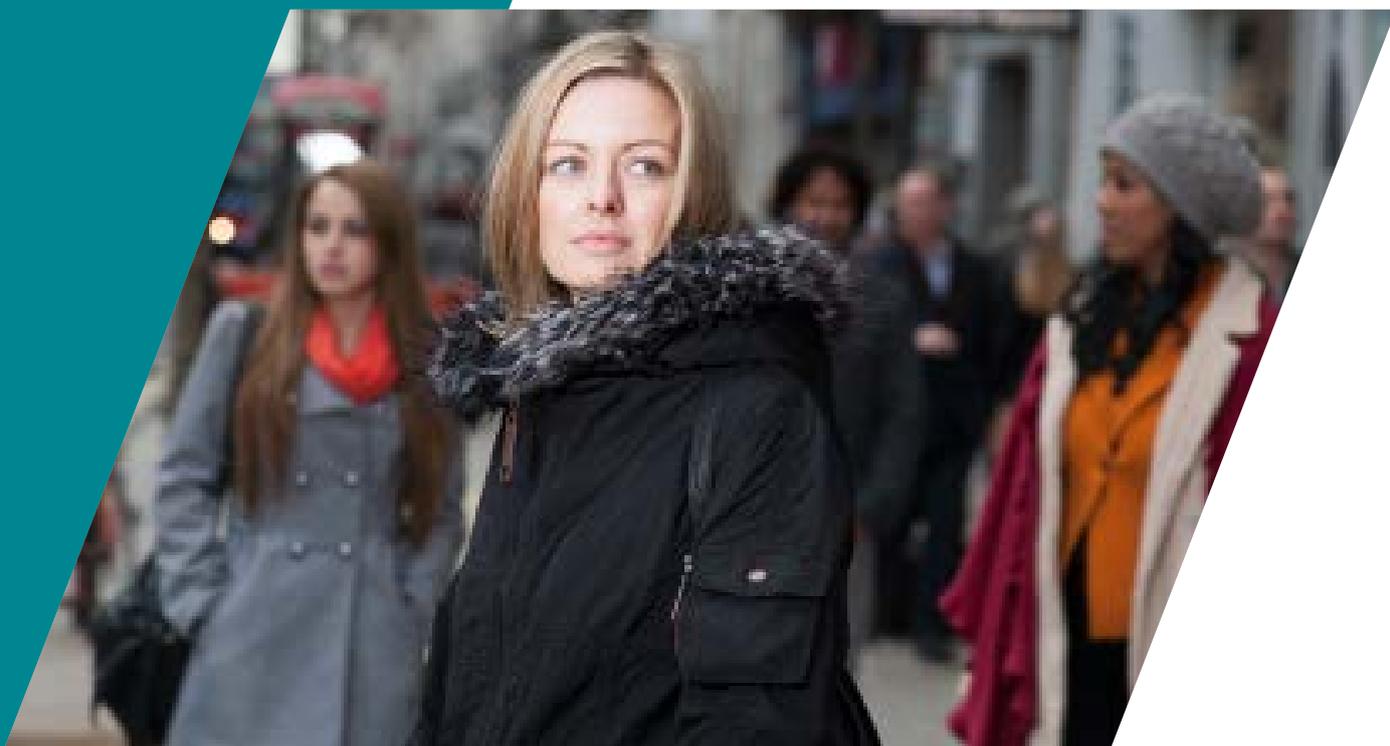


# Quarterly Consultation No.9

June 2015





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The Financial Conduct Authority invites comments on this Consultation Paper. Comments should reach us by 5 July 2015 for Chapters 4 and 5, and by 5 August 2015 for the remaining chapters.

Comments may be sent by electronic submission using the form on the FCA's website at [www.fca.org.uk/your-fca/documents/consultation-papers/cp15-19-response-form](http://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-19-response-form) or by email to [cp15-19@fca.org.uk](mailto:cp15-19@fca.org.uk).

Alternatively, please send comments in writing to:

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If you are responding in writing to several chapters then please send your comments to Emma Elder or Mel Purdie in Communications, who will pass your responses on as appropriate.

All responses should be sent to:

Financial Conduct Authority  
25 The North Colonnade  
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It is the FCA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

You can download this Consultation Paper from our website: [www.fca.org.uk](http://www.fca.org.uk).

## Abbreviations used in this paper

<b>APER</b>	Statements of Principle and Code of Practice for Approved Persons
<b>APRC</b>	annual percentage rate of charge
<b>AUA</b>	assets under administration
<b>BCOBS</b>	Banking: Conduct of Business sourcebook
<b>BIS</b>	Department for Business, Innovation and Skills
<b>CBA</b>	cost benefit analysis
<b>CMA</b>	Competition and Markets Authority
<b>COBS</b>	Conduct of Business sourcebook
<b>CONC</b>	Consumer Credit sourcebook
<b>CP</b>	Consultation Paper
<b>CRA</b>	Consumer Rights Act 2015
<b>CREDS</b>	Credit Unions sourcebook
<b>CSDR</b>	Central Securities Depositories Regulations
<b>DEPP</b>	Decision Procedures and Penalties manual
<b>DISP</b>	Dispute Resolution: Complaints sourcebook
<b>DTR</b>	Disclosure Rules and Transparency Rules sourcebook
<b>EEAP</b>	European Electronic Access Point
<b>EG</b>	Enforcement Guide
<b>ESIS</b>	European Standardised Information Sheet
<b>ESMA</b>	European Securities and Markets Authority
<b>FEES</b>	Fees manual
<b>FRC</b>	Financial Reporting Council

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<b>FSMA</b>	Financial Services and Markets Act 2000 (as amended)
<b>ICOBS</b>	Insurance: Conduct of Business sourcebook
<b>ICR</b>	initial capital requirement
<b>KFI</b>	key facts illustration
<b>LR</b>	Listing Rules sourcebook
<b>MCD</b>	Mortgage Credit Directive
<b>MCOB</b>	Mortgages and Home Finance: Conduct of Business sourcebook
<b>MoU</b>	Memorandum of Understanding
<b>ombudsman service</b>	Financial Ombudsman Service
<b>PS</b>	Policy Statement
<b>SIPP</b>	self-invested personal pension
<b>SME</b>	small and medium-sized business
<b>SUP</b>	Supervision manual
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls sourcebook
<b>TC</b>	Training and Competence sourcebook
<b>UNFCOG</b>	Unfair Contract Terms Regulatory Guide
<b>UTCCRs</b>	Unfair Terms in Consumer Contracts Regulations 1999

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# 1. Overview

<b>Chapter No</b>	<b>Proposed changes to Handbook</b>	<b>Consultation Closing Period</b>
2	UK Corporate Governance Code transposition and other miscellaneous changes to LR, DTR, SYSC and APER	5 August 2015
3	Minor changes to the Handbook for self-invested personal pension operators	5 August 2015
4	Minor amendments to MCOB and TC	5 July 2015
5	Minor amendments to various business standards sourcebooks, specialist sourcebooks and a regulatory process manual in relation to the Consumer Rights Act. Amendments to the Enforcement Guide (EG) and the Unfair Contract Terms Regulatory Guide (UNFCOG) to reflect the Consumer Rights Act.	5 July 2015
6	Technical amendments relating to HM Treasury's SME finance measures.	5 August 2015

## 2. UK Corporate Governance Code transposition and other miscellaneous changes to LR, DTR, SYSC and APER

### Introduction

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- 2.1** In this chapter we are proposing some minor changes to various parts of the FCA Handbook which are set out below.
- 2.2** This chapter will be of interest to:
- UK and overseas issuers with UK-listed securities or considering a UK listing of their securities
  - firms advising on the issuance of UK-listed securities
  - firms or persons investing in UK-listed securities
  - other firms subject to SYSC and APER provisions of the Handbook, and
  - primary information providers.
- 2.3** The proposed amendments and the statutory powers they will be made under are set out in Appendix 2.

### Summary of proposals

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- 2.4** We are proposing minor amendments to the following sourcebooks which are considered in turn below:
- Listing Rules sourcebook (LR)
  - Disclosure Rules and Transparency Rules sourcebook (DTR)
  - Statements of Principle and Code of Practice for Approved Persons (APER), and
  - Senior Management Arrangements, Systems and Controls sourcebook (SYSC).

## UK Corporate Governance Code

### *Listing Rules (LR) and other Handbook references*

- 2.5** The UK Corporate Governance Code (the Code) sets out standards for listed companies of good practice for leadership, effectiveness, accountability and communication. The Financial Reporting Council (FRC) is responsible for promoting confidence in corporate governance and reporting and for keeping the Code under review.
- 2.6** The provisions of the Code are supported in LR, which requires premium-listed issuers to report on the extent to which they comply or do not comply with the provisions of the Code and to explain their reasons. LR also requires premium-listed companies to state how they have applied the principles of the Code. DTR refer to a number of provisions of the Code. Therefore, whenever the Code is revised we have to assess how these revisions impact LR and DTR, and other parts of the FCA Handbook.
- 2.7** The Financial Reporting Council (FRC) published a new edition of the Code in September 2014 (2014 Code). It applies to reporting periods beginning on or after 1 October 2014. Therefore, we are proposing to update the definition of the Code in the Glossary and in LR and to make a number of other consequential changes to LR, DTR, APER and SYSC.
- 2.8** We consulted in September 2014 on, and have subsequently implemented, certain changes to the Glossary, LR and DTR to reflect the 2012 Code. However, this resulted in a partitioned definition of the Code given that other sections of the FCA Handbook referred to an earlier edition of the Code. The various changes we are now proposing will allow a single Handbook definition to be applied, referring to the 2014 Code.

### **Q2.1: Do you agree with our proposal to update the definition of the Code so that it applies across all sections of the Handbook?**

#### *Going concern*

- 2.9** The Listing Rules have an explicit provision, derived from earlier versions of the Code, that requires directors to report, in accordance with the Code recommendations and associated guidance, on whether the company is a going concern. This requirement has existed in LR in its current form for many years, as has the specific requirement for the auditors to review the appropriateness of the directors' decision.
- 2.10** The Sharman Panel of Inquiry on *Going Concern and Liquidity Risks*<sup>1</sup> reported to the FRC in 2012. A key change recommended by the Panel's report was to distinguish between, (i) the decision on the appropriateness of adopting the going concern basis of accounting and (ii) the provision of information to shareholders about the economic and financial viability of the entity and the directors' stewardship and governance of the entity in that respect. That recommendation reflected concerns about the existence of an 'expectation gap' about the nature of the assurance that the directors and auditors could provide as well as a belief that better quality narrative disclosure around longer term prospects of the company would be helpful to shareholders and other stakeholders.
- 2.11** The revised 2014 UK Corporate Governance Code provisions in this area, together with the revised guidance issued by the FRC at the same time, have now confirmed this change. In view of the change in best practice, we have considered what changes to make to the corresponding

<sup>1</sup> The Sharman Inquiry - Going Concern and Liquidity Risks: lessons for companies and auditors: Final report and recommendations of the Panel of Inquiry (June 2012)

LR provisions. In doing so, we noted the recognition in the Sharman report that both the narrow going concern accounting decision and the wider issue of provision of information about viability of the entity were relevant to the purpose of the LR provision.

- 2.12** We have concluded, as Lord Sharman recommended, that it would be appropriate to maintain the congruence of the Code and related guidance for directors with the LR provisions in this important area. As such, we have proposed redrafting LR 9.8.6R(3) to require the directors to make the disclosures relating both to the going concern basis of accounting and to the long-term viability of the entity, and we do this by reference to the relevant provisions in the revised UK Corporate Governance Code. We have also proposed updating the provision regarding auditor reporting thereon, contained in LR 9.8.10R(1), so as to refer to the reformulated requirement.

**Q2.2: Do you agree with the proposal to modify the LR requirements on going concern so as to refer to the reformulated requirements under the UK Corporate Governance Code and the associated FRC guidance?**

***Other Code changes***

- 2.13** The revised Code also makes a number of enhancements to the various disclosures which the auditors are required by the LR to review. We propose amending the relevant references to Code provisions that the auditors are required to review under LR 9.2.10R(2) to refer to the revised content and numbering of Code provisions.
- 2.14** Having considered the relevant Code provisions in DTR, we consider that no changes are required to these references to reflect the 2014 Code. However, we have proposed a stylistic change to the Code references in DTR 7.2.8G.
- 2.15** Given the application provisions of the 2014 version of the Code (set out above), we have proposed transitional provisions in both LR and DTR.

**Q2.3: Do you agree with our proposed amendments to LR and DTR to reflect these other Code changes? Do you agree with our proposed transitional provisions in LR and DTR?**

***SYSC and APER***

- 2.16** There are certain references in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) and the Statements of Principle and Code of Practice for Approved Persons (APER) within the Handbook to the provisions of the Code and, in one case, to associated FRC guidance. We propose to update the various Code references to refer to the 2014 version as well as to cross-refer in APER to the associated 'Guidance on Risk Management, Internal Control and Related Financial and Business Reporting' (September 2014) which has replaced that on 'Internal Control: Revised Guidance for Directors on the Combined Code' (October 2005). This also includes proposed transitional arrangements in SYSC and APER referring to the appropriate version of the Code (proposed SYSC TP 5 and APER TP 2). We also propose to bring up to date the reference in APER 3.1.9G to 'firms listed on the London Stock Exchange' by referring to the premium listing status of their shares, rather than their trading venue.
- 2.17** We have modified the wording of the examples provided in SYSC 2.1.6G, Question 14 and SYSC 4.4.6G, Question 14. These examples refer to an area in which the chief executive's involvement is not required when corporate governance best practice recommends this. These examples now refer more clearly to the audit committee's responsibility, among other things, for overseeing the effectiveness of the audit process and the objectivity and independence of

the external auditor. We have also amended the reference in this guidance to the composition of audit committees to reflect the specification under more recent versions of the Code that they should be composed of independent non-executive directors, and not just of non-executives.

**Q2.4: Do you have any comments on the proposed changes to the Code references in APER and SYSC, including the transitional arrangements?**

**Scientific research based companies**

- 2.18** The Listing Rules' bespoke arrangements for scientific research based companies provide a route to premium listing where applicants lack a published or filed three-year financial record but where they can nevertheless demonstrate required credentials, including their possession of a three-year record of laboratory research and development. LR 6.1.12R specifies the modified eligibility provisions that scientific research company applicants within the scope of LR 6.1.11R need to comply with. However, recent changes to LR 6.1.12R<sup>2</sup>, together with some inconsistency of wording between LR 6.1.11R and LR 6.1.12R, have generated ambiguity and possible incoherence in the application of these rules.
- 2.19** LR 6.1.11R only applies to a company which does not have a published/filed three-year financial record. However, LR 6.1.12R(5) requires a company that satisfies LR 6.1.11R to demonstrate that it has a 'three-year record of operations in laboratory research and development'. Therefore, the time references in the current rules could leave a company which does not meet the 'three-year requirement' (as per LR 6.1.11R) unsure as to how it can subsequently satisfy the 'three-year requirement' in LR 6.1.12R(5). We propose addressing the linguistic inconsistency by deleting the words 'of operations' in LR 6.1.12R(5).
- 2.20** We are also concerned about which companies are within the scope of the alternative eligibility provisions in LR 6.1.12R. A scientific research based company that has a three-year financial track record (and therefore satisfies LR 6.1.3R(1)(a)) is unable to qualify for the alternative eligibility route under LR 6.1.11R. However, because of the early stage of its business, this financial record would be unlikely to accord with, for example, the expectation of LR 6.1.3EG that this record would be of consistent revenue, cash flow or profit growth throughout the period covered by the historic financial information. The applicant may be unable to satisfy the requirement in LR 6.1.3BR(2) for the relevant financial information to put prospective investors in a position to make a full assessment of the business otherwise required of a new applicant. Therefore, it would be ineligible for premium listing, even though it is able fully to comply with the alternative eligibility provisions in LR 6.1.12R. We think this differential treatment is not justified.
- 2.21** The Listing Rules have long allowed a scientific research company to be eligible for premium listing without the three years of audited accounts that would normally be required. This logically includes a company which has a three-year record of laboratory research and development but has not yet published/filed three-years of financial statements due to the time lapse between its accounting year end and actual publication/filing of its accounts. However, it has become clear that the change<sup>3</sup> to LR 6.1.12R that makes its application explicitly dependent upon the applicant being within the scope of LR 6.1.11R has limited the scope of the scientific research company provisions such that their scope is narrower than had been originally the case.

<sup>2</sup> PS14/8 *Enhancing the Effectiveness of the Listing Rules* (May 2014)

<sup>3</sup> Pursuant to PS14/8

- 2.22** Therefore, we propose to amend LR 6.1.12R so that it applies when a scientific research company applicant either does not yet have the three-year financial record required by LR 6.1.3R or where it has the relevant three-year financial record but is unable to comply with LR 6.1.3BR (putting prospective investors in a position to make an informed assessment of the business for which admission is sought).
- 2.23** We are also proposing a minor change to LR 6.1.11R(2) to clarify that the requirement in LR 6.1.3BR(1) (historical financial information to represent at least 75% of the new applicant's business for the full period) also applies, where applicable, for the reduced period that is covered by the published or filed historical financial information since the inception of the applicant's business.

**Q2.5: Do you agree that the changes proposed to LR 6.1.11R and LR 6.1.12R provide appropriate clarification of the eligibility for premium listing requirements for scientific research based companies?**

**Regulated information (DTR 8, Annex 2)**

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- 2.24** DTR 8, Annex 2 sets out the headline codes that must be used by FCA-approved primary information providers when disseminating regulated information. We have reviewed these headline codes (and the associated headline categories and descriptions) and are proposing a number of minor amendments due to the need to:
- update legal references as a result of statutory changes/changes to European directives
  - update the names of third parties due to recent legislative/organisational change, and
  - ensure the various components remain fit for purpose.
- 2.25** We are also proposing a number of new headline codes (and associated headline categories and descriptions) as a result of stakeholder demand.
- 2.26** We consider that both proposals will ultimately improve the accessibility of regulated information for investors and other stakeholders.
- 2.27** For completeness, we note that ESMA's recent consultation on Draft Regulatory Technical Standards on the European Electronic Access Point (EEAP)<sup>4</sup> has proposed common classifications for regulated information that could be used by officially appointed mechanisms, member states, issuers and end users (e.g., investors). We will monitor developments in this area and will consider the need for further amendments to the headline codes (and associated headline categories and descriptions) in DTR 8 Annex 2 in due course.

**Q2.6: Do you agree with our proposed amendments to the headline codes (and associated headline categories and descriptions) in DTR 8 Annex 2?**

<sup>4</sup> ESMA/2014/1566, see section V.

**Electronic settlement compatibility**

- 2.28** Prior to 2012, LR 6.1.23R had required that a company's equity shares must be eligible for electronic settlement. In CP12/2, we asked whether respondents believed we should either amend this rule or delete it entirely. The case for deletion, we suggested, was that this was more a matter on which the exchanges on which shares were admitted to trading should specify appropriate requirements.
- 2.29** Most respondents agreed with our proposal to amend or delete the rule and some would have supported either course of action. We amended the rule to state that to be premium-listed the constitution of the listed company and the terms of its equity shares must be compatible with electronic settlement.
- 2.30** Article 3.2 of the EU's Central Securities Depositories Regulations (CSDR), which came into force in September 2014, requires that relevant securities that are the subject of transactions on a trading venue must be recorded in book-entry form and thus capable of being settled in dematerialised form. This requirement, which may be considered to have superseded the requirements of LR 6.1.23R, is applicable to both premium- and standard-listed equities, but there is no equivalent listing rule that currently applies to standard-listed equities.
- 2.31** In the light of the introduction of the CSDR's requirements, we no longer consider there are any obvious grounds to have a specific requirement that is applicable to premium-listed companies. We are also mindful that our regime for standard listing is designed to accord with basic EU directive and regulation requirements. As such, we have concluded that retention of the rule for premium-listed companies no longer serves a useful purpose, and indeed could be construed as giving a misleading impression regarding our expectations of settlement efficiency in markets other than for premium-listed equities. Accordingly, we are now proposing to delete both the eligibility requirements (LR 6.1.23R, together with its associated guidance in LR 6.1.24G and LR 6.1.24AG) and the associated continuing obligation (LR 9.2.3R) regarding electronic settlement.

**Q2.7: Do you agree that with our proposal to delete the requirements regarding electronic settlement for premium-listed companies (LR 6.1.23R, LR 6.1.24G, LR 6.1.24AG and LR 9.2.3R)?**

**Cost benefit analysis**

- 2.32** Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.
- 2.33** We do not anticipate the proposed changes to the LR, APER, SYSC and DTR having any significant cost implications (see below). Therefore, a detailed cost benefit analysis has not been prepared.

**UK Corporate Governance Code**

- 2.34** Our proposals are designed to ensure congruence of the Listing Rules and other parts of the FCA Handbook with evolving best practice as embodied in the most recent revisions by the FRC of the UK Corporate Governance Code and they should avoid the imposition of any additional incremental cost.

### ***Other proposed changes***

- 2.35** The other proposed changes to LR and DTR to clarify the application of current provisions of the Handbook in line with their existing intent or to update legal references as a result of statutory changes or changes to European directives. We consider that our proposals on regulated information (proposed changes to the DTR) will also ultimately improve the accessibility of regulated information for investors and other stakeholders.

