

Quarterly Consultation No.13

July 2016



Contents

Abbreviations used in this paper	3
1 Overview	5
2 The Insurance Act 2015	7
3 Mortgages and home finance activity	10
4 Changes to the requirements in the Disclosure Rules and Transparency Rules	14
5 Changes to the Training and Competence sourcebook (TC)	20
6 Disapplication of CASS audit requirements to certain debt management firms	23
7 Distribution and promotion of credit union deferred shares and subordinated debt	25
8 A new 'pooled investment vehicle' definition for the marketing restriction rules on NMPs	33
9 Changes to reporting requirements in the Supervision manual (SUP)	37
10 Transparency reporting requirements for AIFMs	41

Appendices

1 List of questions	
2 The Insurance Act 2015	
3 Mortgages and home finance activity	
4A Changes to the prescribed market definition	
4B Changes to the requirements in the Disclosure Rules and Transparency Rules	
5 Changes to the Training and Competence sourcebook (TC)	
6 Disapplication of CASS audit requirements to certain debt management firms	
7 Distribution and promotion of credit union deferred shares and subordinated debt	
8 A new 'pooled investment vehicle' definition for the marketing restriction rules on NMPs	
9 Changes to reporting requirements in the Supervision manual (SUP)	
10 Transparency reporting requirements for AIFMs	

The Financial Conduct Authority invite comments on this Consultation Paper. Comments should reach us by 1 August 2016 for Chapter 5, 12 August 2016 for Chapter 3 and 1 September 2016 for all other chapters (see the Overview section for further details).

Comments may be sent by electronic submission using the form on the FCA's website at www.the-fca.org.uk/cp16-17-response-form or by email to cp16-17@fca.org.uk.

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If you are responding in writing to several chapters then please send your comments to Emily How in Communications, who will pass your responses on as appropriate.

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Abbreviations used in this paper

AD	Accounting Directive (2013/34/EU)
AIF	alternative investment fund
AIFM	alternative investment fund manager
AIFMD	Alternative Investment Fund Managers Directive (2011/61/EU)
BIS	the Department for Business, Innovation & Skills
CASS	Client Assets sourcebook
CBA	cost benefit analysis
CBTL	consumer buy-to-let
CCD	Consumer Credit Directive
COBS	Conduct of Business sourcebook
COMP	Compensation sourcebook
CONC	Consumer Credit sourcebook
CP	Consultation Paper
CREDS	Credit Unions sourcebook
DTR	Disclosure Guidance and Transparency Rules sourcebook
EEA	European Economic Area
ESMA	European Securities and Markets Authority
EU	European Union
EU NFR Directive	Non-Financial Reporting Directive (2014/95/EU)
FCA	Financial Conduct Authority
FEES	Fees manual
FSCS	Financial Services Compensation Scheme

FSMA	Financial Services and Markets Act 2000
GENPRU	General Prudential sourcebook
ICOB	Insurance: Conduct of Business sourcebook
IFPRU	Prudential sourcebook for Investment Firms
MAR	Market Abuse Regulation (596/2014/EU)
MCD	Mortgage Credit Directive
MCOB	Mortgages and Home Finance: Conduct of Business sourcebook
MIPRU	Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
NCA	National Competent Authority
NMPI	non-mainstream pooled investment
PERG	Perimeter Guidance manual
PIEs	Public Interest Entities
PII	professional indemnity insurance
PRA	Prudential Regulation Authority
PS	Policy Statement
RAO	Regulated Activities Order
RIE	Recognised Investment Exchange
RMAR	Retail Mediation Activities Return
RRA	residential renovation agreements
SPV	special purpose vehicle
SUP	Supervision manual
TC	Training and Competence sourcebook
UCIS	unregulated collective investment scheme
UK	United Kingdom

1. Overview

Chapter No.	Proposed changes to Handbook	Consultation Closing Period
2	To align the claims handling rules with the Insurance Act 2015.	2 months
3	Minor changes to rules and guidance for firms conducting mortgages and home finance activity.	6 weeks
4	Change to the definition of a prescribed market in the Handbook Glossary for the purposes of DTR 5 following repeal of the Prescribed Markets and Qualifying Investments Order on 3 July 2016. The addition of a new rule in DTR 7.2 to implement the new Non-Financial Reporting Directive (2014/95/EU) requirement for issuers to disclose their diversity policy in the corporate governance statement.	2 months
5	Changes to the Training and Competence sourcebook (TC) list of appropriate qualifications.	1 month
6	Disapplication of CASS audit requirements to certain debt management firms.	2 months
7	Update rules on distribution and promotion of credit union deferred shares and subordinated debt.	2 months
8	To introduce a new 'pooled investment vehicle' definition to clarify the scope of the non-mainstream pooled investment rules.	2 months
9	To make changes to the regulatory reporting requirements set out in the Supervision manual (SUP).	2 months
10	To make changes to the transparency reporting requirements for certain alternative investment fund managers, to reduce information gaps and allow effective monitoring of their risk-taking activities.	2 months

- 1.1** With regard to Chapters 3, 4 and 5, the policy contained in the underlying rules has been designed in the context of the existing UK and EU regulatory framework. With regard to Chapter 10, the policy contained in the underlying rules and supervisory statements has been designed in the context of the existing UK and EU regulatory framework. The FCA will keep the policy under review to assess whether any changes would be required due to any intervening changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

2. The Insurance Act 2015

Introduction

- 2.1** In this chapter, we propose to make consequential amendments to the Insurance: Conduct of Business sourcebook (ICOBS) and the Conduct of Business sourcebook (COBS) to align the claims handling rules with the Insurance Act 2015 (the Act) which will come into force on 12 August 2016.
- 2.2** The consultation will be of interest to consumers, insurers and intermediaries, and their trade bodies.
- 2.3** The text of the proposed amendments, and the statutory powers these amendments will be made under, are set out in Appendix 2 of this paper.