### **Compatibility statement**

- 2.36** This section follows the requirements in section 138I of FSMA. When consulting on new rules, the FCA is required by section 138I of FSMA to include an explanation of why it believes making the proposed rules is compatible with its strategic objective, advances one or more of its operational objectives, and has regard to the regulatory principles in section 3B of FSMA.
- 2.37** This section also sets out our view of how the proposed rules are compatible with our duty to discharge our general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (section 1B(4) of FSMA). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
- 2.38** This section also includes our assessment of the equality and diversity implications of these proposals.

### ***The FCA's objectives and regulatory principles***

- 2.39** The proposals set out in this consultation paper are compatible with the FCA's strategic objective of ensuring that the relevant markets function well, as they assist in ensuring that the LR, SYSC, APER and DTR remain effective. The proposals in this consultation paper are primarily intended to advance our operational objectives of:
- enhancing market integrity – protecting and enhancing the integrity of the UK financial system by ensuring that the LR, SYSC, APER and DTR reflect best practice and evolution of regulatory requirements, and
  - delivering consumer protection – maintaining and securing an appropriate degree of protection for consumers, by ensuring that the LR, SYSC, APER and DTR remain effective.
- 2.40** In preparing these proposals, the FCA has had regard to all of the regulatory principles in section 3B of FSMA.

### ***The need to use our resources in the most efficient and economic way***

- 2.41** We believe that the proposals in this consultation paper will have minimal impact on our resources.

### ***The principle that a burden or restriction should be proportionate to the benefits***

- 2.42** We believe the proposals in this consultation paper will not significantly increase the administrative burden on issuers, primary information providers and FCA-regulated firms.

### ***The principle that we should exercise our functions as transparently as possible***

- 2.43** These proposals provide transparency to the rule making process.

**2.44** In preparing the proposals we have had regard to the FCA's duty to promote effective competition in the interests of consumers under section 1B(4) FSMA.

***Impact on mutual societies***

**2.45** Section 138K of the Financial Services and Markets Act 2000 requires us to state whether in our opinion our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons.

**2.46** The relevant LR and DTR that we propose to delete, amend or include apply equally to relevant issuers or primary information providers, regardless of whether they are an authorised person which is a mutual society or another authorised person.

**2.47** The amendments to APER and to SYSC 4 would apply equally to mutual societies and other authorised persons; while those to SYSC 2 do not apply to mutual societies.

**2.48** Therefore, we believe that the impact of our proposals, in so far as they are of relevance to mutual societies, would not significantly differ depending on whether an issuer, firm or primary information provider is:

- an authorised person which is a mutual society; or
- another authorised person.

**Equality and diversity considerations**

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**2.49** We have considered the equality and diversity issues that may arise from the proposals in this CP. Overall, we do not consider that the proposals in this CP raise concerns with regards to equality and diversity issues. We do not consider that the proposals in this consultation adversely impact any of the groups with protected characteristics, i.e., age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.

**2.50** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim, we welcome any input to this consultation on such matters.

## 3.

# Technical changes to the regulatory capital framework for SIPP operators

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### Introduction

- 3.1** Following consultation by the Financial Services Authority in November 2012 (CP12/33), the FCA published PS14/12 in August 2014 which included an instrument containing rules amending the capital requirements framework for self-invested personal pension (SIPP) operators. These rules will come into force on 1 September 2016. Broadly speaking, these rules require firms to calculate their capital requirements in relation to their assets under administration (AUA), with an additional capital surcharge for firms that administer non-standard assets.
- 3.2** Since publishing PS14/12, the FCA has received comments on the rules, some of which were not raised during the consultation period that preceded them, for example on the practicalities of the policy. In some cases, these comments identified areas where it was felt that clarifications could be useful. Therefore, we propose some minor changes to the rules along with some guidance to clarify certain areas, as explained in more detail below. We expect these changes to reduce compliance costs on firms, who we strongly encourage to read them. We also consider that they do not pose any risk to our statutory objectives of consumer protection, market integrity, and effective competition in the interest of consumers.
- 3.3** This consultation only concerns changes in this chapter. It does not propose to re-open the broader framework and any other aspects of the policy observed. Accordingly, any feedback should only be in respect of the changes discussed in this chapter.
- 3.4** The proposed amendments and the statutory powers they will be made under are set out in Appendix 3.

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### Proposed rule changes and guidance

#### Frequency of valuations

- 3.5** For some firms, obtaining accurate quarterly valuations of the AUA in a timely manner can be difficult, largely due to systems and reliance on third parties. Therefore, we propose that firms can rely on the valuations provided to members for the purpose of the calculation in these rules. This would be calculated as the sum of the most recent annual valuations of the personal pension plans administered by the firm over the preceding 12 months, adjusted to include any revaluation of assets that may occur between the date of the most recent annual valuation and the date when the firm must calculate its AUA. So, on 1 September 2016 when the rules come into force, a firm would calculate the sum of the most recent annual valuations provided to members, subject to any revaluations. This would be recalculated quarterly, looking at the

preceding 12 months of valuations. If, for any reason, a firm expects not to have this data available at 1 September 2016, it should contact the FCA.

### **Six-month period to apply the increased constant**

- 3.6** We also propose that, when the firm's AUA increases and the result is that a higher constant is required to be used to calculate the firm's initial capital requirement (ICR), the firm has six months before it must apply the new constant. This will allow the firm time, for example, to raise any additional capital, if required.

### **Amendments to the standard asset list**

- 3.7** In respect of quoted shares, the standard asset list in PS14/12 only allows shares traded on the Alternative Investment Market, London Stock Exchange or a recognised overseas investment exchange to be categorised as a standard asset. We propose to expand this to all securities admitted to trading on a regulated venue. Regulated venue means an exchange (for example a stock exchange, or trading venue such as a multilateral trading facility) that is authorised by a financial regulator or government agency. It is not restricted to the EEA. The term 'security' is defined in the FCA Handbook and is broader than shares, including bonds. As such, we propose to remove 'corporate bonds' from the standard asset list, to capture quoted corporate bonds, which are covered by this new wording. Firms should note that, whilst this proposal expands the standard asset list, the requirement that the asset must be capable of being readily realised within 30 days, to be considered a standard asset, will still apply.

- 3.8** We also propose to change 'bank deposits' to 'deposits', as defined in the FCA Handbook, which makes clear that building society or credit union deposits are eligible. We would expect that most deposits should be breakable, albeit with a penalty, and so should qualify as standard. However, if a firm believes that this is not the case for an individual deposit they should contact the FCA.

### **Guidance**

- 3.9** We believe that some additional guidance to these rules would be helpful for firms interpreting these rules. Based on the feedback received from firms, we propose guidance to clarify what 'capable of being...readily realised within 30 days' means. The key consideration is whether this would be capable of taking place. This is a broad judgement on whether there is a market for the asset and whether it could be sold at a value close to the most recent valuation if no material change to the underlying economic condition has occurred.
- 3.10** For a UK commercial property, the asset should be considered to have been realised at the point that the land registry is formally notified. In addition to this, we clarify that responsibilities and expectations around valuations and due diligence is in line with previous FCA guidance.
- 3.11** Basing the financial requirements on assets under administration requires firms to value their assets correctly. In particular, where firms have been involved in a high proportion of non-standard investments in the past and/or where they have had difficulties carrying out their due diligence or receiving valuations.
- 3.12** Where a firm has doubts about the values it has been provided, it should make further enquiries and take appropriate steps to ensure that the investment is real and to establish if it is impaired. A proper level of enquiries needs to be undertaken by the firm to establish the correct value of the assets.

**Q3.1: Do you have any comment on the proposals outlined above? If you do not agree with them, please explain why.**

### Cost benefit analysis

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- 3.13** Whilst we expect these changes to reduce costs for some firms, we do not believe that these proposals require us to adjust the cost benefit analysis completed in CP12/33, which was updated in PS14/12. These changes do not amend the fundamental framework of this policy but rather make focused technical changes. Broadly, these will result in reduced costs for firms. For example, the obligation to obtain quarterly valuations of AUA under the previous methodology may have been costly for some firms, due to systems restraints and renegotiations of contracts with third parties. Under these proposals, such costs would be reduced, as firms would simply need to calculate the sum of the most recent valuations provided to members, subject to any revaluations, on a quarterly basis. This is data that should be readily available to the firm, and so costs should be more limited.
- 3.14** The other key change is to broaden the range of securities admitted to trading on the standard asset list. A standard asset must both be on the list of standard assets, but also be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days. We do not believe that this broadening will result in firms who administer more risky assets holding insufficient capital, as the asset must still be capable of being readily realised within 30 days to be treated as a standard asset.
- 3.15** We do not expect the changes in this chapter to impact on the benefits estimated in the CBA in CP12/33, updated in PS14/12.

### Compatibility statement

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- 3.16** These proposals must be read in conjunction with the rules made in PS14/12, and the accompanying compatibility statement in CP12/33. We believe that the full package of rules increase the protection provided to consumers in the scenario of a SIPP operator exiting the market, as there is more capital available to ensure the transfer of the SIPP book to another provider, and orderly exit of the firm from the market.
- 3.17** The changes proposed do not markedly increase the protection provided by those rules. However, they do reduce costs on firms and are likely to improve effective compliance with this policy at no risk to consumer protection. Therefore, we believe that the proposals are ultimately in the interest of consumers, as they will help ensure that firms are focusing on embedding the broader policy, rather than being distracted by costs. Reduced costs may also assist effective competition in the interest of consumers.
- 3.18** We do not believe that these proposals materially impact the potential for financial crime.

### Equality and diversity

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- 3.19** These changes are technical in nature, and broadly speaking make changes to assist firms in the compliance with a wider policy. We do not believe that they have any prejudicial impact on any groups, or that they have any adverse equality and diversity implications.

## 4. Minor amendments to MCOB and TC

### Introduction

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- 4.1** In CP14/20<sup>5</sup>, we consulted on a number of rule changes to implement the Mortgage Credit Directive (MCD) and make second charge mortgages subject to the regulatory regime for mortgages. The final rules were published in PS15/9.<sup>6</sup>
- 4.2** Since publication, it has come to our attention that minor amendments need to be made to these rules. Therefore, we are consulting on the following:
- an amendment allowing firms to use the current calculation method for the annual percentage rate of charge (APRC) when providing an additional figure as part of the 'top up' information to the key facts illustration (KFI). This had been our original policy intent, however the final rules did not reflect this
  - a clarification of the application of the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) to second charge mortgages entered into before 21 March 2016, and
  - an amendment to the Training and Competence sourcebook (TC) restricting the availability of the transitional provisions delaying the 'in-force' dates of the TC requirements to those firms carrying out MCD activities before 20 March 2014. This change is required to implement the MCD.
- 4.3** The text of the proposed amendments and the statutory powers they will be made under can be found in Appendix 4.

### Summary of proposals

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#### ***Using the APR calculation method as part of the KFI 'top up'***

- 4.4** The MCD provides for a transitional period, allowing firms to continue using existing disclosure documents (in the UK's case, the KFI) before switching over to the new European Standardised Information Sheet (ESIS) in 2019, as long as the existing document meets equivalent information requirements. To use the transitional, our final rules stated that firms continuing to use the KFI must 'top up' the document with certain additional information.
- 4.5** One of these 'top up' items is an additional annual percentage rate of charge (APRC) figure, calculated on the basis of interest rates rising to their highest level in the last 20 years.

<sup>5</sup> CP14/20 *Implementing the Mortgage Credit Directive and the new regime for second charge mortgages* (September 2014) <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-20>

<sup>6</sup> PS15/9 *Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages, feedback to CP14/20 and final rules* (March 2015) <http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-09>

- 4.6** Our rules currently require firms using this transitional to use two different calculation methods in different parts of the KFI. For the 'top up' APRC, firms are required to use the MCD calculation method.<sup>7</sup> For KFI disclosures, firms must use the existing MCOB APR calculation method.<sup>8</sup> Our original policy intent had been to allow firms to use either the MCD method or the MCOB method for the calculation of the top-up disclosure. Therefore, we propose to amend the rules to allow this.

**Q4.1: Do you agree with our proposal to allow firms to use either the MCD method or MCOB method for the calculation of the additional APRC as part of the 'top up' KFI?**

***Amending the application provision for second charge mortgages entered into before 21 March 2016***

- 4.7** In CP14/20, we proposed that second charge mortgages entered into before 21 March 2016 should be subject to certain MCOB rules with effect from 21 March 2016. We confirmed that we would proceed with our approach in PS15/9.
- 4.8** Our final rules included an application provision (MCOB 1.2.20R) which lists three MCOB chapters that apply to second charge mortgages entered into prior to 21 March 2016. Our original policy intent was for this list to act as examples of the provisions that apply. However, we have become aware that some stakeholders may regard this as an exhaustive list of the provisions that apply.
- 4.9** Therefore, we propose to amend MCOB 1.2.20R to make it guidance, rather than a rule, and adjust the language to clarify that it is not an exhaustive list of those MCOB rules that apply.
- 4.10** We expect firms to consider the application provisions of each chapter when determining how MCOB applies to such contracts. We can also confirm that firms are not obliged to replace existing loans with new contracts so that customers have the benefit of all the MCOB rules, such as advice on entering into the contract.

**Q4.2: Do you have any comments on our amendment to MCOB 1.2.20?**

***Knowledge and competence transitional period***

- 4.11** The MCD allows those firms who were carrying out activities regulated under MCD before 20 March 2014 an additional year (from 21 March 2016 to 21 March 2017) to comply with the revised knowledge and competence standards of the MCD.
- 4.12** However, our rules published in PS15/9 applied this transitional to all firms, meaning that firms that begin conducting MCD activities after 20 March 2014 would be eligible to benefit from the transitional provision. We propose to correct this by including the eligibility condition as given in the MCD in the transitional provision text.

**Q4.3: Do you have any comments on our proposal to apply the transitional provision in TC to only to those firms carrying out MCD activities prior to 20 March 2014?**

<sup>7</sup> This calculation method is shown in MCOB 10A in our final rules, published as part of PS15/9.

<sup>8</sup> As shown in MCOB 10.

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### Cost benefit analysis

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- 4.13** Section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.
- 4.14** CP14/20 and PS15/9 contained cost benefit analyses relating to the implementation of the MCD. As we are only making minor amendments to ensure our intended policy is achieved and the MCD is correctly implemented, these proposals are expected to impose no additional costs from those already considered.
- 4.15** The amendment to allow firms to use the current calculation method for the APR in the 'top up' KFI should allow firms to show this additional figure without having to make changes to their systems to incorporate the new calculation method.
- 4.16** Our change to MCOB 1.2.20 is intended to provide certainty for second charge firms and clarify the application of MCOB to those contracts entered into before 21 March 2016. This reflects our original policy intention and the basis on which our CBA in CP14/20 was conducted.
- 4.17** The amendment to TC directly implements the MCD transitional provision on knowledge and competency. The implementation of MCD in this area was considered in our CBA to CP14/20.

### *Impact on mutual societies*

- 4.18** Clause 22 of the Financial Services Bill 2012 amends the rule-making powers of the FCA in the Financial Services and Markets Act 2000 (FSMA) to require us to provide an opinion on whether the impact of proposed rules on mutual societies is significantly different to the impact on other authorised persons. While our proposed changes will impact mutual societies involved in mortgage lending covered under the MCD, we do not believe the changes in this consultation will have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons.

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### Compatibility statement

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- 4.19** Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA.
- 4.20** The proposals in this chapter are intended to advance our operational objective of securing appropriate levels of consumer protection by ensuring that our intended policy in implementing the MCD is achieved.

### Equality and diversity

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- 4.21** We have considered the equality and diversity issues that may arise from the proposals and do not consider that these proposals raise any concerns. We do not consider that these proposals adversely impact any of the groups with protected characteristics ie age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.
- 4.22** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim, we welcome any input to this consultation on such matters.

## 5. Consumer Rights Act

### Introduction

- 5.1** The Consumer Rights Act (CRA) received Royal Assent on 26 March 2015. It is to come into force on 1 October 2015, as set out in the press release dated 27 March 2015 from the Department for Business, Innovation and Skills (BIS).<sup>1</sup> The CRA will replace the provisions of the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) and introduce changes to the existing law on unfair contract terms.<sup>2</sup> The FCA has powers under the UTCCRs to challenge unfair terms in standard form consumer contracts entered into by authorised firms or appointed representatives of firms that undertake any regulated activity. The Competition and Markets Authority (CMA) is the principal enforcer of the UTCCRs and will retain that role under the CRA.
- 5.2** We are proposing to amend rules and guidance provisions in a number of sourcebooks in the Handbook and two regulatory guides: the Enforcement Guide (EG) and the Unfair Contract Terms Regulatory Guide (UNFCOG). These amendments are necessary to reflect these changes.
- 5.3** This chapter will be of interest to firms who are subject to our requirements and the UTCCRs. It may also be of interest to consumers who have concerns about unfair terms in their contracts with firms or unfair consumer notices.
- 5.4** The text of the proposed amendments and the statutory powers they will be made under can be found in Appendix 5.

### Summary of proposals

- 5.5** Subject to the commencement order relating to the CRA's unfair terms provisions, the CRA will replace the UTCCRs for contracts entered into on or after 1 October 2015. The UTCCRs will continue to apply to contracts entered into before 1 October 2015. We are consulting on amendments to wording in the Handbook and Regulatory Guides regarding the UTCCRs and the FCA's powers as a qualifying body under the UTCCRs. This wording needs to be amended to reflect the provisions concerning unfair terms and notices, enforcement of the law on unfair contract terms and notices, and investigatory powers in the CRA.

#### *Proposed changes to the Handbook*

- 5.6** We propose to amend the rules and guidance provisions in the Handbook as follows:
- to reflect the new definition of consumer under the CRA, and

<sup>1</sup> <https://www.gov.uk/government/news/biggest-overhaul-of-consumer-rights-in-a-generation>

<sup>2</sup> It will give effect in the UK to Council Directive 93/13/EEC on unfair terms in consumer contracts.

- to clarify the applicability of references to the UTCCRs and insert references to the CRA.

**5.7** These changes will be made to the following parts of the Handbook:

- Conduct of Business sourcebook (COBS)
- Insurance: Conduct of Business sourcebook (ICOBS)
- Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)
- Banking Conduct of Business sourcebook (BCOBS)
- Supervision manual (SUP)
- Credit Unions sourcebook (CREDS), and
- Consumer Credit sourcebook (CONC).

**Q5.1: Do you have any comments on our proposed amendments to the Handbook in the light of the CRA?**

***Proposed changes to the Enforcement Guide (EG)***

**5.8** EG currently describes the FCA's approaches and policies relating to applications for injunctions under regulation 12 of the UTCCRs and for enforcement orders under Part 8 of the Enterprise Act 2002.

**5.9** The FCA's new powers (under Schedule 3 to the CRA, replacing those in the UTCCRs) enable it to apply for injunctions for consumer contract terms and notices that are:

- unfair
- non-transparent and/or
- exclusionary or restrictive in relation to certain liabilities.

**5.10** The FCA will also have new investigative powers, replacing and slightly widening those in the UTCCRs, under Schedule 5 to the CRA.

**5.11** Lastly, the CRA replaces all of the FCA's investigative powers under Part 8 of the Enterprise Act 2002 and adds to the remedies available to the FCA through court action for enforcement orders under that Act.

**5.12** We propose to amend EG to reflect these changes. Our view, subject to consultation responses, is that these changes do not require us to materially change our relevant approaches and policies.

**Q5.2: Do you have any comments on our proposed amendments to EG in the light of the CRA?**

***Proposed changes to the Unfair Contract Terms Regulatory Guide (UNFCOG)***

**5.13** UNFCOG sets out the FCA's policy on how it uses its powers under the UTCCRs, including its powers to obtain undertakings and seek information from firms. The FCA's powers as a regulator to obtain undertakings and as an enforcer to require the production of information

under the CRA are set out in Schedules 3 and 5 to the CRA, respectively. We propose to amend UNFCOG as follows:

- change the title so that it becomes the Unfair Contract Terms and Consumer Notices Regulatory Guide
- replace all references to the UTCCRs with references to the CRA and all references to provisions under the UTCCRs to corresponding or new provisions under the CRA
- explain that the UTCCRs will still apply to contracts entered into before 1 October 2015
- explain that we may review terms, whether or not they have been individually negotiated
- clarify that we can also assess consumer notices for fairness under the CRA
- explain that core terms relating to price and subject matter are only exempt from a review of fairness if they are transparent and prominent
- clarify that the subject matter and price exemption does not apply to consumer notices
- provide that a written term of a contract, or a consumer notice in writing, must be transparent
- explain that the FCA has investigatory powers to require the production of information from firms under the CRA, and
- state that the FCA has powers to enforce the law on unfair contract terms and notices under the CRA.

**Q5.3: Do you have any comments on our proposed amendments to UNFCOG in the light of the CRA?**

- 5.14** The CMA has consulted on draft guidance<sup>3</sup> on the unfair terms provisions in the CRA, including an overview of the key changes to unfair terms legislation in *What's new?*<sup>4</sup> The CMA has stated in its unfair contract terms consultation document that it will publish a final version of its guidance and a summary of the consultation responses received within the scope of the consultation. We will take into account the CMA's final guidance in deciding whether to issue our own guidance and, if so, the content of any guidance we issue.

***The Memorandum of Understanding (MoU) between the CMA and the FCA***

- 5.15** We will liaise with the CMA to consider amendments to the current MoU (dated 12 June 2014 and on our website<sup>5</sup>) in the light of the CRA and the changes to the existing law on unfair contract terms. We will publish the updated MoU on our website.

<sup>3</sup> <https://www.gov.uk/government/consultations/unfair-contract-terms-draft-guidance-on-consumer-protection-law>

<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/398211/CMA37\\_c\\_con\\_Unfair\\_terms\\_what\\_s\\_new.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398211/CMA37_c_con_Unfair_terms_what_s_new.pdf)

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/325666/MoU\\_FCA-CMA\\_Final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325666/MoU_FCA-CMA_Final.pdf)

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### Cost benefit analysis

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- 5.16** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us, when we are making rules, to perform a cost benefit analysis of our proposed requirements and to publish the result, unless we consider the proposal will not give rise to any cost or to an increase in cost of minimal significance.
- 5.17** We consider that our proposals will not give rise to any costs additional to firms' costs of complying with the CRA or that any such additional costs would be of minimal significance. In January 2014, BIS published its final revised impact assessment on the Consumer Rights Bill titled Consumer Rights Bill: Proposals on Unfair Terms, which is available on its website, setting out the likely costs of firms complying with the Bill.<sup>6</sup> We are providing no cost benefit analysis in relation to our proposals.

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### Compatibility statement

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- 5.18** Section 138I of FSMA requires us to explain why we consider that proposed rules are compatible with our strategic objective, and advance one or more of our operational objectives, and how we have had regard to the regulatory principles in section 3B of FSMA.
- 5.19** Our proposals consist primarily of guidance. However, to the extent that our proposals include rules, we consider that they are compatible with our strategic objective of ensuring that relevant markets work well and advance our operational objective of securing an appropriate level of protection for consumers. In particular, they reflect new consumer protection legislation in our Handbook. We have also had regard to the regulatory principles in section 3B of FSMA. We consider that the minor changes we are proposing are compatible with these principles.
- 5.20** Section 138(2)(k) of FSMA also requires the FCA to state our opinion about the impact of the proposed rules on mutual societies. The proposed rules are not expected to have a significantly different impact on mutual societies, compared to the impact on other authorised persons.

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### Equality and diversity

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- 5.21** We have considered the equality and diversity issues that may arise from the proposals in this CP. Overall, we do not consider that the proposals in this CP raise concerns with regards to equality and diversity issues. We do not consider that the proposals in this consultation adversely impact any of the groups with protected characteristics, ie age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.
- 5.22** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we welcome any input to this consultation on such matters.

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<sup>6</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/274864/bis-13-1362-consumer-rights-bill-proposals-on-unfair-terms-impact-final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274864/bis-13-1362-consumer-rights-bill-proposals-on-unfair-terms-impact-final.pdf)

## 6. Changes relating to HM Treasury SME finance measures

### Introduction

- 6.1** The government consulted on improving access to small and medium-sized business (SME) credit data in December 2013<sup>7</sup>, following the announcement in the 2013 Budget that the government would ‘investigate options for improving access to SME credit data to make it easier for newer lenders to assess applications for loans to smaller businesses’. A further consultation on helping to match SMEs rejected for finance with alternative lenders was published in March 2014.<sup>8</sup>
- 6.2** The Small Business, Enterprise and Employment Act 2015<sup>9</sup> contains measures aimed at improving access to SME credit information and helping to match SMEs rejected for finance with alternative lenders. Detailed provisions will be set out in secondary legislation (the Regulations) that will require us to maintain arrangements to monitor and enforce relevant requirements.
- 6.3** We are consulting on Handbook changes to ensure we have arrangements in place that are consistent with the government’s legislation. The timing of the implementation of the Regulations is a matter for government, although it is likely that separate regulations reflecting the two policy measures outlined above will be commenced at different times. Draft Regulations<sup>10</sup> are available on the HM Treasury website, which may be subject to further amendment before being made.
- 6.4** The Regulations will create a separate monitoring and enforcement regime from the authorisation requirements under the Financial Services and Markets Act 2000 (FSMA), but apply, or make provision corresponding to, certain aspects of FSMA.
- 6.5** The Regulations will require, with permission from the relevant SME, designated banks to:
- share SME credit information with designated credit reference agencies (CRAs), which must then provide such information to finance providers on request, and
  - provide specified information about rejected SME loan applicants to designated finance platforms, which must then provide such information to finance providers on request.
- 6.6** The nature and content of the SME credit information to be shared with designated CRAs, and specified information regarding rejected SME loan applicants to be provided to designated

<sup>7</sup> <https://www.gov.uk/government/consultations/competition-in-banking-improving-access-to-sme-credit-data>

<sup>8</sup> <https://www.gov.uk/government/consultations/sme-finance-help-to-match-smes-rejected-for-finance-with-alternative-lenders>

<sup>9</sup> See sections 4 to 9 of the Act <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted/data.htm>

<sup>10</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389204/DraftRegulations\\_12\\_12\\_14\\_1111\\_\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389204/DraftRegulations_12_12_14_1111__2_.pdf)  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389210/The\\_Small\\_and\\_Medium\\_Sized\\_Business\\_Finance\\_Platforms\\_Regulations\\_2015\\_Regulations\\_draft\\_statutory\\_instrument.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389210/The_Small_and_Medium_Sized_Business_Finance_Platforms_Regulations_2015_Regulations_draft_statutory_instrument.pdf)

finance platforms and then to finance providers, will be set out in the schedules to the respective Regulations.

- 6.7** For the purposes of the Regulations, a business is an SME business if it:
- a.** has an annual turnover of less than £25 million
  - b.** carries out commercial activities
  - c.** does not carry out regulated activities as its principal activity, and
  - d.** is not owned or controlled by a public authority.
- 6.8** This chapter sets out how we plan to undertake our functions under the Regulations. These proposals will be of interest to banks, CRAs and finance platforms considering designation by HM Treasury, SMEs seeking finance and alternative finance providers.
- 6.9** The limited proposed amendments to our rules and guidance are set out in Appendices 6A, 6B and 6C. Proposed guidance on our functions in relation to the Regulations is at Appendix 6D, which we intend to publish on our website.

### **Summary of proposals**

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- 6.10** The Regulations will set out the detail of the procedure for designation by HM Treasury and the duties on designated banks, CRAs and finance platforms. They will also set out our powers and include a duty on us to maintain arrangements to monitor and enforce relevant requirements. The Regulations will apply, or make provision corresponding to, certain aspects of FSMA and will require us to have regard to using our resources in the most efficient and economic way.

#### ***Monitoring approach***

- 6.11** We will have no role in the designation of banks, CRAs and finance platforms under the Regulations, this will solely be a matter for HM Treasury.
- 6.12** Broadly, we expect to apply our standard risk-based approach to monitoring compliance, having regard to the requirement to use our resources in the most efficient and economic way. If information is received about potential non-compliance with the Regulations by designated banks, CRAs or finance platforms, we would consider this in accordance with our relevant supervisory processes.
- 6.13** The Regulations will apply certain provisions of FSMA about information gathering and investigations, including the appointment of a skilled person. Therefore, we propose to apply chapter 5 of the Supervision manual (SUP 5), relating to the appointment of skilled persons, to designated entities as guidance. We do not propose to introduce any reporting requirements at this time.

#### ***Complaints***

- 6.14** The Regulations will bring the designated CRAs and finance platforms' activities under the Regulations within the scope of the compulsory jurisdiction of the Financial Ombudsman Service (the ombudsman service). SME consumers who have complaints about designated CRAs or finance platforms carrying out activities under the Regulations (including activities which are ancillary) may, therefore, be able to complain to the ombudsman service if they meet

the requirements of being an 'eligible complainant'<sup>11</sup> and remain dissatisfied with the response to their complaint.

- 6.15** Designated CRAs and finance platforms will be required to comply with the relevant rules in the Dispute Resolution: Complaints sourcebook (DISP) when responding to such complaints. The activities which banks carry out under the Regulations may also be within scope of the compulsory jurisdiction as ancillary activities to those already within scope.
- 6.16** We are consulting on amendments to DISP to reflect these changes, and to bring designated CRAs and finance platforms within the scope of the ombudsman service's compulsory jurisdiction, where they are not already subject to it.
- 6.17** The ombudsman service proposes to change the voluntary jurisdiction rules to align with the changes mentioned above and the changes that we propose to make to the compulsory jurisdiction.
- 6.18** The powers to make rules relating to the ombudsman service are shared between the FCA and the ombudsman service, so this section is issued jointly by the FCA and the ombudsman service. Where relevant, references to 'we' are to the FCA and the ombudsman service.

#### ***Enforcement***

- 6.19** The Regulations will include a duty on us to maintain arrangements to monitor and enforce relevant requirements, and to issue statements of policy and procedure on the imposition and amount of penalties and the imposition and duration of restrictions.
- 6.20** We propose to achieve this by reflecting our general approach to enforcing FSMA, by exercising our powers in a manner that is transparent, proportionate and consistent with our publicly stated policies.
- 6.21** We propose including relevant guidance within chapter 19 of the Enforcement Guide (EG 19), and to make minor amendments to the Decision Procedures and Penalties manual (DEPP) to apply relevant Handbook provisions to designated banks, CRAs and finance platforms.

### **Q6.1: Do you agree with our proposed approach to monitoring, complaints and enforcement under the Regulations?**

#### ***Fees***

- 6.22** Our approach to charging fees under the Regulations will reflect our proposed monitoring approach. FCA fees are intended to recover our costs. We are not proposing to introduce application fees, as designation under the Regulations is solely a matter for HM Treasury.
- 6.23** We expect that minimal additional resources will be required to monitor the compliance of banks, CRAs and finance platforms with the Regulations. Therefore, we consider that the costs involved in setting up and levying a periodic fee would be disproportionate at the present time in relation to the anticipated costs of monitoring and the small number of banks, CRAs and finance platforms likely to be designated under the Regulations.
- 6.24** Nevertheless, there could be occasions when we have to undertake additional work because a designated entity has, or may have failed, to comply with requirements under the Regulations

<sup>11</sup> The jurisdiction of the ombudsman service currently limits eligible complainants to consumers, micro-enterprises, small charities and trustees of small trusts.

or has or may have committed the offence of misleading the FCA. In these circumstances, it would not be reasonable for our costs to be covered by the general body of firms.

- 6.25** We propose making provision in chapter 3 of the Fees manual (FEES 3) to charge designated CRAs and finance platforms an hourly rate if our costs exceed a threshold of £10,000. We would provide notice to the entity concerned where costs are likely to exceed £10,000. If costs were to exceed £10,000, the full costs incurred would be payable as a fee not simply the excess over £10,000. We will absorb costs below £10,000 within our general FSMA expenses. For the purposes of calculating costs, we propose using the hourly rates in FEES 3 Annex 9<sup>12</sup> (Special Project Fee). The current hourly rates are:

Administrator	£30
Associate	£55
Technical Specialist	£100
Manager	£110
Any other person employed by the FCA	£160

- 6.26** If a skilled person is appointed under the Regulations, FEES 3.2.7R(zp) and (zq) will apply.
- 6.27** We also propose to amend FEES 5 to ensure that case fees are paid by respondents where the ombudsman service deals with more than 25 cases in a year. The FOS levy will initially be set at £0, as the ombudsman service expect few cases. However, the FOS levy will be reviewed at the end of the first financial year when such complaints are eligible, and the levy may be increased if the ombudsman service has seen a higher number of complaints than expected.
- 6.28** We will keep our approach under review in the light of our experience with these measures, to consider whether it would be appropriate to introduce periodic fees at a future time.

#### **Q6.2: Do you agree with our proposed approach to charging fees under the Regulations?**

##### **Guidance**

- 6.29** The Regulations will enable us to issue guidance about their operation and our functions in relation to them. As such, we are consulting on draft guidance relating to designation, monitoring and enforcement, complaints and fees at Appendix 6C.

#### **Q6.3: Do you have any comments on the content of the Guidance?**

### **Cost benefit analysis**

- 6.30** FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits' that will arise if the proposed rules are made. It also requires us to include estimates of those costs and benefits, unless these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate. This requirement does not apply to Fees rules.

<sup>12</sup> <http://fshandbook.info/FS/html/FCA/FEES/3/Annex9>

- 6.31** The government has published its own impact assessments of the effects of the SME credit information<sup>13</sup> and finance platforms<sup>14</sup> measures. These assessments consider the impact on designated banks, CRAs and finance platforms of operating under the Regulations. The Regulations, rather than our rules, will set out the process by which SME credit information is to be shared with designated CRAs and specific information about rejected SME loan applicants is to be provided to designated finance platforms, including the nature of that information. Our rules will not impose any additional information sharing requirements on designated banks, CRAs and finance platforms.
- 6.32** For designated banks and CRAs, the government estimates that the incremental costs in amending their existing systems to comply with the Regulations will not be material. The costs to finance platforms are anticipated to be negligible in comparison to the expected commercial benefits deriving from designation.
- 6.33** Given the impact of the government's legislation, existing industry practice and our proposed regulatory approach we consider that any increase in costs to designated entities will be of minimal significance.
- 6.34** The Regulations will also require us to bring designated CRAs and finance platforms within the scope of the ombudsman service. We consider that any increase in costs arising from this will also be of minimal significance.
- FCA costs**
- 6.35** The Regulations will require us to maintain arrangements for monitoring and enforcing the relevant requirements. The Regulations will also require us to have regard to using our resources in the most efficient and economic way. In view of our proposed monitoring approach we do not consider that there will be any material additional regulatory costs for us.

#### **Q6.4: Do you have any comments on our cost benefit analysis?**

#### **Compatibility statement**

- 6.36** Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA. In addition, section 138K(2) of FSMA requires us to state whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
- 6.37** The proposals in this chapter are compatible with our strategic objective of ensuring that the relevant markets function well. They will also advance our operational objective of promoting effective competition in the interests of consumers by improving the availability of SME credit data, thus potentially increasing competition for SME finance. We have also had regard to the regulatory principles in section 3B of FSMA and consider that the proposed changes are compatible with all these principles. We do not consider the impact of any proposed rule would be significantly different in relation to a mutual society.

<sup>13</sup> <https://www.gov.uk/government/publications/improving-access-to-sme-credit-data>

<sup>14</sup> <http://www.parliament.uk/documents/impact-assessments/IA14-20D.pdf>

### Equality and diversity

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- 6.38** Under the Equality Act 2010, we are required to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we have assessed the likely equality and diversity impacts and concluded they do not give rise to any concerns for particular groups as a result of any protected characteristic. However, we welcome any comments in this regard.

# Appendix 1

## List of questions

- Q2.1:** Do you agree with our proposal to update the definition of the Code so that it applies across all sections of the Handbook?
- Q2.2:** Do you agree with the proposal to modify the LR requirements on going concern so as to refer to the reformulated requirements under the UK Corporate Governance Code and the associated FRC guidance?
- Q2.3:** Do you agree with our proposed amendments to LR and DTR to reflect these other Code changes? Do you agree with our proposed transitional provisions in LR and DTR?
- Q2.4:** Do you have any comments on the proposed changes to the Code references in APER and SYSC, including the transitional arrangements?
- Q2.5:** Do you agree that the changes proposed to LR 6.1.11R and LR 6.1.12R provide appropriate clarification of the eligibility for premium listing requirements for scientific research based companies?
- Q2.6:** Do you agree with our proposed amendments to the headline codes (and associated headline categories and descriptions) in DTR 8 Annex 2?
- Q2.7:** Do you agree with our proposal to delete the requirements regarding electronic settlement for premium-listed companies (LR 6.1.23R, LR 6.1.24G, LR 6.1.24AG and LR 9.2.3R)?
- Q3.1:** Do you have any comment on the proposals outlined above? if you do not agree with them, please explain why.
- Q4.1** Do you agree with our proposal to allow firms to use either the MCD method or MCOB method for the calculation of the additional APRC as part of the 'top up' KFI?
- Q4.2:** Do you have any comments on our amendment to MCOB 1.2.20?

**Q4.3: Do you have any comments on our proposal to apply the transitional provision in TC to only those firms carrying out MCD activities before 20 March 2014?**

**Q5.1: Do you have any comments on the proposed changes to the Handbook in the light of the CRA?**

**Q5.2: Do you have any comments on the proposed changes to EG in the light of the CRA?**

**Q5.3: Do you have any comments on the proposed changes to UNFCOG in the light of the CRA?**

**Q6.1: Do you agree with our proposed approach to monitoring, complaints and enforcement under the Regulations?**

**Q6.2: Do you agree with our proposed approach to charging fees under the Regulations?**

**Q6.3: Do you have any comments on the content of the Guidance?**

**Q6.4 Do you have any comments on our cost benefit analysis?**

# Appendix 2

## Corporate Governance Code instrument

**CORPORATE GOVERNANCE CODE AND MISCELLANEOUS AMENDMENTS  
INSTRUMENT 2015**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under the following sections of the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
  - (2) section 89C (Transparency rules);
  - (3) section 89O (Corporate governance rules);
  - (4) section 89P (Primary information providers);
  - (5) section 96 (Obligations of issuers of listed securities);
  - (6) section 137A (General rule-making power);
  - (7) section 137T (General supplementary powers); and
  - (8) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force [*date*].

**Amendments to the FCA Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex C
Listing Rules sourcebook (LR)	Annex D
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex E

**Citation**

- E. This instrument may be cited as the Corporate Governance Code and Miscellaneous Amendments Instrument 2015.

By order of the Board of the Financial Conduct Authority  
[*date*]

**Annex A****Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text and striking through indicates deleted text.

Amend the following definition as shown.

- UK Corporate Governance Code*
- (a) ~~(except in *LR* and *DTR*) the UK Corporate Governance Code published in May 2010 by the Financial Reporting Council.~~
  - (b) ~~(in *LR* and *DTR*)~~ the UK Corporate Governance Code published in September ~~2012~~ 2014 by the Financial Reporting Council, available at: <https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx>.

## Annex B

## Amendments to Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 2.1 Apportionment of Responsibilities

...

## 2.1.6 G Frequently asked questions about allocation of functions in SYSC 2.1.3R

This table belongs to SYSC 2.1.5G.

	Question	Answer
...		
14	What if generally accepted principles of good corporate governance recommend that the <i>chief executive</i> should not be involved in an aspect of corporate governance?	The Note to SYSC 2.1.4R provides that the <i>chief executive</i> or other executive director or <i>senior manager</i> need not be involved in such circumstances. For example, the <i>UK Corporate Governance Code</i> recommends that the board of a listed company should establish an audit committee of <u>independent, non-executive directors</u> to be responsible <u>(among other things)</u> for <del>oversight</del> <u>overseeing the effectiveness of the audit process and the objectivity and independence of the external auditor</u> . That aspect of the oversight function may therefore be allocated to the members of such a committee without involving the <i>chief executive</i> . Such individuals may require approval under section 59 in relation to that function (see Question 1).
...		

...

## 4.4 Apportionment of Responsibilities

...

## 4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

	Question	Answer
...		
14	What if generally accepted principles of good corporate governance	The Note to SYSC 4.4.5R provides that the <i>chief executive</i> or other executive director or <i>senior manager</i> need not be involved in such circumstances.

	recommend that the <i>chief executive</i> should not be involved in an aspect of corporate governance?	For example, the <i>UK Corporate Governance Code</i> recommends that the board of a listed company should establish an audit committee of <u>independent, non-executive directors to be responsible (among other things) for <del>oversight</del> overseeing the effectiveness of the audit process and the objectivity and independence of the external auditor.</u> That aspect of the oversight function may therefore be allocated to the members of such a committee without involving the <i>chief executive</i> . Such individuals may require approval under section 59 in relation to that function (see Question 1).
...		

...

### Transitional Provisions and Schedules

SYSC TP 4 is deleted in its entirety. The deleted text is not shown. Insert the following new TP after the deleted SYSC TP 4. The text is not underlined.

#### TP 5 UK Corporate Governance Code

(1)	(2) Material to which the Transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	SYSC 2.1.6G, SYSC 3.1.3G and SYSC 4.4.6G	R	Where a <i>firm</i> has an accounting period ending on or before 30 September 2015, a reference to the <i>UK Corporate Governance Code</i> is a reference to the UK Corporate Governance Code published by the Financial Reporting Council in September 2012.	From [x] 2015	[x] 2015

## Annex C

### Amendments to Statements of Principle and Code of Practice for Approved Persons (APER)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### 3.1 Introduction

...

- 3.1.9 G *UK domestic firms ~~listed on the London Stock Exchange~~ with a premium listing of equity shares are subject to the *UK Corporate Governance Code*, whose *internal control* provisions are amplified in the publication entitled "~~Internal Control: Revised Guidance for Directors on the Combined Code (October 2005)~~" 'Guidance on Risk Management, Internal Control and Related Financial and Business Reporting (September 2014)' issued by the Financial Reporting Council. *Firms* regulated by the *appropriate regulator* in this category will ~~thus~~ be subject to that code as well as to the requirements and standards of the *regulatory system*. In forming an opinion whether *approved persons* have complied with its requirements, the *appropriate regulator* will give due credit for their following corresponding provisions in the *UK Corporate Governance Code* and related guidance.*

...

#### Transitional Provisions and Schedules

APER TP 1.1 is deleted in its entirety. The deleted text is not shown. Insert the following new text after the deleted APER TP 1.1. The text is not underlined.

#### TP 2 UK Corporate Governance Code

(1)	(2) Material to which the Transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	APER 3.1.9G	R	Where a <i>UK domestic firm</i> to which the <i>UK Corporate Governance Code</i> applies has an accounting period ending on or before 30 September 2015:  (a) a reference to the <i>UK Corporate Governance Code</i> is a reference to the	From [x] 2015	[x] 2015

			<p>UK Corporate Governance Code published by the Financial Reporting Council in September 2012; and</p> <p>(b) a reference to the ‘Guidance on Risk Management, Internal Control and Related Financial and Business Reporting (September 2014)’ is a reference to the ‘Internal Control: Revised Guidance for Directors on the Combined Code (October 2005)’ issued by the Financial Reporting Council.</p>		
--	--	--	---	--	--

## Annex D

## Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 6 Additional requirements for premium listing (commercial company)

### 6.1 Application

...

Scientific research based companies

6.1.11 R If a *scientific research based company* applies for the *admission* of its *equity shares* to a *premium listing* and cannot comply with LR 6.1.3R (1)(a) because it has been operating for a shorter period:

...

(2) LR 6.1.3R(1)(b) to (e) and (2), LR 6.1.3R (2) and LR 6.1.3BR(1) apply to the *scientific research based company* only with regard to the period for which it has published or filed historical financial information under (1).

6.1.12 R ~~Where LR 6.1.11R applies,~~ If an applicant for the admission of equity shares to a premium listing of a scientific research based company does not need to satisfy LR 6.1.3BR but either LR 6.1.3R(1)(a) or LR 6.1.3BR(2), it must:

...

(5) demonstrate that it has a three year record of operations in laboratory research and development including:

...

...

Settlement

6.1.23 R ~~To be listed, the constitution of the company and the terms of its equity shares must be compatible with electronic settlement. [deleted]~~

6.1.24 G In LR 6.1.23 R, electronic settlement includes settlement by a "relevant system" (as defined in the Uncertificated Securities Regulations 2001 (SI 2001/3755)). [deleted]

6.1.24A G LR 6.1.23 R is intended to ensure that that there is nothing inherent within the constitution of a company which prevents electronic settlement of its

~~equity shares. The FCA recognises that for some companies there may be external factors which affect the eligibility of an equity share for electronic settlement. [deleted]~~

...

## 9 Continuing obligations

...

### 9.2 Requirements with continuing application

...

#### Settlement arrangements

9.2.3 R ~~A listed company must comply with LR 6.1.23R at all times. [deleted]~~

...

## 9.8 Annual financial report

...

#### Additional information

9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

...

- (3) ~~statement made by the *directors* that the business is a going concern, together with supporting assumptions or qualifications as necessary, that has been prepared in accordance with Going Concern and Liquidity Risk: Guidance for Directors of UK Companies 2009, published by the Financial Reporting Council in October 2009~~ statements by the *directors* on the:
- (a) appropriateness of adopting the going concern basis of accounting (containing the information set out in provision C.1.3 of the *UK Corporate Governance Code*); and
  - (b) longer-term viability of the *company* (containing the information set out in provision C.2.2 of the *UK Corporate Governance Code*);

prepared in accordance with the ‘Guidance on Risk Management, Internal Control and Related Financial and Business Reporting’

published by the Financial Reporting Council in September 2014;

...

...

Auditors report

9.8.10 R A *listed company* must ensure that the auditors review each of the following before the annual report is published:

(1) *LR 9.8.6R(3)* (~~statement~~ statements by the ~~directors~~ directors ~~that the business is a~~ regarding going concern and longer-term viability); and

(2) the parts of the statement required by *LR 9.8.6R(6)* (corporate governance) that relate to the following provisions of the *UK Corporate Governance Code*:

...

(b) C.2.1 and C.2.3; and

...

...

## App 1.1 Relevant definitions

**Note:** The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

### App 1.1.1

...	
<i>UK Corporate Governance Code</i>	the UK Corporate Governance Code published in September <del>2012</del> <u>2014</u> by the Financial Reporting Council.
...	

...

Insert the following new text after LR TR 13. The text is not underlined.

## TR 14 Transitional Provisions for the UK Corporate Governance Code

(1)	(2) Material to which the Transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1.	LR 9.8.6R(3)	R	<p>Where a <i>listed company</i> or a <i>closed-ended investment fund</i> incorporated in the <i>United Kingdom</i> has an accounting period ending before 30 September 2015:</p> <p>(1) LR 9.8.6R(3) does not apply; and</p> <p>(2) its annual financial report must include a statement by the directors that the business is a going concern, together with supporting assumptions or qualifications as necessary, prepared in accordance with the <i>Going Concern and Liquidity Risk: Guidance for Directors of UK Companies 2009</i>, published by the <i>Financial Reporting Council</i> in October 2009.</p>	From [x] 2015	[x] 2015
2.	LR 9.8.6R(5), LR 9.8.6R(6) and LR 15.6.6R(2)	R	<p>(1) Where a <i>listed company</i> or a <i>closed-ended investment fund</i> has an accounting period ending before 30 September 2015, a reference to a <i>Main Principle</i>, principle or provision in the <i>UK Corporate Governance Code</i> must be read:</p> <p>(a) as a reference to a <i>Main Principle</i>, principle or provision in the <i>UK Corporate Governance Code</i> published by the <i>Financial Reporting</i></p>	From [x] 2015	[x] 2015

			Council in September 2012; or  (b) in accordance with LR TR 13.		
3.	LR 9.8.10R	R	<p>Where a <i>listed company</i> or a <i>closed-ended investment fund</i> has an accounting period ending before 30 September 2015:</p> <p>(1) LR 9.8.10R does not apply; and</p> <p>(2) the <i>listed company</i> or <i>closed-ended investment fund</i> must:</p> <p>(a) ensure that the auditors review the following before the annual report is published:</p> <p>(i) the statement by the directors in the annual financial report that the business is a going concern, together with supporting assumptions or qualifications as necessary, prepared in accordance with the Going Concern and Liquidity Risk: Guidance for Directors of UK Companies 2009, published by the Financial Reporting Council in October 2009; and</p> <p>(ii) the parts of the statement required by LR 9.8.6R(6) (Comply or explain) that relate to C.1.1, C.2.1 and C.3.1 to C.3.7 of the UK Corporate Governance Code published by the Financial Reporting Council in September 2012; or</p> <p>(b) comply with LR TR 13.</p>	From [x] 2015	[x] 2015

## Annex E

## Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 7.2 Corporate governance statements

...

- 7.2.8 G In the *FCA's* view, the information specified in provisions A.1.1, A.1.2, B.2.4, ~~D.2.1~~, C.3.3, ~~and C.3.8~~ and D.2.1 of the *UK Corporate Governance Code* will satisfy the requirements of *DTR 7.2.7R*.

...

## 8 Annex 2R Headline codes and categories

Headline code	Headline Category	Description
<b>Urgent priority</b>		
...		
REN	Restoration of listing	Submitted to indicate that a security has been <del>admitted/cancelled from</del> <u>restored</u> to the Official List
...		
<u>LIS</u>	<u>Listing of Securities</u>	<u>Statement regarding the initial admission of securities to the Official List</u>
<del>MSC</del> <u>MSCU</u>	Miscellaneous – <u>Urgent Priority</u>	Miscellaneous urgent priority announcements
<b>High priority</b>		
...		
DRL	<u>Drilling/ Production Report</u>	Report given by mineral, oil and natural gas companies

EGM-GMS	EGM GM Statement	Statement made at a company's <u>EGM</u> general meeting, other than at an <u>AGM</u>
...		
FON	Formal Notice	Notification of the issue of a debt instrument programme and publication of relevant listing particulars
...		
LOI	Letter of Intent Signed	Statement regarding a letter of intent, memorandum of understanding or heads of terms signed between entities
MER	Merger Update	Statement regarding a decision <del>whether</del> by the Competition and Markets Authority (CMA) to refer a takeover/merger <del>has been referred for investigation to the Competition Commission/Secretary of State for Trade and Industry to a CMA Inquiry Group</del>
...		
PNM	Prior Notice of Merger	Statement regarding a proposed <del>mergers</del> merger
...		
AGR	<del>Re</del> Agreement	Statement regarding an <del>alliance</del> agreement between entities
SAL	<del>Re</del> Alliance	Statement regarding an alliance <u>or</u> collaboration between entities
CNT	<del>Re</del> Contract	Statement regarding a contract entered into/awarded/ <del>signed</del>
JVE	<del>Re</del> Joint Venture	Statement regarding a joint venture between entities
...		
RSP	Response to (insert appropriate text)	Statement submitted in response to a previous statement made <u>by</u> another

		entity/body
REP	Restructure Proposals	<del>Operational</del> <u>Statement regarding the proposed operational restructuring of a company</u>
...		
REG	Result of EGM	Notification of the results of any voting at an EGM
...		
ROM	Result of Meeting	<del>Outcome of a meeting other than an AGM or EGM</del> <u>Notification of the results of any voting at a general meeting, other than at an AGM</u>
...		
SOA	<del>Scheme of arrangement</del> <u>Arrangement</u>	Statement giving details of a scheme of arrangement
...		
STC	Statement re (insert appropriate text)	Statement by the Competition <del>Commission</del> <u>and Markets Authority</u> regarding the outcome of its investigation of a takeover/merger
...		
PGR	<del>Report on payments</del> <del>Payments to governments</del> <u>Governments</u>	Publication of report on payments to governments
UPD	<u>Strategy/Company/Operations Update</u>	<u>Statement regarding strategy, company or operations update, which is not a trading statement (TST)</u>
MSCH	Miscellaneous – <u>High Priority</u>	Miscellaneous high priority announcements
<b>Medium priority</b>		
...		
<del>LIS</del> <u>ALS</u>	Additional Listing	<del>Notification of any addition to a company's existing share capital by an issuer of the admission to the Official</del>

		List of further securities of a class already admitted to listing
AIU	Annual Information Update	Notification referring to or containing all information that has been published or has been made available to the public over the last 12 months
...		
RDS	Director/PDMR Shareholding	Notification of issuers, persons discharging managerial responsibilities and their connected persons in respect of transactions conducted in their own account in shares of the issuer <u>or derivatives or any other financial instrument relating to those shares</u>
BOA	<del>Directorate change</del> <u>Change to Directors/Board Committees</u>	Notification of any change to a company's board (eg, appointment/resignations/changes to important functions or executive responsibilities of a director) or board committee (eg, <u>changes to the composition or functions of audit/risk/remuneration committees</u> )
...		
HOL	Holding(s) in Company*	Notification in major interests in shares/ <u>financial instruments</u>
...		
PFU	Portfolio Update	Periodic notification by an investment company/trust of its investment portfolio <del>as required by LR 15.4.10R</del>
PDI	Publication of a <del>prospectus</del> <u>Prospectus</u>	Publication of a prospectus in accordance with the <del>prospectus rules</del> <u>Prospectus Rules</u>
PSP	Publication of a <u>Supplementary Prospectus</u>	Publication of a <u>supplementary prospectus in accordance with the Prospectus Rules</u>
PFT	Publication of Final Terms	Publication of final terms in accordance with the <u>Prospectus Rules</u>

...		
<u>ITL</u>	<u>Intention to List</u>	<u>Notification of an intention to apply for the admission of securities to the Official List</u>
<u>MSC</u> <u>MSCM</u>	<u>Miscellaneous – Medium Priority</u>	Miscellaneous medium priority announcements
<b>Low priority</b>		
...		
<u>RDN</u>	<u>Director Declaration</u>	<u>Notification of details of all directorships held by a director in any other publicly quoted company and of any details shown regarding any of the matters in LR 9.6.13R (2) to (6)</u>
...		
<u>NOE</u> <u>NOG</u>	<u>Notice of EGM</u> <u>GM</u>	<u>Notification of a company's extraordinary general meeting</u> <u>general meeting, other than an AGM</u>
...		
<u>MSC</u> <u>MSCL</u>	<u>Miscellaneous – Low Priority</u>	Miscellaneous low priority announcements
...		

...

**TP 1 Disclosure and transparency rules**

## DTR Sourcebook - Transitional Provisions

(1)	(2) Material to which the Transitional provisions applies	(3)	(4) Transitional provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					

26	<u>DTR 7.1.7G</u> and <u>DTR 7.2.8G</u>	R	<p>(1) <u>Where an issuer has an accounting period ending before 30 September 2015, a reference to the UK Corporate Governance Code must be read:</u></p> <p>(a) <u>as a reference the UK Corporate Governance Code published by the Financial Reporting Council in September 2012; or</u></p> <p>(b) <u>in accordance with DTR TP 24.</u></p>	From <u>[x] 2015</u>	<u>[x] 2015</u>
27	<u>DTR 7.2.4G</u>	R	<p>(1) <u>Where an issuer has an accounting period ending before 30 September 2015, a reference to the UK Corporate Governance Code must be read:</u></p> <p>(a) <u>as a reference to the UK Corporate Governance Code published by the Financial Reporting Council in September 2012; or</u></p> <p>(b) <u>in accordance with DTR TP 25.</u></p>	From <u>[x] 2015</u>	<u>[x] 2015</u>

# Appendix 3

## Changes to the rules for SIPP operators

**PERSONAL PENSION SCHEME OPERATORS (CAPITAL REQUIREMENTS)  
(AMENDMENT) INSTRUMENT 2015**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137T (General supplementary powers); and
  - (3) section 139A(1) (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 September 2016.

**Amendments to the FCA Handbook**

- D. The Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) is amended in accordance with Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Personal Pension Scheme Operators (Capital Requirements) (Amendment) Instrument 2015.

By order of the Board of the Financial Conduct Authority  
[*date*]

## Annex

**Amendments to the Interim Prudential sourcebook for Investment Businesses  
(IPRU(INV))**

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

The following guidance is new, and should be inserted between IPRU(INV) 5.2.3(4)(a)R and IPRU(INV) 5.2.3(5)R. The text is not underlined.

- 5.2.3(4A)    G    (1)    This guidance applies to a *firm* whose *permitted business* includes *establishing, operating or winding up a personal pension scheme* for the purpose of Table 5.2.3(4)(a).
- (2)    A *firm* should:
- (a)    consider that a UK commercial property is realised when the transaction is notified to the Land Registry;
  - (b)    value each asset, taking into account its individual characteristics and using all the information reasonably available;
  - (c)    on a consistent basis across all *clients* who hold the same type of assets, apply the following:
    - (i)    a prudent valuation approach; and
    - (ii)    a reasonable valuation methodology.
  - (d)    when determining whether an asset is capable of being readily realised within 30 days, consider whether:
    - (i)    the transaction can be concluded within that time limit in the ordinary course of business. For example, if the transaction can be concluded within 30 days but, in practice, takes longer due to factors such as delays in receiving information from third parties, then the asset can be categorised as a Standard Asset;
    - (ii)    a Standard Asset can be realised for a value close to the most recent valuation if no material change to the underlying economic conditions has occurred.

Amend the following table as shown.

Table 5.2.3(4)(a) **Liquid Capital Requirement for firms whose permitted business includes establishing, operating or winding up a personal pension scheme.**

Liquid Capital Requirement = Initial Capital Requirement + Capital Surcharge

Calculation of Initial Capital Requirement

Where

ICR

means Initial Capital Requirement

AUA

means Assets Under Administration as defined below:

K1

is set subject to the ~~firm's~~ *firm's* AUA as specified in the below table

AUA	K1 constant to be applied
<£100m	10
£100-£200m	15
>£200m	20

ICR =  $(\sqrt{\text{AUA}}) \times \text{K1}$

Assets Under Administration

For the calculation in this Table, this means ~~the average of~~ the sum of the most recent annual valuations of the personal pension schemes administered by the firm *firm* at the latest 4 quarter end dates over the preceding 12 months, and adjusted to include any revaluation of assets that may occur between the date of the most recent annual valuation and the date when the *firm* must calculate its AUA.

A *firm* must calculate its AUA quarterly in line with the dates when it has to submit its regulatory capital reporting form in accordance with SUP 16.12 (Integrated Regulatory Reporting).

Where it is not possible to value an asset ~~at the quarter end date~~ (for example because there is no readily available market price), the most recent market valuation should be used.

Where it would be reasonable to assume that the value of the asset has changed by more than 15% since the most recent market valuation, a *firm* should instead use a reasonable estimate. For UK commercial property, such an estimate could, where relevant, be obtained through an appropriate commercial property index. This is without prejudice to any requirement on a *firm* to provide a *personal pension scheme* member with accurate and timely valuations of their portfolios.

K1

When K1 changes due to an increase in AUA, in accordance with the thresholds in this table, the *firm* must apply the new K1 value within six months following the date on which its AUA exceeded the threshold of its previous K1 value.

Calculation of Capital Surcharge

Where

CS means Capital Surcharge  
P means the fraction of *personal pension schemes* administered by the *firm* which contain one or more asset types which **do not** appear in the list of Standard Assets below, at the most recent quarter end. For example, if a quarter of ~~personal pensions~~ *personal pension schemes* contained non-standard assets, this would be inputted in to the formula as 0.25.  
K2 is set at 2.5-  
ICR means the Initial Capital Requirement calculated as above-

$$CS = (\sqrt{P}) \times K2 \times ICR$$

### Standard Assets

The List of Standard Assets is as follows (subject to Note 1):

~~Bank account deposits~~

Cash

Cash funds

~~Corporate bonds~~

Deposits

Exchange traded commodities

Government & local authority bonds and other fixed interest stocks

~~Physical gold bullion~~

Investment notes (structured products)

Shares in *Investment trusts*

Managed pension funds

National Savings and Investment products

Permanent interest bearing shares (PIBs)

Physical gold bullion

Real estate investment trusts (REITs)

~~Shares listed on:~~

- ~~• the Alternative Investment Market;~~
- ~~• the London Stock Exchange; or~~
- ~~• a recognised overseas investment exchange.~~

Securities admitted to trading on a regulated venue.

UK commercial property

Unit in *Regulated collective investment schemes*

**NOTE 1:**

A Standard Asset, ~~and where relevant the underlying assets,~~ must be capable of being accurately and fairly valued on an ongoing basis and readily realised within 30 days, whenever required. Valuations should be undertaken in accordance with the generally accepted standards used in the relevant sector for the asset.

...

...

# Appendix 4

## Amendments to MCOB and TC

**MORTGAGE CREDIT DIRECTIVE (AMENDMENT) INSTRUMENT 2015****Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137T (General supplementary powers);
  - (3) section 139A (Power of the FCA to give guidance);
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 21 March 2016 immediately after the coming into force of Annex B and Part 2 of Annex D (for purposes other than Part 1 of Annex D) to the Mortgage Credit Directive Instrument 2015.

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Training and Competence sourcebook (TC)	Annex A
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex B

**Citation**

- E. This instrument may be cited as the Mortgage Credit Directive (Amendment) Instrument 2015.

By order of the Board of the Financial Conduct Authority  
[date]

## Annex A

## Amendments to the Training and Competence sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

## TP 9 – Transitional Provisions relating to MCD credit agreement activities

(1)	(2)	(3)	(4)	(5)	(6)
	<b>Material to which the transitional provision applies</b>		<b>Transitional provision</b>	<b>Transitional provision: dates in force</b>	<b>Handbook provisions: coming into force</b>
9.1	2.1.5B	R	<p>A <i>firm</i> <u>that before 20 March 2014 was carrying out activities that with effect from that date would amount to acting as an MCD credit intermediary</u> or an MCD creditor may comply with the <i>TC rules</i> as they were in force on 20 March 2016.</p> <p>[<b>Note:</b> article 43(3) of the <i>MCD</i>]</p>	From 21 March 2016 to 21 March 2017	21 March 2016

## Annex B

## Amendments to the Mortgages and Home Finance (Conduct of Business) sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1.2 General application: who? what?

...

1.2.20 ~~R~~  
G From 21 March 2016, where a *second charge mortgage contract* was entered into before 21 March 2016 (subject to certain exceptions in article 28 of the Mortgage Credit Directive Order 2015) the ~~following~~ provisions of *MCOB* that apply include:

- (a) *MCOB 7* (disclosure at start of contract and after sale)
- (b) *MCOB 12* (charges)
- (c) *MCOB 13* (arrears, payment shortfalls and repossessions: regulated mortgage contracts and home purchase plans)

...

## TP 1.1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
-----	--	-----	----------------------------	--	---

...

46	<i>MCOB 5A</i> , <i>MCOB 6A</i> and <i>MCOB 7B</i>	R	<p>A <i>firm</i> that applies TP 45 must also provide the information in (1), <del>to (3)</del> <u>(2) and either (3)(a) or (3)(b)</u> below:</p> <p>(1) <del>for a variable interest rate loan, the warning and the additional <i>APRC</i> required by Section 4 of <i>MCOB 5A Annex 1R</i> and <i>MCOB 5A Annex 2</i>, 6.2R to 6.8R;</del></p> <p><u>(2) for a foreign currency loan, the warning and illustrative example required by Section 6 of <i>MCOB 5A Annex 1R</i> and</u></p>	From 21 March 2016 until 21 March 2019	21 March 2016
----	--	---	---	--	---------------

*MCOB 5A Annex 2, 8.6R; and*

~~(3)~~ (2) the reflection period required by *MCOB 6A.3.4R(1)* and (2), section 11 of *MCOB 5A Annex 1R* and *MCOB 5A Annex 2, 13.1R; and*

(3) where the *borrowing rate* is variable:

- (a) the warning and the additional *APRC* required by section 4 of *MCOB 5A Annex 1R* and *MCOB 5A Annex 2, 6.2R to 6.8R; or*
- (b) the information in (a), but reading references to "*APRC*" as references to "*APR*".

# Appendix 5

## Consumer Rights Act instrument

## CONSUMER RIGHTS ACT INSTRUMENT 2015

### Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”)
- (1) section 137A (The FCA’s general rules);
  - (2) section 137T (General supplementary powers);
  - (3) section 139A (Power of the FCA to give guidance);
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 1 October 2015

### Amendments to the Handbook

- D. The modules of the Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Insurance: Conduct of Business sourcebook (ICOBS)	Annex C
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex D
Banking: Conduct of Business sourcebook (BCOBS)	Annex E
Supervision manual (SUP)	Annex F
Credit Unions sourcebook (CREDS)	Annex G
Consumer Credit sourcebook (CONC)	Annex H

### Amendments to the material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex I to this instrument.
- F. The Unfair Contract Terms Regulatory Guide (UNFCOG) is amended in accordance with Annex J to this instrument.

**Citation**

G. This instrument may be cited as the Consumer Rights Act Instrument 2015.

By order of the Board of the Financial Conduct Authority

[*date*]

**Annex A****Amendments to the Glossary**

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

CRA                                    the Consumer Rights Act 2015

*UNFCOG*                            the Unfair Contract Terms and Consumer Notices Regulatory Guide

Amend the following definition as shown.

*consumer*                            ...

(8)    (in relation to the CRA) an individual acting for purposes wholly or mainly outside that individual's trade, business, craft or profession.

**Annex B****Amendments to the Conduct of Business sourcebook (COBS)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**2 Conduct of business obligations****2.1 Acting honestly, fairly and professionally**

...

2.1.3 G (1) ...

- (2) The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

...

## Annex C

### Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 General matters

### 2.5 Exclusion of liability and reliance on others

...

2.5.2 G The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

...

## 6 Product information

### 6.4 Pre- and post-contract information: protection policies

...

6.4.12 G (1) ...

(2) *Firms* will need to consider whether mid-term changes are compatible with the original *policy*, in particular whether it reserves the right to vary *premiums*, charges or other terms. *Firms* also need to ensure that any terms which reserve the right to make variations are not themselves unfair under the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) or the *CRA*.

...

## Annex D

### Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Conduct of business standards: general

### 2.6A Protecting customer's interests: regulated mortgage contracts, home purchase plans, home reversion plans and regulated sale and rent back agreements

...

#### 2.6A.10 G ...

[**Note:** The terms of a *home purchase plan*, *home reversion plan* or *regulated sale and rent back agreement* should take into account relevant legal obligations such as those under the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015), the *CRA* and, where applicable, the Housing Act 1988 (or, in Scotland, the Housing (Scotland) Act 1988). A *firm* may find material on the *FCA* website concerning the *FCA's* consumer protection powers useful.]

...

## 11 Responsible lending, and responsible financing of home purchase plans

### 11.6 Responsible lending and financing

...

#### 11.6.51 G (1) ...

(2) ...A *mortgage lender* should also have regard to the *Unfair Terms Regulations* ~~*CRA*~~ when drafting the provisions of *regulated mortgage contracts* in relation to changes to their features.

...

## 12 Charges

### 12.7 Home purchase plans

#### 12.7.1 G ...

**Note:** A *firm* should also have regard to its obligations under the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) or the *CRA* and may find material on the *FCA* website concerning the *FCA*

consumer protection powers useful.

**13 Arrears, payment shortfalls and repossessions: regulated mortgage contracts and home purchase plans**

**13.3 Dealing fairly with customers with a payment shortfall: policy and procedures**

...

13.3.7 G In relation to granting a *customer's* request for a change to the payment date, a term that purported to allow a *firm* to change the payment date unilaterally might in any event contravene the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) or the *CRA*.

...

## Annex E

### Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Application

##### 1.1 General application

...

- 1.1.7 G The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

...

#### 4 Information to be communicated to banking customers

##### 4.1 Enabling banking customers to make informed decisions

...

- 4.1.2 G ...

- (7) The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to use or rely on a variation clause in a contract with a *consumer*.

...

## Annex F

## Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Information gathering by the FCA or PRA on its own initiative

### 2.1 Application and purpose

...

- 2.1.4 G ...This chapter does not deal with the information gathering powers that the FCA has under the *Unfair Terms Regulations* and the CRA. These are dealt with in *UNFCOG*.

...

## 13A Qualifying for authorisation under the Act

### Annex 1 Application of the Handbook to Incoming EEA Firms

G

...		
<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
...		
<i>EG</i>	<i>EG</i> describes the FCA's approach to exercising the main enforcement powers given to it by FSMA and by <del>regulation 12 of the <i>Unfair Terms Regulations</i></del> <u>other legislation</u> . <i>EG</i> is a Regulatory Guide and as such does not form part of the Handbook	<i>EG</i> (Enforcement Guide) As column (2)
...		

## Annex G

## Amendments to the Credit Unions sourcebook (CREDS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 10 Application of other parts of the Handbook to Credit unions

### 10.1 Application and purpose

10.1.3

G

Module	Relevance to Credit Unions
...	...
The Enforcement Guide ( <i>EG</i> )	The Enforcement Guide ( <i>EG</i> ) describes the <i>FCA's</i> approach to exercising the main enforcement powers given to it by the <i>Act</i> and by <del>regulation 12 of the <i>Unfair Terms Regulations</i></del> <u>other legislation.</u>
...	

...

## Annex H

### Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Conduct of business standards: general

### 2.2 General principles for credit-related regulated activities

...

- 2.2.5 R Any specific rule or piece of guidance in *CONC* is without prejudice to the application of *PRIN*, any other *rules* in the *Handbooks*, the *CCA* and secondary legislation made and things done under it, the Consumer Protection from Unfair Trading Regulations 2008, the ~~Unfair Terms in Consumer Contracts Regulations 1999~~ Consumer Rights Act 2015, Part 8 of the Enterprise Act 2002 and any other applicable consumer protection legislation.

...

## 8 Debt advice

### 8.7 Charging for debt counselling, debt advice and related services

...

#### 8.7.6 R ...

- (7) claim a fee or charge from a *customer* or take payment from a *customer's* account which is not provided for in the agreement with the *customer*, or where it is provided for but is, or is likely to be, unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (for contracts entered into before 1 October 2015) or the Consumer Rights Act 2015;

[Note: paragraph 3.34i of *DMG*]

## Annex I

## Amendments to the Enforcement Guide (EG)

In this Annex, underling indicates new text and striking through indicates deleted text, unless otherwise stated.

## 1. Introduction

- 1.1 This guide describes the *FCA*'s approach to exercising the main enforcement powers given to it by the Financial Services and Markets Act 2000 (the *Act*) and by ~~regulation 12 of the *Unfair Terms Regulations*~~ other legislation. It is broken down into two parts. The first part provides an overview of enforcement policy and process, with chapters about the *FCA*'s approach to enforcement (chapter 2), the use of its main information gathering and investigation powers under the *Act* and the *CRA* (chapter 3) ... The second part contains an explanation of the *FCA*'s policy concerning specific enforcement powers such as ... and powers which the *FCA* has been given under legislation other than the *Act* (chapter 19).

...

## 3. Use of information gathering and investigation powers

- 3.1 The *FCA* has various powers under sections 97, 131E, 131FA, 165 to 169 and 284 of the *Act* and 5 to the *CRA* to gather information and appoint investigators, and to require the production of a report by a *skilled person*. ...

...

### Power to require information relating to potentially unfair etc terms and notices

3.15E Schedule 5 to the *CRA* gives:

- (1) (a) the *FCA*; and
- (b) any other *person*, who may be an *FCA* employee, specifically authorised or appointed by the *FCA* for this purpose;
- the power to require, by notice in writing, which must contain the particulars specified by paragraph 15 of Schedule 5, the production of information so as to enable the *FCA* to ascertain whether a *person* has complied with or is complying with an *injunction* granted or an undertaking given under Schedule 3 to the *CRA*, as described in paragraphs 10.12 to 10.19 below; and
- (2) such an appointed or authorised *person* the same power so as to enable the *FCA* to:
- (a) seek an *injunction* or undertaking under Schedule 3; or
- (b) consider whether to do so;

but only if that *person* reasonably suspects that an unfair term or notice within the scope of Schedule 3 is being used or proposed or recommended to be used.

...

## 10. Injunctions

...

### **Applications for injunctions under regulation 12 of the Unfair Terms Regulations or Schedule 3 to the CRA: the FCA's policy**

- 10.11A The *Unfair Terms Regulations* still apply to contracts entered into before 1 October 2015. Please read the pre-1 October 2015 version of this guide for the FCA's approach and policy relating to its powers under the *Unfair Terms Regulations*.
- 10.12 ~~If~~ For a consumer contract term, if the FCA decides, after notifying the Competition and Markets Authority (the CMA), to the extent required by Schedule 3 to the CRA, to address issues using its powers under the *Unfair Terms Regulations*, and Schedule 3, if the contract term is within its the CRA's scope, as described in the FCA's Regulatory Guide on these powers, it will, unless the case is urgent, generally first write to the a *person* using or proposing or recommending the use of that term.
- 10.12A When writing, the FCA will express expressing its concerns about the potential unfairness as to whether the term is or would be unfair within the meaning of sections 62 to 64 of the CRA, or non-transparent within the meaning of section 68 of the CRA, or purports or would purport to exclude or restrict any liability described in the sections of the CRA specified in paragraph 3(2) of Schedule 3 the *Unfair Terms Regulations* of a term or terms in the *person's* contract and inviting will invite the *person's* comments on those concerns.
- 10.12B If the FCA, having considered those comments, remains of the view that the term is or would be unfair or non-transparent or purports, or would purport, to be exclusionary or restrictive, as described above, within the meaning of the *Unfair Terms Regulations*, it will normally ask the *person* to undertake to stop including the term in new contracts and stop relying on it in contracts which have been concluded using, relying on or recommending it or proposing its use. It should be noted that, under paragraphs 2(3), 6(3) and 7(1) of Schedule 3 to the CRA, such an undertaking must be notified by the FCA to the CMA and any relevant complainant and then the CMA is under a duty to publish it.
- 10.12C In relation to a notice to consumers within the CRA's scope, the FCA will generally, after notifying the CMA, request such an undertaking from the relevant *person*, if the notice causes the FCA relevant concerns, without first seeking comments. Although the FCA will, unless the case is an urgent one and time does not permit, then have regard to any representations responsive to that request.
- 10.13 If, whether in relation to such a notice or such a term, the *person* either declines to give such an undertaking, or gives such an undertaking and fails to follow it, the FCA will consider the need to apply to court for an *injunction* under regulation 12 of

~~the *Unfair Terms Regulations* Schedule 3 to the CRA. The *FCA* will, again, notify the *CMA* appropriately at this stage, as required by Schedule 3.~~

- 10.14. In determining whether to seek an *injunction* under Schedule 3 to the CRA against a person, ~~after or, in an urgent case, instead of requesting such an undertaking,~~ the *FCA* will consider the full circumstances of each case. A number of factors may be relevant for this purpose. The following list is not exhaustive; not all of the factors may be relevant in a particular case, and there may be other factors that are relevant:
- (1) whether the *FCA* is satisfied that the contract term ~~which is the subject of the complaint or notice in question~~ may properly be regarded, if it is used, as unfair, non-transparent and/or purportedly exclusionary and/or restrictive within the meaning of the *Unfair Terms Regulations* CRA;
  - (2) the extent and nature of the detriment to consumers resulting from the term or notice, or the potential detriment which could result from the term or notice;
  - (3) whether the person has, if asked to do so, fully cooperated with the *FCA* in resolving the *FCA*'s concerns about the fairness of the particular contract term or notice;
  - (4) the likelihood of success of an application for an *injunction*;
  - (5) the costs the *FCA* would incur in applying for and enforcing an *injunction* and the benefits that would result from that action; the *FCA* is more likely to be satisfied that an application is appropriate where an *injunction* would not only prevent the ~~continued~~ use of the particular contract term or notice, but would also be likely, as paragraph 5(3)(b) of Schedule 3 to the CRA envisages, to prevent the use or ~~continued use~~ of similar terms or notices, or terms or notices having the same a similar effect, ~~used or recommended by other firms concluding contracts with consumers.~~
- 10.15 In an urgent case, the *FCA* may seek a temporary *injunction*, to prevent the continued or potential use of the term or notice until the fairness of the term ~~could~~ it can be fully considered by the court... In such an urgent case, the *FCA* may seek a temporary *injunction* without first consulting with the person or persons using or proposing to use, or recommending the use of, the relevant term or notice.
- 10.16 In deciding whether to grant ~~an~~ a final *injunction* under Schedule 3 to the CRA, the court will decide whether the term or notice in question is unfair, purportedly restrictive or exclusionary or non-transparent within the meaning of the *Unfair Terms Regulations* (see UNFCOG 1.3.2G) CRA. The court may grant an *injunction* on such terms as it sees fit. For example, it may require the person to stop including the unfair a term in contracts with consumers or issuing, publishing, communicating or announcing a notice to consumers from the date of the *injunction* and to stop relying on the unfair term in such contracts which have been concluded or on the notice to the extent that it has already been issued, published, communicated or announced. If the person fails to comply with the *injunction*, ~~it~~ the person will be in contempt of court.
- 10.17 ~~Regulation 8 of the *Unfair Terms Regulations*~~ The CRA provides that an unfair a term or notice that is unfair or a term that excludes or restricts liability in any of the ways

specified in the CRA is not binding on the consumer. This means that if the court finds that the term in question is unfair, the person would be unable to rely on the unfair term in existing contracts governed by the Unfair Terms Regulations is the case irrespective of whether there has been a decision of a court to that effect. To The CRA also provides that, to the extent that it is possible practicable, the existing rest of the contract would continue continues in effect without the unfair term.

- 10.18 When the FCA considers that a case requires enforcement action under the *Unfair Terms Regulations* CRA, it will take the enforcement action itself, after appropriately notifying the CMA, if the person against whom such action will be taken is a firm or an appointed representative.
- 10.19 Where ~~the~~ that person is not a *firm* or an *appointed representative*, the FCA will liaise with the Competition and Markets Authority CMA or (as appropriate) a qualifying body under the Unfair Terms Regulations another CRA regulator.

...

## 19. Non-FSMA powers

...

### Enterprise Act 2002

...

- 19.40 The Enterprise Act identifies two ~~main~~ types of breach which trigger the Part 8 enforcement powers. These are referred to as:
- (1) “domestic infringements”, which are breaches of particular UK law, enactments or of contractual or tortious duties, in each case if they occur in the course of a business and in relation to goods or services supplied or sought to be supplied:
    - (a) to or for a person in the UK; or
    - (b) by a person with a place of business in the UK; and
  - (2) “Community infringements”, which are breaches of the EU legislation listed in Schedule 13 of the Enterprise Act, if directly effective, or of national laws, whether of the UK or not, giving effect to that EU legislation, even where it is directly effective, including provisions of those national laws that provide additional protections, beyond but permitted by that EU legislation.

In both cases the breach must ~~be regarded as harming~~, to trigger those powers, harm the collective interests of consumers.

...

### *The FCA’s powers as a designated enforcer*

19.43 As a designated enforcer, the *FCA* has the power to apply to the courts for an enforcement order ~~or an interim enforcement order~~ which requires a *person* who has committed a ~~breach of applicable legislation~~ domestic or Community infringement or, as to the latter, is likely to commit such an infringement:

- (1) not to engage, including through a company and, as to a domestic infringement, whether or not in the course of business, in the conduct which constituted, or is likely to constitute, the ~~breach~~ infringement;
- (2) to publish the order and/or a corrective statement;
- (3) to offer compensation or other redress, including the right to terminate relevant contracts, to affected *consumers*;
- (4) where such *consumers* cannot be practically identified, to take measures in the collective interests of *consumers*;
- (5) to take measures intended to prevent or reduce the risk of the relevant conduct occurring or being repeated; and/or
- (6) to take measures intended to enable *consumers* to choose more effectively between *persons* supplying or seeking to supply goods or services;

although it should be noted that the remedies listed under (3) to (6) inclusive are only applicable to conduct taking place or likely to occur after the relevant provisions of the *CRA* came into force.

19.43A The *FCA* may also apply for orders where it thinks that a *person* is likely to commit a ~~Community infringement~~, if necessary without notice, for interim enforcement orders where immediate temporary prohibition of the relevant conduct is expedient pending full consideration by the court. Such interim orders can also be sought preemptively in relation to Community infringements, but again only preventing conduct in the course of business.

19.44 ~~The *FCA* has the power under the *FCA*'s~~ investigative powers in support of its Enterprise Act enforcement powers are set out in Schedule 5 to the *CRA*. The *FCA* can, under Schedule 5, ~~to~~ require any *person* to provide it with information which will enable it to (i) exercise or consider exercising its functions as an enforcer; or (ii) determine whether a person is complying with an enforcement order, ~~or an interim enforcement order~~ or an undertaking given as described below. If the *FCA* requires a person to provide it with information, it must give him a notice setting out the information that it requires and for which of purposes (i) and (ii) above the information is required specifying the relevant enforcement function and/or any such purpose.

19.45 Before the *FCA* may apply for an enforcement order, including an interim enforcement order, it must:

- (1) give notice to the CMA of its intention to apply for an enforcement order; and

- (2) unless the application relates to breach of an undertaking given to the court (other than one to provide information), consult the *person* against whom the enforcement order would be made.

19.45A The ~~period~~ periods for notification and consultation ~~is~~ (both of which can be waived by the CMA) are:

- (1) 14 days before an application for an enforcement order is made unless, just as to consultation, the *person* to be consulted is a member of or represented by a body operating an approved consumer code, in which case the period is 28 days; or

- (2) 7 days in the case of an application for an interim enforcement ~~award~~ order, unless the application relates to breach of an undertaking given to the court, in which case the CMA must be notified but not necessarily in advance.

19.45B The aim of consultation is to ensure that any action taken is necessary and proportionate, and to ensure that businesses are given a reasonable opportunity to put things right before the courts become involved. The consultation period starts when the *person* receives the *FCA*'s request for consultation and runs whether or not that *person* agrees to be consulted and/or is available for consultation.

19.46 The Enterprise Act also makes provision for enforcers and courts to accept undertakings from ~~a *person*~~ persons who ~~has~~ have committed ~~a breach~~ breaches or, in respect of Community infringements, are considered likely to do so. The undertaking confirms that the *person* will not, amongst other things, commence, continue or repeat the conduct which constituted or, as to a Community infringement, would constitute the breach, although, as above, such a pre-emptive prohibition will only apply to conduct in the course of business. The undertaking may also confirm that the person will compensate consumers and/or take the other measures described in paragraph 19.43, above. There is a general expectation that, if a breach of applicable legislation or of a relevant duty is committed, or if a Community infringement is likely to be committed, enforcers will seek an undertaking from the *person* in question before applying to court for an enforcement order ~~against him~~.

...

### *The FCA's powers as a CPC enforcer*

19.48 In addition to its powers as a designated enforcer under the Enterprise Act, the *FCA* also has powers, in its capacity as a "CPC enforcer" and, therefore, only in respect of Community infringements, to enter commercial premises with or without a warrant. The *FCA* must give at least two working days' notice of its intention to enter such premises without a warrant unless it ~~has not been possible to serve such notice despite all that is not~~ reasonably practicable ~~steps having been taken~~. If the *FCA* cannot give a notice in advance, it must produce the notice on the day the premises are entered.

## Annex J

**Amendments to the Unfair Contract Terms Regulatory Guide (UNFCOG)**

In this Annex, underlining indicates new text and striking through indicates deleted text, unless stated otherwise.

**1 The Unfair Contract Terms and Consumer Notices Regulatory Guide****1.1 Application and purpose**

- 1.1.1 G This Guide explains the *FCA's* policy on how it will use its powers under the ~~*Unfair Terms Regulations*~~ (the Regulations) *CRA* in relation to unfair terms and consumer notices.
- 1.1.1A G The *Unfair Terms Regulations* will continue to apply to contracts entered into before 1 October 2015. Firms (see 1.1.5G) should refer to the previous version of this Guide for an explanation of the *FCA's* policy regarding the *Unfair Terms Regulations*.
- 1.1.1B G The unfair terms provisions in Part 2 of the *CRA* apply to consumer contracts entered into on or after 1 October 2015 and consumer notices issued on or after 1 October 2015.
- 1.1.1C G In this Guide, 'consumer notice' has the same meaning as in section 61 of the *CRA*.
- 1.1.2 G We have agreed with the Competition and Markets Authority ("CMA") that the *FCA* will consider the fairness (within the meaning of the ~~Regulations~~ *CRA*) of those financial services contracts ~~for carrying on any regulated activity~~ and consumer notices specified in Part 2 of Annex B of the Memorandum of Understanding between the CMA and the *FCA* (<http://www.fca.org.uk/static/documents/mou/fca-cma-mou.pdf>)
- 1.1.3 G Where the firm concerned is not a *firm* or an *appointed representative*, the ~~CMA may take enforcement action under the Regulations in respect of financial services contracts involving the carrying on of regulated activities~~ *FCA* will liaise with the CMA or (as appropriate) another *CRA* regulator (see ~~EG 10.16 and 10.17~~ 10.19).
- 1.1.4 G This Guide applies to:
- (1) *firms*;
  - (2) *appointed representatives*; ~~and~~
  - (3) other *persons*, whether or not a *person* with *permission*, who use, or recommend the use of, contracts to carry on ~~regulated activities~~;

(4) electronic money issuers; and

(5) payment service providers.

...

## 1.2 Introduction

1.2.1 G This Guide explains the *FCA's* formal powers under the ~~Regulations~~ CRA in relation to unfair terms and consumer notices. It does not contain comprehensive *guidance* on the ~~Regulations themselves~~ CRA itself, and you should refer to ~~those Regulations~~ the CRA for further details.

1.2.2 G This Guide also provides *guidance* on the approach we take before considering whether to exercise our formal powers under the ~~Regulations~~ CRA in relation to unfair terms and notices.

1.2.3 G The *FCA* has powers as a ~~qualifying body~~ regulator and an unfair contract terms enforcer under the ~~Regulations~~ CRA. ~~The Regulations are not made under the Act, but, under the Regulations~~ Under the CRA our functions are treated as functions under the *Act*. This:

(1) makes the *statutory objectives* relevant to forming policy that governs the discharge of our functions under the ~~Regulations~~ CRA;

(2) means that any complaints about the *FCA's* activities under the ~~Regulations~~ CRA can be referred to the *Complaints Commissioner*;

...

(5) protects the *FCA* against liability in damages in respect of its activities under the ~~Regulations~~ CRA; and

(6) allows the *FCA* to raise fees to fund its activities under the ~~Regulations~~ CRA.

1.2.4 G (1) As such, we may publish on our website details of cases that result in a change in the ~~contract~~ terms and notices used by the firm. This may happen through either an undertaking by a firm or injunction obtained from the courts.

(2) Under ~~regulation 14 of~~ paragraphs 4(1) and 6(3) of Schedule 3 to the Regulations CRA, the *FCA* has a duty to pass details of these cases to the CMA.

(3) The CMA also publishes details of cases that it, and other ~~qualifying bodies~~ regulators, have dealt with in accordance with the CMA's duties under ~~regulation 15 of~~ paragraph 7 of Schedule 3 to the Regulations CRA.

### 1.3 ~~The Unfair Terms Regulations~~ CRA

Terms and notices to which the ~~Regulations apply~~ CRA applies

- 1.3.1 G (1) ~~The Part 2 of the Regulations apply~~ CRA applies, with certain exceptions, to ~~terms in contracts concluded a contract between a seller or supplier trader and a consumer, which have not been individually negotiated.~~ Part 2 of the CRA also applies to consumer notices.
- (2) Terms or notices cannot be reviewed for fairness within the meaning of the ~~Regulations~~ CRA if they ~~are terms which~~ reflect:
- ...
- (b) the provisions or principles of an international conventions convention to which the EEA States United Kingdom or the EU as a whole are is a party.
- (3) Terms ~~written in plain and intelligible language~~ which are transparent and prominent (as defined in section 64 of the CRA) cannot be reviewed for fairness within the meaning of the ~~Regulations~~ CRA if ~~the terms relate to~~ to the extent that:
- ~~the definition of~~ they specify the main subject matter of the contract; or
  - ~~the adequacy assessment is of the appropriateness of the price or remuneration, as against payable under the contract by comparison with the goods, digital content or services supplied in exchange under it.~~
- However, we can fully review terms concerning these matters for fairness within the meaning of the ~~Regulations~~ CRA if they are not ~~written in plain, intelligible language~~ transparent and prominent. We do not consider that it is enough that a lawyer could understand the term for it to be excluded from such a review. The term must be ~~plain and intelligible to the consumer.~~
- (4) The subject matter and price exemption in (3) only applies to terms. It does not apply to a term of a contract listed in Part 1 of Schedule 2 to the CRA.
- (5) It is a requirement under section 68 of the CRA that a written term of a consumer contract, or a consumer notice in writing, is transparent.

When a term or notice is 'unfair' within the meaning of the ~~Regulations~~ CRA

- 1.3.2 G Terms or notices are ~~regarded as~~ unfair if, contrary to the requirement of good faith, they cause a significant imbalance in the parties' rights and

obligations to the detriment of the *consumer*.

The main powers of the courts, ~~and qualifying bodies~~ regulators and unfair contract terms enforcers under the Regulations CRA

- 1.3.3 G (1) ~~Under regulation 13 we have the power to request, for certain purposes:~~
- ~~'(a) a copy of any document which that person has used or recommended for use, [...] as a pre-formulated standard contract in dealings with consumers;~~
- ~~(b) information about the use, or recommendation for use, by that person of that document or any other such document in dealings with consumers.'~~
- As an unfair contract terms enforcer under Schedule 5, we have powers in relation to the production of information. Under paragraph 14 of Schedule 5, an enforcer or an officer of an enforcer may give notice to a person requiring the person to provide the enforcer with the information specified in the notice.
- 1.3.4 G (1) Unless the case is urgent, we will generally first write to a firm to express our concern about the potential unfairness of a term or terms (within the meaning of the Regulations CRA) and will invite the firm to comment on those concerns. If we still believe that the term is unfair, we will normally ask the firm to stop including the term in new contracts and to stop relying on it in any concluded contracts. If the firm either declines to give an undertaking, or gives an undertaking but fails to follow it, the *FCA* will consider the need to apply to the courts for an injunction under ~~regulation 12~~ paragraph 3 of Schedule 3.
- (2) In deciding whether to ask a firm to undertake to stop, including a term in new contracts and to stop relying on it in concluded contracts, we will consider the full circumstances of each case. Several factors may be relevant for this purpose and the following list is not exhaustive, but will give some indication of the sorts of things we consider:
- (a) whether we are satisfied that the contract term may properly be regarded as unfair within the meaning of the Regulations CRA;
- ...
- 1.3.4A G (1) In relation to a consumer notice, where we are concerned about the potential unfairness of the notice, we will generally contact a firm to ask the firm to amend or withdraw the notice.
- (2) The *FCA* can also ask a firm to undertake to amend or withdraw a consumer notice. Under paragraph 6 of Schedule 3, a regulator may accept an undertaking from a *person* against whom it has applied, or thinks it is entitled to apply for an injunction or interdict. The

undertaking may provide that the *person* will comply with the conditions that are agreed between the person and the regulator about the use of terms or notices, or terms or notices of a kind, specified in the undertaking.

1.3.5 G ~~Regulation 12 states that:~~

~~'(1) The [OFT] or [...] any qualifying body may apply for an injunction (including an interim injunction) against any person appearing to them to be using, or recommending the use of, an unfair term drawn up for general use in contracts concluded with consumers'.~~

~~'(3) The court, on an application under this regulation, may grant an injunction on such terms as it thinks fit.'~~

Under paragraph 3 of Schedule 3, a regulator may apply for an injunction or (in Scotland) an interdict against a *person* if the regulator thinks that—

(a) the *person* is using, or proposing or recommending the use of, a term or notice to which Schedule 3 applies, and

(b) the term or notice:

- purports to exclude or restrict liability of the kind mentioned in paragraph 3(2), Schedule 3;
- is unfair to any extent;
- breaches the transparency requirement.

A regulator may apply for an injunction or interdict in relation to a term, whether or not it has received a relevant complaint about the term.

The *FCA* is a ~~qualifying body~~ regulator for the purposes of ~~regulation 12~~ Schedule 3. Our approach to seeking an injunction under the ~~Regulations~~ *CRA* is set out in Chapter 10 of *EG*.

1.3.6 G ~~Regulation 8~~ Under sections 62 and 67 of the *CRA*, states that an unfair term is not binding on the *consumer* but ~~that~~ the contract will continue to bind the parties if it is capable of continuing in existence without the unfair term. ~~Therefore, if~~ If the court finds that the term in question is unfair, the firm would have to stop relying on the unfair term in existing and future contracts governed by the ~~Regulations~~ *CRA*.

1.3.6A G Under section 62 of the *CRA*, an unfair consumer notice is not binding on the *consumer*.

## 1.4 ~~The Unfair Terms Regulations~~ *CRA*: the *FCA*'s role and policy

1.4.1 G The *FCA* may consider the fairness of a ~~contract~~ term or notice within the meaning of the ~~Regulations~~ *CRA* following a complaint from a *consumer* or other person or on its own initiative if the ~~contract~~ term or notice is within

its scope.

- 1.4.2 G There are three main ways in which we might receive a complaint from a *consumer* or other person. These are:
- ...
- (2) from another ~~qualifying body~~ regulator which considers that the *FCA* should deal with the complaint; or
- ...
- 1.4.3 G (1) The main way in which we would act on our own initiative is to undertake a review of contracts or consumer notices in a particular area of business. This might involve looking at the ~~contract~~ terms or notices used by several firms in a particular sector.
- (2) We will, for example, consider launching such a review if multiple *consumer* ~~contract~~ complaints or other intelligence lead us to believe that under the ~~Regulations~~ CRA there may be a ~~contractual~~ an issue relating to contracts or notices of wider significance to firms and *consumers*.
- 1.4.4 G If, following either a complaint or an own-initiative review, we consider that a term ~~in a contract~~ or notice is unfair, we may challenge firms about their use of that term or notice.

#### Interaction with the FCA's powers under the Act

- 1.4.5 G (1) The *FCA* will consider using its powers under the ~~Regulations~~ CRA in the context of its wider regulatory powers under the *Act*.
- (2) In some cases, it might be appropriate for us to use other powers to deal with issues identified under the ~~Regulations~~ CRA. The powers available to the *FCA* under the *Act* may vary depending on the *regulated activities* which the firm carries out. For example, the use of ~~the~~ an unfair term might involve a breach of a *Principle* or a *rule* in *BCOBS*, *COBS*, *CONC*, *MCOB* or *ICOBS* and the use of an unfair notice might involve a breach of the *financial promotions rules*. If so, the *FCA* might also address the issue as a *rule* breach.
- (3) We may, in some circumstances, consider treating the matter under our powers in the *Act* itself and also under the ~~Regulations~~ CRA.
- ...

## 1.5 Risk Management

- 1.5.1 G ...

- (2) The firm should also, as part of its risk management, consider the effect on its own business, including whether there are relevant risks which need mitigation. For example, firms should consider the effect of ~~regulation 8 of the Regulations~~ section 62 of the CRA which provides that an unfair term or consumer notice is not binding on the *consumer*, ~~but that the contract will continue to bind the parties if it is capable of continuing in existence without the unfair term.~~ The mitigation may involve the firm contacting existing customers to ask that they agree to an amended contract, although any such amendment will itself need to avoid unfairness within the meaning of the Regulations and to comply with the law of contract generally.
- (3) As part of their risk management, ~~firms that have not themselves given an undertaking or been subject to a court decision should remain alert to undertakings or court decisions about other firms, since these will be of potential value in indicating the likely attitude of the courts, the FCA, the CMA or other qualifying bodies to similar terms or to terms with similar effects.~~ Section 67 of the CRA provides that a contract will continue to bind the parties if it is capable of continuing in existence without the unfair term. Mitigation may involve the firm contacting existing customers to ask that they agree to an amended contract, although any such amendment will itself need to avoid unfairness within the meaning of the CRA and to comply with the law of contract generally.
- (4) As part of their risk management, firms that have not given an undertaking or been subject to a court decision should remain alert to undertakings or court decisions about other firms, since these will be of potential value in indicating the likely attitude of the courts, the FCA, the CMA or other qualifying bodies to similar terms or notices or those intended to have similar effects.

## 1.6 Redress

- 1.6.1 G (1) ~~The FCA~~ Under the CRA, the FCA (as a regulator and an unfair contract terms enforcer) does not have the power ~~under the Regulations~~ to grant redress to *consumers* who have suffered loss because of an unfair term or notice. *Consumers* may choose to complain to the firm and to seek redress from it. If the firm does not satisfy the *consumer's* complaint, the *consumer* may choose to refer the complaint to the *Financial Ombudsman Service*, if appropriate.
- ...
- (3) The FCA can use its powers under section 404 of the Act to make rules requiring authorised persons, electronic money issuers and payment service providers to establish and operate consumer redress schemes. The FCA can also impose a requirement on an authorised person, electronic money issuer and payment service provider under

section 404F(7) of the Act to establish and operate a scheme that corresponds to, or is similar to, a consumer redress scheme under section 404 of the Act .

## 2 Statements of Good Practice on fairness of terms in consumer contracts

### 2.1

- 2.1.1 G In the Unfair Contract Terms Library <http://www.fca.org.uk/your-fca/list?types=&year=&search> (<http://www.fca.org.uk/firms/being-regulated/unfair-contracts/library>) you will find Notices of Undertakings, Statements, Speeches and other publications where we have set out our views on the likely application of the Regulations *Unfair Terms Regulations* and the *CRA* in relation to certain types of clause in standard form *consumer* contracts. We will add further publications to the Unfair Contract Terms Library as and when they are published.

Insert the following new section in UNFCOG after UNFCOG 2. The text is not underlined.

#### TP1 Transitional Provisions

Transitional provisions applying to the Unfair Contract Terms and Consumer Notices  
Regulatory Guide

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Regulatory Guide provision: coming into force
	<i>UNFCOG</i>		<p><i>UNFCOG</i> takes effect on 1 October 2015, save to the extent described below.</p> <p>In relation to a contract entered into before 1 October 2015, <i>UNFCOG</i> should apply in its form as at 30 September 2015.</p>	1 October 2015	1 October 2015

# Appendix 6A

## SME Credit Information changes

**SMALL AND MEDIUM SIZED BUSINESS (CREDIT INFORMATION)  
INSTRUMENT 2015**

**Powers exercised by the Financial Ombudsman Service Limited**

- A. The Financial Ombudsman Service Limited makes and amends:
- (1) the rules relating to complaints handling procedures of the Financial Ombudsman Service; and
  - (2) the standard terms for Voluntary Jurisdiction participants;
- as set out in Annex D of this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary Jurisdiction);
  - (2) paragraph 8 (Guidance) of Schedule 17;
  - (3) paragraph 14 (The scheme operator’s rules) of Schedule 17;
  - (4) paragraph 15 (Fees) of Schedule 17;
  - (5) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
  - (6) paragraph 22 (Consultation) of Schedule 17.
- B. The making (and amendment) of the rules and standard terms in Annex D by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

**Powers exercised by the Financial Conduct Authority**

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions:
- (1) sections 210 (statement of policy) and 211 (statement of policy: procedure) of the Act, as applied and modified by regulation 43 of the Small and Medium Sized Business (Credit Information) Regulations 2015 (SI 2015/xxx);
  - (2) section 226 (Compulsory jurisdiction) of the Act, as applied and modified by regulation 17(1) of the Small and Medium Sized Business (Credit Information) Regulations 2015 (SI 2015/xxx);
  - (3) paragraph 13(1), (3) and (4) (FCA’s rules) of Schedule 17 to the Act, as applied and modified by regulation 17(1) of the Small and Medium Sized Business (Credit Information) Regulations 2015 (SI 2015/xxx); and
  - (4) regulation 20 of the Small and Medium Sized Business (Credit Information) Regulations 2015 (SI 2015/xxx).
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

- E. The Financial Conduct Authority consents and approves the rules and standard terms made and amended by the Financial Ombudsman Service Limited in Annex D to this instrument.

**Commencement**

- F. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- G. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Supervision manual (SUP)	Annex B
Decision Procedure and Penalties Manual (DEPP)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D

**Amendments to the material outside the Handbook**

- H. The Enforcement Guide (EG) is amended in accordance with Annex E to this instrument.

**Citation**

- I. This instrument may be cited as the Small and Medium Sized Business (Credit Information) Instrument 2015.

By order of the Board of the Financial Ombudsman Service Limited  
 [*date*]

By order of the Board of the Financial Conduct Authority  
 [*date*]

**Annex A****Amendments to the Glossary of definitions**

In this annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

*credit information* (in accordance with regulation 2 of, and the Schedule to, the *Small and Medium Sized Business (Credit Information) Regulations*):

- (a) information relating to a loan, namely:
  - (i) the start date of loan agreement;
  - (ii) the date the loan agreement closes or enters default;
  - (iii) the amount of the loan which is outstanding;
  - (iv) the repayment period;
  - (v) the repayment frequency;
  - (vi) the full repayment amount;
  - (vii) the number of missed payments; and
  - (viii) details of any defaults and associated satisfactions;
- (b) information relating to a credit card, namely:
  - (i) the start date of the facility;
  - (ii) the date the facility closed;
  - (iii) any outstanding balance;
  - (iv) the agreed credit limit;
  - (v) the number of missed payments;
  - (vi) the number of cash advances;
  - (vii) the value of cash advances; and
  - (viii) details of any defaults and associated satisfactions;
- (c) information relating to a current account, namely the:
  - (i) start date of the facility;

- (ii) date the facility closed;
  - (iii) current balance;
  - (iv) minimum balance;
  - (v) maximum balance;
  - (vi) average balance;
  - (vii) overdraft limit;
  - (viii) total value of all payments into the account;
  - (ix) total value of debits withdrawn from the account;
  - (x) number of days in the month where the customer has exceeded its approved limit; and
  - (xi) number of cheques or direct debts that have not been paid due to insufficient funds;
- (c) where any of the information described in the preceding paragraph is provided:
- (i) business type indicator (e.g. limited liability company or non-limited business);
  - (ii) business name and address;
  - (iii) company registration number (if applicable);
  - (iv) telephone number; and
  - (v) VAT number (if applicable).

*designated bank* a person designated as such for the purposes of regulation 9 of the *Small and Medium Sized Business (Credit Information) Regulations* (in accordance with regulation 2 of those Regulations).

*designated credit reference agency* a person designated as such for the purposes of regulation 9 of the *Small and Medium Sized Business (Credit Information) Regulations* (in accordance with regulation 2 of those Regulations).

*finance provider* (in accordance with section 7(2) of the Small Business, Enterprise and Employment Act) a body corporate that:

- (a) lends money or provides credit in the course of a business; or
- (b) arranges or facilitates the provision of debt or equity finance in the course of a business; or

- (c) provides, arranges or facilitates invoice discounting or factoring in the course of a business;

but, for the purposes of the *Small and Medium Sized Business (Credit Information) Regulations*, it does not include a body corporate that provides credit only by providing goods or services before payment of part, or all of, the amount to be paid for such goods or services.

*Small Business, Enterprise and Employment Act* the Small Business, Enterprise and Employment Act 2015 (c.26).

*Small and Medium Sized Business (Credit Information) Regulations* the Small and Medium Sized Business (Credit Information) Regulations 2015 (SI 2015/xxx).

Amend the following text as shown.

*Compulsory Jurisdiction* the jurisdiction of the *Financial Ombudsman Service* to which *firms, payment service providers, ~~and~~ electronic money issuers and designated credit reference agencies* (as a result of the *Small and Medium Sized Business (Credit Information) Regulations*) (and certain other persons as a result of the *Ombudsman Transitional Order* or section 226(2)(b) and (c) of the *Act*) are compulsorily subject.

*respondent* (1) (in *DISP, FEES 5* and *CREDS 9*) a *firm* (except an *AIFM* qualifier or a *UCITS* qualifier), *payment service provider, electronic money issuer, designated credit reference agency, or VJ participant* covered by the *Compulsory Jurisdiction, Consumer Credit Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.

(2) (in *DISP 2* and *3* and *FEES 5*) includes, as a result of section 226 of the *Act*, including as applied and modified by the *Small and Medium Sized Business (Credit Information) Regulations*:

...

- (c) a *person* who was formerly a *payment service provider* in respect of a *complaint* about an act or omission which occurred at the time when it was a *payment service provider*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; ~~and~~

- (d) a *person* who was formerly an *electronic money issuer* in respect of a *complaint* about an act or omission which occurred at the time when it was an *electronic money issuer*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; and
- (e) a *person* who was formerly a *designated credit reference agency* in respect of a *complaint* about an act or omission which occurred at the time when it was a *designated credit reference agency*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question.

## Annex B

## Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 5 Reports by skilled persons

### 5.1 Application and purpose

...

- 5.1.2A G (1) This chapter also applies, as guidance, to a *designated bank* or a *designated credit reference agency*:
- (a) in relation to its activities under the *Small and Medium Sized Business (Credit Information) Regulations*;
  - (b) as if, in relation to the activities in (a), references to “must” in SUP 5 were read as “should”; and
  - (c) where it is not a *firm*, as if it were a *firm*.
- (2) Regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* applies Part 11 of the *Act* which includes the provisions concerning skilled persons in relation to activities of a *designated bank* or a *designated credit reference agency* under those *Regulations*.
- (3) In relation to a *designated bank* or a *designated credit reference agency*, a reference in this chapter to the *regulatory system* includes the requirements applicable to such a *person* set out in the *Small and Medium Sized Business (Credit Information) Regulations*.
- (4) The application of section 166 by regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* does not include the *persons* set out in section 166(11). Therefore, any reference to those persons in this chapter does not apply in relation to a *designated bank* or a *designated credit reference agency*.
- (5) In relation to an appointment under section 166A as applied by the *Small and Medium Sized Business (Credit Information) Regulations*, any reference in this chapter to a breach of rules concerning collecting and keeping up-to-date information is a reference to contravention of the requirement under regulation 24 of the *Small and Medium Sized Business (Credit Information) Regulations*.

...

## Annex C

## Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

Insert the following new table at the end of this annex.

<u>The Small and Medium Sized Business (Credit Information) Regulations 2015</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulations 39 and 40</u>	<u>when the FCA is proposing or deciding to publish a statement (under regulation 28), or impose a financial penalty (under regulation 29), or impose a limitation or restriction (under regulation 30), or exercise the power to require restitution (under regulation 32(2)).</u>		<u>RDC</u>

Amend the following as shown.

### Sch 3 Fees and other required payments

...

#### Sch 3.2G

The FCA's power to impose financial penalties is contained in:	
	.....
	the <i>Immigration Regulations</i>
	<u>the <i>Small and Medium Sized Business (Credit Information) Regulations</i></u>

### Sch 4 Powers Exercised

...

## Sch 4.1G

The following powers and related provisions in or under the *Act* have been exercised by the *FCA* to make the statements of policy in *DEPP*:

	...
	Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> , <del>and</del> by paragraph 3 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i> <u>and by regulation 43 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i></u>
	...
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> , <del>and</del> by paragraph 5 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i> <u>and by regulation 44 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i></u>

## Annex D

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

The rules and guidance in this Annex are made by the Financial Conduct Authority in relation to the compulsory jurisdiction of the ombudsman scheme, and by the Financial Ombudsman Service (with the approval of the Financial Conduct Authority) in relation to the voluntary jurisdiction of the ombudsman scheme.

#### INTRO Introduction

This part of the *FCA Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms, payment service providers, electronic money issuers, designated credit reference agencies and VJ participants*) and the *Financial Ombudsman Service*.

...

The powers to make rules (or set *standard terms*) relating to *firms, payment service providers, electronic money issuers, designated credit reference agencies and VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

...

#### 1 Treating complainants fairly

##### 1.1 Purpose and application

...

Background

1.1.2 G Details of how this chapter applies to each type of respondent are set out below. For this purpose, respondents include:

- (1) *persons carrying on regulated activities (firms), providing payment services (payment service providers) ~~or~~, providing electronic money issuance services (electronic money issuers) or providing credit information under the Small and Medium Sized Business (Credit Information) Regulations (designated credit reference agencies) and which are covered by the *Compulsory Jurisdiction*; and*

...

...

Application to designated credit reference agencies

1.1.10G R This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to a *designated credit reference agency* in respect of *complaints from eligible complainants* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.

1.1.10H G Although *designated credit reference agencies* are not required to comply with the *complaints record rule*, they must retain records in accordance with regulation 24 of the *Small and Medium Sized Business (Credit Information) Regulations* and these can be used to assist the *Financial Ombudsman Service* should this be necessary.

...

Exemptions for firms, payment service providers, ~~and~~ electronic money issuers and designated credit reference agencies

1.1.12 R (1) A *firm, payment service provider, ~~or~~ electronic money issuer or designated credit reference agency* falling within the *Compulsory Jurisdiction* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so, can, by written notification to the *FCA*, claim exemption from the *rules* relating to the funding of the *Financial Ombudsman Service*, and from the remainder of this chapter.

...

...

**1 Annex Application of DISP 1 to type of respondent / complaint  
2G**

...

Type of respondent / complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
...	...	...	...	...	...	...
<u><i>designated credit reference agency</i> in relation to</u>	<u>Applies for <i>eligible complainants</i></u>	<u>Applies for <i>eligible complainants</i></u>	<u>Applies for <i>eligible complainants</i></u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>

<u>complaints about providing credit information</u>						
--	--	--	--	--	--	--

## 2 Jurisdiction of the Financial Ombudsman Service

### 2.1 Purpose, interpretation and application

#### Purpose

2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* two jurisdictions:

- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities*, *payment services* and issuance of *electronic money*, and covers:

...

- (b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*; ~~and~~
- (c) *relevant credit-related complaints* against businesses which were, at the time of the events complained about, covered by a standard licence under the Consumer Credit Act 1974, or formerly authorised to carry on an activity by virtue of section 34(A) of that Act, in accordance with article 11 of the *Regulated Activities Amendment Order*; and
- (d) certain complaints against designated credit reference agencies under the Small and Medium Sized Business (Credit Information) Regulations;

...

...

### 2.3 To which activities does the Compulsory Jurisdiction apply?

...

Activities by designated credit reference agencies

- 2.3.2D R The Ombudsman can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *designated credit reference agency* in carrying on:
- (1) the activity of providing *credit information* under the *Small and Medium Sized Business (Credit Information) Regulations*; or
  - (2) any ancillary activities, including advice, carried on by the *designated credit reference agency* in connection with the activity in (1).

#### General

- 2.3.3 G *Complaints* about acts or omissions include those in respect of activities for which the *firm, payment service provider, ~~or~~ electronic money issuer or designated credit reference agency* is responsible (including business of any *appointed representative or agent* for which the *firm, payment institution, ~~or~~ electronic money institution or designated credit reference agency* has accepted responsibility).

...

## 2.5 To which activities does the Voluntary Jurisdiction apply?

- 2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

- (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

- (c) activities which (at ~~24 April 2015~~ [date]) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1*);

...

...

...

## 2.6 What is the territorial scope of the relevant jurisdiction

### Compulsory Jurisdiction

- 2.6.1 R (1) The *Compulsory Jurisdiction* covers *complaints* about the activities

of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents of a payment institution*), ~~or~~ of an *electronic money issuer* (including *agents of an electronic money institution*) or of a *designated credit reference agency* carried on from an establishment in the *United Kingdom*.

...

...

## 2.7 Is the complainant eligible?

...

Eligible complainants

...

2.7.6 R To be an *eligible complainant*, a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(11A) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in providing credit information;

...

...

Exceptions

2.7.9 R The following are not *eligible complainants*:

(1) (in all jurisdictions) a *firm*, *payment service provider*, *electronic money issuer*, *designated credit reference agency* or *VJ participant* whose *complaint* relates in any way to an activity which:

...

(ab) the *firm*, *payment service provider*, ~~or~~ *electronic money issuer* or *designated credit reference agency* itself is entitled to carry on under the *Payment Services Regulations*, ~~or~~ the *Electronic Money Regulations* or the *Small and Medium Sized Business (Credit Information) Regulations*; or

...

...

...

**2 Annex G Regulated Activities for the Voluntary Jurisdiction at ~~24 April 2015~~  
1 [date]**

...

The activities which were covered by the *Compulsory Jurisdiction* (~~at 24 April 2015~~ [date]) were:

...

- (4) for designated credit reference agencies:
- (a) providing credit information under the *Small and Medium Sized Business (Credit Information) Regulations*; or
  - (b) any ancillary activities, including advice, carried on by the *designated credit reference agency* in connection with the activity in (a).

The activities which (at 24 April 2015) were *regulated activities* ...

## Annex E

### Amendments to the Enforcement Guide (EG)

In this Annex, all the text is new and not underlined.

Insert the following new provisions after EG 19.169.

#### **The Small and Medium Sized Business (Credit Information Regulations) 2015**

19.170      The *Small and Medium Sized Business (Credit Information) Regulations* were made under the *Small Business, Enterprise and Employment Act*. The *Small and Medium Sized Business (Credit Information) Regulations* impose a duty on designated banks to provide information about their small and medium sized business customers (with the consent of those businesses) to designated credit reference agencies. The Treasury is the body that has the power to designate a bank or credit reference agency and may revoke such a designation.

19.171      As the provision of credit data on companies is not a regulated activity under the *Act*, the Regulations create a separate monitoring and enforcement regime but apply, or make provision corresponding to, certain aspects of the *Act*. The *FCA's* approach to taking enforcement action under the Regulations will reflect its general approach to enforcing the *Act*, as set out in *EG 2*. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers.

#### ***Information gathering and investigation powers***

19.172      Regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* applies many of the provisions of the *Act* regarding the *FCA's* investigation and information-gathering powers to designated banks and designated credit reference agencies. The effect is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating any breaches of the *Small and Medium Sized Business (Credit Information) Regulations*.

19.173      For example, the *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation and the reasons for the appointment. The *FCA's* policy in regulatory investigations under the *Small and Medium Sized Business (Credit Information) Regulations* is to use powers to compel information, in the same way as it would in the course of an investigation under the *Act*.

#### ***Decision making under the Small and Medium Sized Business (Credit Information) Regulations***

- 19.174 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices* or *decision notices* to be given under the *Small and Medium Sized Business (Credit Information) Regulations*, as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure in *DEPP 3.2* or, where appropriate, *DEPP 3.3* or *DEPP 3.4*. For decisions made by executive procedures, the procedure to be followed will be those described in *DEPP 4*.
- 19.175 Regulation 46 of the *Small and Medium Sized Business (Credit Information) Regulations* applies the procedural provisions of Part 9 of the *Act*, in respect of matters that can be referred to the *Tribunal*, and regulation 44 of the *Small and Medium Sized Business (Credit Information) Regulations* applies Part 26 of the *Act* to *warning* and *decision notices* given under the *Regulations*.
- Public censures, imposition of penalties and the impositions of restrictions under the Small and Medium Sized Business (Credit Information) Regulations***
- 19.176 When determining whether to take action to impose a penalty or to issue a public censure under the *Small and Medium Sized Business (Credit Information) Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP 6.2* and *DEPP 6.4*. When determining the level of financial penalty, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP 6.5*, *DEPP 6.5A*, *DEPP 6.5D* and *DEPP 6.7*.
- 19.177 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving breaches of the *Small and Medium Sized Business (Credit Information) Regulations* to assist it to exercise its functions. *DEPP 5*, *DEPP 6.7* and *EG 5* set out information on the *FCA*'s settlement process and the settlement discount scheme.
- 19.181 When determining whether to take action to impose a restriction under regulation 30 of the *Small and Medium Sized Business (Credit Information) Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP 6A.2* and *DEPP 6A.4*. When determining the length of the period of restriction, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP 6A.3*.
- 19.182 The *FCA* will apply the approach to publicity that is outlined in *EG 6*.

# Appendix 6B

## SME Finance Platform changes

**SMALL AND MEDIUM SIZED BUSINESS (FINANCE PLATFORMS)  
INSTRUMENT 2015**

**Powers exercised by the Financial Ombudsman Service Limited**

- A. The Financial Ombudsman Service Limited makes and amends:
- (1) the rules relating to complaints handling procedures of the Financial Ombudsman Service; and
  - (2) the standard terms for Voluntary Jurisdiction participants;

as set out in Annex D of this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (1) section 227 (Voluntary Jurisdiction);
  - (2) paragraph 8 (Guidance) of Schedule 17;
  - (3) paragraph 14 (The scheme operator’s rules) of Schedule 17;
  - (4) paragraph 15 (Fees) of Schedule 17;
  - (5) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
  - (6) paragraph 22 (Consultation) of Schedule 17.
- B. The making (and amendment) of the rules and standard terms in Annex D by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

**Powers exercised by the Financial Conduct Authority**

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions:
- (1) sections 210 (statement of policy) and 211 (statement of policy: procedure) of the Act, as applied and modified by regulation 39 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (SI 2015/xxx).
  - (2) section 226 (Compulsory jurisdiction) of the Act, as applied and modified by regulation 13(1) of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (SI 2015/xxx);
  - (3) paragraph 13(1), (3) and (4) (FCA’s rules) of Schedule 17 to the Act, as applied and modified by regulation 13(1) of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (SI 2015/xxx); and
  - (4) regulation 16 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (SI 2015/xxx).
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents and approves the rules and standard terms made and amended by the Financial Ombudsman Service Limited in Annex D to this instrument.

**Commencement**

F. This instrument comes into force on [*date*].

**Amendments to the Handbook**

G. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Supervision manual (SUP)	Annex B
Decision Procedure and Penalties Manual (DEPP)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D

**Amendments to the material outside the Handbook**

H. The Enforcement Guide (EG) is amended in accordance with Annex E to this instrument.

**Citation**

I. This instrument may be cited as the Small and Medium Sized Businesses (Credit Information) Instrument 2015.

By order of the Board of the Financial Ombudsman Service Limited  
[*date*]

By order of the Board of the Financial Conduct Authority  
[*date*]

## Annex A

## Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>designated finance platform</i>	a <i>finance platform</i> designated for the purposes of regulation 9 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> (in accordance with regulation 2 of those Regulations).
<i>finance application</i>	(in accordance with regulation 2 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> ) a request, in any form, for a <i>finance facility</i> , whether such a request is made for a new facility or for the renewal or extension of an existing facility.
<i>finance facility</i>	(in accordance with regulation 2 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> ) a loan agreement, an overdraft agreement, a credit card account, an invoice discounting or factoring agreement, a hire purchase agreement or a finance leasing agreement.
<i>finance platform</i>	(in accordance with section 7(2) of the <i>Small Business, Enterprise and Employment Act</i> ) a person that provides a service for the exchange of information between <i>finance providers</i> and businesses that require finance.
<i>specified information</i>	(in accordance with regulation 2 of, and the Schedule to, the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> ): <ul style="list-style-type: none"> <li>(a) the name of the small or medium sized business;</li> <li>(b) the postal address, email address and telephone number of the business;</li> <li>(c) the amount of finance requested by the business;</li> <li>(d) the type of finance requested by the business (where a specific type of finance has been requested by the business);</li> <li>(e) the legal structure of the business (limited company, limited partnership, partnership sole trader, or other);</li> <li>(f) the period in years and months for which the business has been trading and receiving income; and</li> <li>(g) the date by which the business requires finance or, if such date is not known, the date by which the business has requested finance.</li> </ul>

*Small and Medium Sized Business (Finance Platforms) Regulations* The Small and Medium Sized Business (Finance Platforms) Regulations 2015 (SI 2015/xxx).

### Amended definitions

Amend the following text as shown.

- Compulsory Jurisdiction* the jurisdiction of the *Financial Ombudsman Service* to which *firms, payment service providers, electronic money issuers, and designated credit reference agencies* (as a result of the *Small and Medium Sized Businesses (Credit Information) Regulations*), and designated finance platforms ( as a result of the *Small and Medium Sized Business (Finance Platforms) Regulations*) (and certain other persons as a result of the *Ombudsman Transitional Order* or section 226(2)(b) and (c) of the *Act*) are compulsorily subject.
- designated bank* a person designated as such for the purposes of regulation 9 of the *Small and Medium Sized Businesses (Credit Information) Regulations* or the *Small and Medium Sized Business (Finance Platforms) Regulations* (in accordance with regulation 2 of those Regulations):
- respondent*
- (1) (in *DISP, FEES 5* and *CREDS 9*) a *firm* (except an *AIFM* qualifier or a *UCITS* qualifier), *payment service provider, electronic money issuer, designated credit reference agency, designated finance platform, or VJ participant* covered by the *Compulsory Jurisdiction, Consumer Credit Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
  - (2) (in *DISP 2* and *3* and *FEES 5*) includes, as a result of section 226 of the *Act*, including as applied and modified by the *Small and Medium Sized Businesses (Credit Information) Regulations* and the Small and Medium Sized Business (Finance Platforms) Regulations:
- ...
- (d) a person who was formerly an *electronic money issuer* in respect of a *complaint* about an act or omission which occurred at the time when it was an *electronic money issuer*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question- ; and
  - (e) a person who was formerly a *designated credit reference agency* in respect of a *complaint* about an act or omission which occurred at the time when it was a

*designated credit reference agency*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; and

- (f) a person who was formerly a *designated finance platform* in respect of a *complaint* about an act or omission which occurred at the time when it was a *designated finance platform*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question.

## Annex B

## Amendments to the Supervision Manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 5 Reports by skilled persons

### 5.1 Application and purpose

...

- 5.1.2A G (1) This chapter also applies, as guidance, to a *designated bank* or a *designated credit reference agency* or a designated finance platform:
- in relation to its activities under the *Small and Medium Sized Business (Credit Information) Regulations* or in relation to its activities under the *Small and Medium Sized Business (Finance Platform) Regulations*, as the case may be;
- (a) ...
- (2) Regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* applies Part 11 of the Act which includes the provisions concerning skilled persons in relation to activities of a *designated bank* or a *designated credit reference agency* under those Regulations. Regulation 22 of the *Small and Medium Sized Business (Finance Platform) Regulations* has the same effect in relation to *designated finance platforms*.
- (3) In relation to a *designated bank* or a *designated credit reference agency*, a reference in this Chapter to the *regulatory system* includes the requirements applicable to such a *person* set out in the *Small and Medium Sized Business (Credit Information) Regulations*. In relation to a *designated finance platform*, a reference in this chapter to the *regulatory system* includes the requirements applicable to such a *person* set out in the *Small and Medium Sized Business (Finance Platform) Regulations*.
- (4) The application of section 166 by Regulation 26 of the *Small and Medium Sized Business (Credit Information) Regulations* or by Regulation 22 of the *Small and Medium Sized Business (Finance Platform) Regulations* does not include the *persons* set out in section 166(11) and therefore any reference to those persons in this Chapter does not apply in relation to a *designated bank* or a *designated credit reference agency* or a *designated finance platform*.
- (5) In relation to an appointment under section 166A as applied by the *Small and Medium Sized Business (Credit Information) Regulations*

or the *Small and Medium Sized Business (Finance Platform) Regulations*, any reference in this Chapter to a breach of rules concerning collecting and keeping up to date information is a reference to contravention of the requirement under Regulation 24 of the *Small and Medium Sized Business (Credit Information) Regulations* or under Regulation 22 of the *Small and Medium Sized Business (Finance Platform) Regulations*, as the case may be.

## Annex C

## Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

**2 Annex 1G Warning notices and decision notices under the Act and certain other enactments**

<u>The Small and Medium Sized Business (Finance Platforms) Regulations 2015</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
Regulations 35 and 36	when the <i>FCA</i> is <u>proposing or deciding to publish a statement (under regulation 24), or impose a financial penalty (under regulation 25), or impose a limitation or restriction (under regulation 26), or exercise the power to require restitution (under regulation 28(2)).</u>		<u>RDC</u>

Amend the following as shown.

**Schedule 3 Fees and other required payments**

...

Sch 3.2G

The <i>FCA</i> 's power to impose financial penalties is contained in:	
	.....
	the <i>Small and Medium Sized Business (Credit Information) Regulations</i>
	<u>the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i></u>

**Schedule 4 Powers Exercised**

...

## Sch 4.1G

The following powers and related provisions in or under the *Act* have been exercised by the *FCA* to make the statements of policy in *DEPP*:

	...
	Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> , by paragraph 3 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i> , <del>and</del> by regulation 43 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i> <u>and by regulation 39 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i>.</u>
	...
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> , by paragraph 5 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i> , <del>and</del> by regulation 44 of the <i>Small and Medium Sized Business (Credit Information) Regulation</i> <u>and by regulation 40 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i>.</u>

## Annex D

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### Part 1

The rules and guidance in this Annex are made by the Financial Conduct Authority in relation to the compulsory jurisdiction of the ombudsman scheme, and by the Financial Ombudsman Service (with the approval of the Financial Conduct Authority) in relation to the voluntary jurisdiction of the ombudsman scheme.

#### Introduction

This part of the *FCA Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms, payment service providers, electronic money issuers, designated credit reference agencies, designated finance platforms, and VJ participants*) and the *Financial Ombudsman Service*.

...

The powers to make rules (or set *standard terms*) relating to *firms, payment service providers, electronic money issuers, designated credit reference agencies, designated finance platforms, and VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

#### 1 Treating complainants fairly

##### 1.1 Purpose and application

Background

...

- 1.1.2 G Details of how this chapter applies to each type of respondent are set out below. For this purpose, respondents include:
- (1) *persons carrying on regulated activities (firms), providing payment services (payment service providers), providing electronic money issuance services (electronic money issuers) ~~or~~ providing credit information under the Small and Medium Sized Businesses (Credit Information) Regulations (designated credit reference agencies), or providing specified information under the Small and Medium Sized Business (Finance Platforms) Regulations (designated finance platforms) and which are covered by the Compulsory Jurisdiction; and*

...

...

Application to designated finance platforms

1.1.10I R This chapter (except the *complaints record rule*, the *complaints reporting rules*, and the *complaints data publication rules*) applies to a *designated finance platform* in respect of *complaints from eligible complainants* concerning activities carried on from an establishment maintained by it or its agent in the *United Kingdom*.

1.1.10J G Although *designated finance platforms* are not required to comply with the *complaints record rule*, they must retain records in accordance with regulation 20 of the *Small and Medium Sized Business (Finance Platforms) Regulations* and these can be used to assist the *Financial Ombudsman Service* should this be necessary.

...

Exemptions for firms, payment service providers, electronic money issuers, ~~and~~ designated credit reference agencies and designated finance platforms

1.1.12 R (1) A *firm, payment service provider, electronic money issuer*, ~~or~~ *designated credit reference agency* or *designated finance platform* falling within the *Compulsory Jurisdiction* which does not conduct business with *eligible complainants* and has no reasonable likelihood of doing so, can, by written notification to the *FCA*, claim exemption from the *rules* relating to the funding of the *Financial Ombudsman Service*, and from the remainder of this chapter.

...

...

**DISP 1 Annex 2 Application of DISP 1 to type of respondent / complaint**

DISP 1 G  
Annex 2

Type of respondent/ complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
...	...	...	...	...	...	...
<u><i>designated finance</i></u>	<u>Applies for <i>eligible</i></u>	<u>Applies for <i>eligible</i></u>	<u>Applies for <i>eligible</i></u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>

<u>platform in relation to complaints about providing specified information</u>	<u>complainants</u>	<u>complainants</u>	<u>complainants</u>			
...	...	...	...	...	...	...

...

## 2 Jurisdiction of the Financial Ombudsman Service

### 2.1 Purpose, interpretation and application

#### Purpose

2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* two jurisdictions:

(1) the *Compulsory Jurisdiction* is not restricted to *regulated activities*, *payment services* and issuance of *electronic money*, and covers:

...

(c) *relevant credit-related complaints* against businesses which were, at the time of the events complained about, covered by a standard licence under the Consumer Credit Act 1974, or formerly authorised to carry on an activity by virtue of section 34(A) of that Act, in accordance with article 11 of the *Regulated Activities Amendment Order*; ~~and~~

(d) certain *complaints* against *designated credit reference agencies* under the *Small and Medium Sized Businesses (Credit Information) Regulations*; and

(e) certain complaints against designated finance platforms under the Small and Medium Sized Business (Finance Platforms) Regulations.

...

...

### 2.3 To which activities does the Compulsory Jurisdiction apply?

...

#### Activities by designated finance platforms

2.3.2E R The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a designated finance

platform in carrying on:

- (1) the activity of providing *specified information* under the *Small and Medium Sized Business (Finance Platforms) Regulations*; or
- (2) any ancillary activities, including advice, carried on by the *designated finance platforms* in connection with the activity in (1).

General

- 2.3.3 G *Complaints* about acts or omissions include those in respect of activities for which the *firm, payment service provider, electronic money issuer, ~~or~~ designated credit reference agency or designated finance platform* is responsible (including business of any *appointed representative* or *agent* for which the *firm, payment institution, electronic money institution, ~~or~~ designated credit reference agency or designated finance platform* has accepted responsibility).

...

## 2.5 To which activities does the Voluntary Jurisdiction apply?

- 2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

- (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

- (c) activities which (at ~~24 April 2015~~ *[date]*) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1*);

...

...

## 2.6 What is the territorial scope of the relevant jurisdiction

Compulsory Jurisdiction

- 2.6.1 R (1) The *Compulsory Jurisdiction* covers *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*), of an *electronic money issuer* (including *agents* of an *electronic money institution*), ~~or~~ a *designated credit reference agency* or a *designated finance platform* carried on from an establishment in the *United Kingdom*.

...

...

**2.7 Is the complainant eligible?**

...

Eligible complainants

...

2.7.6 R To be an *eligible complainant* a *person* must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(11B) the complainant is a *person* about whom *specified information* was provided to a *person* in relation to a *finance application*;

...

...

Exceptions

2.7.9 R The following are not *eligible complainants*:

(1) (in all jurisdictions) a *firm*, *payment service provider*, *electronic money issuer*, *designated credit reference agency*, *designated finance platform* or *VJ participant* whose *complaint* relates in any way to an activity which:

...

(ab) the *firm*, *payment service provider*, *electronic money issuer*, ~~or~~ *designated credit reference agency* or *designated finance platform* itself is entitled to carry on under the *Payment Services Regulations*, the *Electronic Money Regulations*, ~~or~~ the *Small and Medium Sized Businesses (Credit Information) Regulations* or the *Small and Medium Sized Business (Finance Platforms) Regulations*; or

...

...

...

The activities which were covered by the *Compulsory Jurisdiction* (~~at 24~~  
~~April 2015~~ *[date]*) were:

...

(5) for designated finance platforms:

(a) providing specified information under the *Small and Medium Sized Business (Finance Platforms) Regulations*; or

(b) any ancillary activities, including advice, carried on by the *designated finance platform* in connection with the activity in paragraph (a).

...

## Annex E

### Amendments to the Enforcement Guide (EG)

In this Annex, all the text is new and not underlined.

Insert the following new provisions after EG 19.182.

#### **The Small and Medium Sized Business (Finance Platforms) Regulations 2015**

19.183      The *Small and Medium Sized Business (Finance Platforms) Regulations* were made under the *Small Business, Enterprise and Employment Act*. The *Small and Medium Sized Business (Finance Platforms) Regulations* require designated banks to provide specified information about rejected loan applications made by small and medium sized business customers (with their consent) to designated finance platforms which must then provide such information to finance providers on request. The Treasury is the body that has the power to designate a bank or finance platform and may revoke such a designation.

19.184      As the provision of credit data on companies is not a regulated activity under the *Act*, the Regulations create a separate monitoring and enforcement regime but apply, or make provision corresponding to, certain aspects of the *Act*. The *FCA's* approach to taking enforcement action under the Regulations will reflect its general approach to enforcing the *Act*, as set out in *EG 2*. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers.

#### ***Information gathering and investigation powers***

19.185      Regulation 22 of the *Small and Medium Sized Business (Finance Platforms) Regulations* applies many of the provisions of the *Act* in relation to the *FCA's* investigation and information-gathering powers in respect of designated banks and designated finance platforms. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating any breaches of the *Small and Medium Sized Business (Finance Platforms) Regulations*.

19.186      For example, the *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation and the reasons for the appointment. The *FCA's* policy in regulatory investigations under the Regulations is to use powers to compel information, in the same way as it would in the course of an investigation under the *Act*.

#### ***Decision making under the Small and Medium Sized Business (Finance Platforms) Regulations***

- 19.187 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices* or *decision notices* to be given under the *Small and Medium Sized Business (Finance Platforms) Regulations* as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure in *DEPP 3.2* or, where appropriate, *DEPP 3.3* or *DEPP 3.4*. For decisions made by executive procedures, the procedure to be followed will be those described in *DEPP 4*.
- 19.188 Regulation 42 of the *Small and Medium Sized Business (Finance Platforms) Regulations* applies to the procedural provisions of Part 9 of the *Act*, in respect of matters that can be referred to the *Tribunal*, and regulation 40 of the *Small and Medium Sized Business (Finance Platforms) Regulations* applies to Part 26 of the *Act* to *warning* and *decision notices* given under the *Small and Medium Sized Business (Finance Platforms) Regulations*.
- Public censures, imposition of penalties and the impositions of restrictions under the Small and Medium Sized Business (Finance Platforms) Regulations***
- 19.189 When determining whether to take action to impose a penalty or to issue a public censure under the *Small and Medium Sized Business (Finance Platforms) Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP 6.2* and *DEPP 6.4*. When determining the level of financial penalty, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP 6.5*, *DEPP 6.5A*, *DEPP 6.5D* and *DEPP 6.7*.
- 19.190 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving breaches of the *Small and Medium Sized Business (Finance Platforms) Regulations* to assist it to exercise its functions. *DEPP 5*, *DEPP 6.7* and *EG 5* set out information on the *FCA*'s settlement process and the settlement discount scheme.
- 19.191 When determining whether to take action to impose a restriction under regulation 26 of the *Small and Medium Sized Business (Finance Platforms) Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP 6A.2* and *6A.4*. When determining the length of the period of restriction, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP 6A.3*.
- 19.192 The *FCA* will apply the approach to publicity that is outlined in *EG 6*.

# Appendix 6C

## Fees changes

**DESIGNATED CREDIT REFERENCE AGENCIES AND FINANCE PLATFORMS  
(FEES) INSTRUMENT 2015**

**Powers exercised by the Financial Ombudsman Service<sup>1</sup>**

A. The Financial Ombudsman Service Limited makes this instrument amending:

- (1) rules relating to the payment of fees under the Compulsory Jurisdiction; and
- (2) the standard terms for VJ participants relating to the payment of fees under the Voluntary Jurisdiction;

in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (1) paragraph 14 (The scheme’s operator’s rules) of Schedule 17;
- (2) paragraph 15 (Fees) of Schedule 17; and
- (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

B. The making (and amendment) of rules and standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

**Powers exercised by the Financial Conduct Authority<sup>1</sup>**

C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions:

- (1) paragraph 23 (Fees) of Schedule 1ZA (The Financial Conduct Authority) of the Act;
- (2) section 139A (Power of the FCA to give guidance) of the Act;
- (3) regulation 20 of the Small and Medium Sized Business (Credit Information) Regulations 2015;
- (4) regulation 21 of the Small and Medium Sized Business (Credit Information) Regulations 2015 which applies (with modifications) paragraph 23 (fees) of Schedule 1ZA of the Act;
- (5) regulation 16 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015; and
- (6) regulation 17 of the Small and Medium Sized Business (Finance Platforms) Regulations 2015 which applies (with modifications) paragraph 23 (fees) of Schedule 1ZA of the Act.

D. The Financial Conduct Authority approves and consents to the making (and amendment) of the rules and standard terms that are made and amended by the Financial Ombudsman Service Limited under this instrument.

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<sup>1</sup> (a) The amendment to FEES 5 is solely made by the Financial Ombudsman Service.  
(b) All other changes are made by the Financial Conduct Authority.

- E. The rule making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

- F. This instrument comes into force on [*date*].

**Amendments to the FCA Handbook**

- G. The Fees manual (FEES) is amended in accordance with Annex A to this instrument.

**Citation**

- H. This instrument may be cited as the Designated Credit Reference Agencies and Finance Platforms (FEES) Instrument 2015.

By order of the Board of the Financial Ombudsman Service Limited  
[*date*] 2015

By order of the Board of the Financial Conduct Authority  
[*date*] 2015

## Annex A

### Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### 2.1 Introduction

...

##### Purpose

... ..

- 2.1.5 G (1) ~~Paragraph 23 of Schedule 1ZA of the Act, regulation 92 of the *Payment Services Regulations*, and regulation 59 of the *Electronic Money Regulations*.~~ The following enable the *FCA* to charge fees to cover its costs and expenses in carrying out its functions:
- (a) paragraph 23 of Schedule 1ZA of the Act;
  - (b) regulation 92 of the *Payment Services Regulations*;
  - (c) regulation 59 of the *Electronic Money Regulations*;
  - (d) regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations*; and
  - (e) regulation 17 of the *Small and Medium Sized Business (Finance Platforms) Regulations*.
- (2) The corresponding provisions for the *FSCS* levy, *FOS* levies' and *CFEB* levies are set out in *FEES* 6.1, *FEES* 5.2 and *FEES* 7.1.4G respectively.
- (3) Case fees payable to the *FOS Ltd* are set out in *FEES* 5.5A.
- (4) *Fee-paying payment service providers* and *fee-paying electronic money issuers* are not required to pay the *FSCS* levy but are liable for *FOS* levies.

...

- 2.1.5B G (1) The *FCA* also has a fee-raising power as a result of:
- (a) regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations*; and
  - (b) regulation 17 of the *Small and Medium Sized Business*

(Finance Platforms) Regulations.

(2) The FCA’s functions under these regulations are treated as functions conferred on the FCA under the Act for the purposes of its fee-raising power in paragraph 23 of Schedule 1ZA to the Act.

...

**3.2 Obligation to pay fees**

...

3.2.7 R Table of application, notification and vetting fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable	Due date
...	...	...
(zs) Applicant for FCA permission for an agreement to be enforced under section 28A(3)(a) and/or money paid or property transferred under and agreement to be retained under 28A(3)(b) of the Act	...	...
<u>(zt) Any person to which the Designated Credit Reference Agencies and Finance Platform Fee applies under FEES 3 Annex 12</u>	<u>Designated Credit Reference Agencies and Finance Platform Fee in accordance with FEES 3 Annex 12</u>	<u>30 days of the date of the invoice.</u>

After FEES 3 Annex 11 insert the following new annex. The text is not underlined.

**3 Annex 12**

Designated Credit Reference Agencies and Finance Platform Fee		
(1)	R	The Designated Credit Reference Agencies and Finance Platform Fee (the “DEF”) is only payable by:
		(a) <i>a designated credit reference agency; or</i>

		(b)	a <i>designated finance platform</i> .
(2)	R	The DEF becomes payable by a <i>person</i> falling into (1)(a) or (b) if the <i>FCA</i> conducts regulatory work connected to:	
		(a)	breaches or potential breaches by that <i>person</i> of requirements under the:  (i) <i>Small and Medium Sized Businesses (Credit Information) Regulations</i> ; or  (ii) <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> ; or
		(b)	whether the <i>person</i> has or may have committed an offence of misleading the <i>FCA</i> under:  (i) regulation 30 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> ; or  (ii) regulation 34 of the <i>Small and Medium Sized Businesses (Credit Information) Regulations</i> .
(3)	R	A <i>person</i> falling into (1)(a) or (b) is not required to pay the DEF if the amount calculated in accordance with (4) for the <i>FCA</i> 's regulatory work described at (2)(a) or (b) is less than £10,000.	
(4)	R	The DEF is calculated as follows:	
		(a)	Determine the number of hours, or part of an hour, taken by the <i>FCA</i> , in performing the regulatory work described at (2)(a) or (b).
		(b)	Using the table at <i>FEES 3 Annex 9(11)R</i> determine the relevant pay grades of those employed by the <i>FCA</i> to perform the regulatory work described at (2)(a) or (b).
		(c)	Next, multiply the applicable rate in the table at <i>FEES 3 Annex 9(11)R</i> by the number of hours or part hours obtained under (a).
		(d)	Then add any fees and disbursements invoiced to the <i>FCA</i> by any <i>person</i> in respect of services performed by that <i>person</i> for the <i>FCA</i> in relation to assisting the <i>FCA</i> in performing the regulatory work referred to in 2(a) or (b).
		(e)	The resulting figure is the DEF.
		(f)	The number of hours or part hours referred to in (a) are the number of hours or part hours as recorded on the <i>FCA</i> 's systems in relation to the regulatory work referred to in (2)(a)

			or (b).
(5)	G	The hourly rates chargeable for the <i>FCA</i> pay grades are set out in the table at <i>FEES</i> 3 Annex 9(11)R for Special Project Fee for Restructuring.	
(6)	G	(a)	The obligation to pay the DEF is ongoing.
		(b)	Accordingly, there is no limit on the number of times that the <i>FCA</i> may invoice a <i>person</i> falling into (1)(a) or (b) for the DEF for the same regulatory work described at (2)(a) or (b).
		(c)	If the <i>FCA</i> issues more than one invoice, there is a single floor under (3) and not a separate one for each instalment.
(7)	G	If the DEF is payable, the full amount calculated under (4) is payable not just the excess over £10,000.	
(8)	G	The <i>FCA</i> shall provide any <i>person</i> falling into (1)(a) or (b) with written notice that it is performing regulatory work described at 2(a) or (b) which is likely to exceed £10,000 calculated in accordance with (4) as soon as is reasonably practicable.	

Amend FEES 5 as shown.

5.1.1A R A reference to *firm* in this chapter includes a reference to a *fee-paying payment service provider*, ~~and~~ *fee-paying electronic money issuer*, a designated credit reference agency and a designated finance platform.

## Application

...

5.5B.7 R (1) ~~A firm, payment service provider or electronic money issuer~~ Any of the following persons which is exempt under *DISP 1.1.12 R* is also exempt from *FEES* 5.5B.7:

- (a) a firm;
- (b) a payment service provider;
- (c) an electronic money issuer;
- (d) a designated credit reference agency; and
- (e) a designated finance platform.

(2) save ~~However, that it~~ a person will only be exempt from *FEES* 5.5B in any *financial year* if it met the conditions in *DISP 1.1.12R*

on 31 March of the immediately preceding *financial year*.

...

### Leaving the Financial Ombudsman Service

5.5B.24 R Where a *respondent* ceases to be a ~~*firm, payment service provider, electronic money issuer or VJ participant*~~ any of the following (as the case may be) part way through a *financial year* it will remain liable to pay case fees under *FEES 5.5B* in respect of cases within the jurisdiction of the *Financial Ombudsman Service*:

- (1) a *firm*; or
- (2) a *payment service provider*; or
- (3) an *electronic money issuer*; or
- (4) a *VJ participant*; or
- (5) a *designated credit reference agency*; or
- (6) a *designated finance platform*.

### 5 Annex 1 Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2014/15

	Industry block	Tariff base	General levy payable by firm
	...		
<u>21</u>	<u><i>designated credit reference agencies (but excluding firms in any other industry block)</i></u>	<u>Flat fee</u>	<u>Levy of £0</u>
<u>22</u>	<u><i>designated finance platforms (but excluding firms in any other industry block)</i></u>	<u>Flat fee</u>	<u>Levy of £0</u>

5 Annex	2	Annual Levy Payable in Relation to the Voluntary Jurisdiction for [2015/16]		
	Industry block and business activity	Tariff basis	Tariff rate	Minimum levy
	...			
<u>13V</u>	<u>Persons not covered by 1V to 9V providing credit information under the <i>Small and Medium Sized Businesses (Credit Information) Regulations</i> or would be if it was carried on from an establishment in the <i>United Kingdom</i></u>	[TBC]	[TBC]	[TBC]
<u>14V</u>	<u>Persons not covered by 1V to 9V providing specified information, under the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> or would be if it was carried on from an establishment in the <i>United Kingdom</i></u>	[TBC]	[TBC]	[TBC]

# Appendix 6D

## Guidance on Small and Medium Sized Business (SME) Credit Information and Finance Platforms Regulations

1. The purpose of this guidance is to explain the scope of our functions in relation to The Small and Medium Sized Business (Credit Information) Regulations 2015<sup>15</sup> and The Small and Medium Sized Business (Finance Platforms) Regulations 2015<sup>16</sup> (the Regulations). The guidance will be of interest to banks, credit reference agencies (CRAs) and finance platforms designated by HM Treasury under the Regulations, SMEs seeking finance and alternative finance providers.

### Background

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2. The Small Business, Enterprise and Employment Act 2015<sup>17</sup> contains measures aimed at improving access to finance for SMEs. Detailed provisions are set out in secondary legislation (the Regulations) that require us to maintain arrangements to monitor and enforce relevant requirements. The Regulations create a separate monitoring and enforcement regime from the authorisation requirements under FSMA, but apply, or make provision corresponding to, certain aspects of FSMA.
3. The Regulations require, with permission from the relevant SME, designated banks to:
  - share SME credit information with designated CRAs which must then provide such information to finance providers on request, and
  - provide specified information about rejected SME loan applicants to designated finance platforms which must then provide such information to finance providers on request.
4. The nature and content of the SME credit information to be shared with designated CRAs, and specified information regarding rejected SME loan applicants to be provided to designated finance platforms and then to finance providers, is set out in the schedules to the respective Regulations.
5. For the purposes of the Regulations, a business is an SME business if:
  - a. it has an annual turnover of less than £25 million
  - b. it carries out commercial activities

<sup>15</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389204/DraftRegulations\\_12\\_12\\_14\\_1111\\_\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389204/DraftRegulations_12_12_14_1111__2_.pdf)

<sup>16</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389210/The\\_Small\\_and\\_Medium\\_Sized\\_Business\\_Finance\\_Platforms\\_Regulations\\_2015\\_Regulations\\_draft\\_statutory\\_instrument.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389210/The_Small_and_Medium_Sized_Business_Finance_Platforms_Regulations_2015_Regulations_draft_statutory_instrument.pdf)

<sup>17</sup> <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted/data.htm>

- c. it does not carry out regulated activities as its principal activity, and
- d. it is not owned or controlled by a public authority.

### Designation of banks, CRAs and finance platforms

---

- 6. Designation, for the purposes of the specific activities under the Regulations outlined above, is separate from the authorisation requirements of FSMA and solely a matter for HM Treasury. The process for designation is set out in the Part 3 of the respective Regulations. HM Treasury will maintain a publicly accessible record of current designations. Some designated entities may also be authorised under FSMA in respect of regulated activities.

### Monitoring and enforcement

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- 7. The Regulations require us to maintain arrangements to monitor and enforce relevant requirements, whilst using our resources in the most efficient and economic way.
- 8. The Regulations also set out our information gathering powers, which include being able to appoint (or have appointed) a skilled person to prepare a report, for example in relation to a designated entity's compliance with the Regulations. They also set out our disciplinary powers which include public censure, financial penalties and the imposition of limitations on permission.
- 9. Broadly, we expect to apply our standard risk-based approach to monitoring compliance, having regard to the requirement to use our resources in the most efficient and economic way. If information is received about potential non-compliance with the Regulations by designated banks, CRAs or finance platforms, we would consider this in accordance with our relevant supervisory processes.
- 10. Our approach to enforcement will reflect our general approach to enforcing FSMA as set out in the Enforcement Guide (EG), where we exercise our powers in a manner that is transparent, proportionate and consistent with our publicly stated policies.
- 11. Designated entities are required to maintain records for at least five years from creation which are relevant to demonstrating compliance or non-compliance with relevant requirements under the Regulations.

### Complaints

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- 12. The activities of designated CRAs and finance platforms under the Regulations are within the scope of the ombudsman service. SME consumers affected by designated CRAs and finance platforms carrying out activities under the Regulations (including activities which are ancillary) may, therefore, be able to complain to the ombudsman service subject to other jurisdiction rules. The activities which banks carry out under the Regulations may also be within scope of the compulsory jurisdiction as ancillary activities to those already within scope.

## Fees

- 13.** Our approach to charging fees under the Regulations reflects our monitoring approach. Given the nature and scale of the activities undertaken, and the small number of banks, CRAs and finance platforms likely to be designated under the Regulations, we consider that it is disproportionate to charge a periodic fee at the present time.
- 14.** Nevertheless, there could be occasions when we have to undertake additional work because a designated entity has or may have failed to comply with requirements under the Regulations or has or may have committed the offence of misleading the FCA. In these circumstances, it would not be reasonable for our costs to be covered by the general body of firms.
- 15.** Provision is made in FEES 3 to charge designated CRAs and finance platforms an hourly rate where we anticipate the resources involved in monitoring compliance with the Regulations in individual cases will exceed a threshold of £10,000.
- 16.** We shall provide notice to the entity concerned where costs are likely to exceed £10,000. If costs do exceed £10,000, the full costs incurred are payable as a fee, not simply the excess over £10,000. For the purposes of calculating costs, we will use the hourly rates in FEES 3 Annex 9<sup>18</sup> (Special Project Fee). The current hourly rates are:

Administrator	£30
Associate	£55
Technical Specialist	£100
Manager	£110
Any other person employed by the FCA	£160

- 17.** If a skilled person is appointed under the Regulations, FEES 3.2.7R(zp) and (zq) will apply.
- 18.** FEES 5 also provides for the payment of case fees by respondents where the ombudsman service deals with more than 25 cases in a year. The FOS levy is currently set at £0 for designated CRAs and finance platforms.
- 19.** No application fees are payable as designation under the Regulations is solely a matter for HM Treasury.
- 20.** We will keep our approach under review in the light of our experience of these measures to consider whether it would be appropriate to introduce periodic fees at a future time.

<sup>18</sup> <http://fshandbook.info/FS/html/FCA/FEES/3/Annex9>