Summary of proposals

- 2.4** The Act is directly applicable to insurers and insureds so we are not required to make rules to give it effect. As such our starting point has been to make as few rule changes as possible to avoid replicating primary legislation in our rules unnecessarily. However, there are some instances where we think consequential changes are needed to align current Handbook provisions to the provisions of the Act.

ICOBS 8 and COBS 17

- 2.5** For contracts entered into or variations made before the rules come into force (expected 1 November 2016) we propose to restrict current ICOBS 8.1.2R to these contracts/variations.
- 2.6** For contracts and variations after our proposed rules come into force (expected 1 November 2016) we propose to:
- Include new guidance giving the FCA's view of some cases where rejection will be unreasonable (for the purposes of ICOBS 8.1.1.R) unless an insurer can also rely on relevant legislative provisions. Those cases include rejections for breach of warranty or term, or for fraud, for which provision has been made in the Insurance Act 2015, and we set out in guidance the relevant sections from the Act. The cases also include rejection for misrepresentation for which the relevant tests are already included in ICOBS 8.1.3R.
 - Add a new rule (ICOBS 8.1.2BR) for rejections for breaches of conditions and terms not within the Act, to the effect that they are unreasonable unless the circumstance of claim are connected to the breach. This is to continue the effect of the existing ICOBS 8.1.2R in relation to breaches of condition and to allow for the possibility that there may be breaches of terms that don't fall within the Act.

- Add a new rule (ICOBS 2.5.2AR) to the effect that insurers must operate their warranties so that they are connected to the risks to which they relate. We propose guidance to say that this can be achieved through drafting or, in practice, the warranties may be operated in a way that has the same effect. For warranties in pure protection contracts insurers must also ensure that they are material to the risks and brought to the customer's attention. This up-front regulatory requirement keeps the policy intention underlying ICOBS 8.1.2R without purporting to create liabilities at the rejection stage where the Act says there is no liability. We also include guidance in ICOBS 8.1.2AG of the FCA's view that it will be unreasonable to reject where the policy is operated or drafted in a way that does not allow the insurer to reject.
- Provide an exception (new ICOBS 2.5.2BR) to the requirement that warranties in pure protection contracts are material to the risk and brought to the customer's attention. The exception is for life of another contract where the warranty relates to a statement of fact concerning the life to be assured. The current ICOBS 8.1.2R makes similar provision but imposes an additional requirement. That requirement is that the warranty relates to a statement of fact concerning the life to be assured and would have entitled the insurer to reject under that rule if the statement had been made under an own life contract. We consider that this additional requirement is now no longer necessary because section 7 of the Consumer Insurance (Disclosure and Representations) Act 2012 gives misrepresentations by a life assured the same status as those given by policyholders.

2.7 We propose to include similar provisions to COBS 17.1.3R for long-term care insurance.

Q2.1: Do you agree with the changes to ICOBS 8 and COBS 17 to align the Handbook with the Act and, where relevant, preserve the existing policy?

The Enterprise Act 2016 – no rule changes

- 2.8** The Enterprise Act which received Royal Assent on 4 May 2016 inserts two clauses into the Act on compensation for late payment of claims, under which insurers would have to pay out claims to businesses within a reasonable timeframe and penalties would be imposed for late payment. They are due to take effect (as clauses inserted into the Insurance Act) on 4 May 2017, 12 months from the date on which the Enterprise Act is passed.
- 2.9** No rule changes are proposed in respect of these clauses as ICOBS 8.1.1R provides that an insurer must handle claims promptly and fairly, and settle claims promptly once settlement terms are agreed. Therefore, we believe our rules already provide for the outcomes sought by the proposed changes in legislation and there is no requirement to amend the Handbook.

Cost benefit analysis

- 2.10** Given that the requirements of the Act are, as we understand, consistent with existing industry good practice, we do not envisage that our proposed changes will impose any additional costs on firms or consumers.
- 2.11** Any changes required by firms as a result of our proposed changes will, we consider, be minimal. We think that firms should have already made, or be making, changes to reflect the requirements of the Act and amended questions they ask to comply with the Act. Where we are requiring warranties to be operated in a way that they are connected to the risks to which they relate and, for some contracts, are material to the risks, our understanding is that firms

generally do operate in that way. We are not requiring the re-writing of the insurer's warranties in this regard, though that is an option for firms.

Q2.2: Do you have any comments on our cost benefit analysis?

Compatibility statement

- 2.12** Our proposals will set a regulatory standard for the industry and also enable us to supervise firms and take regulatory action if we see evidence of non-compliance and consumers not getting a fair deal. This is consistent with our statutory objective to protect consumers.
- 2.13** We have had regard to the FCA's duty to help maintain competitive markets and promote effective competition in the interests of consumers. Our changes have a neutral impact on competition and merely align our rules and guidance with the Act.
- 2.14** The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

Equality and diversity

- 2.15** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 2.16** Overall, we do not consider that the proposals in this Consultation Paper adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 2.17** 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.
- 2.18** In the interim we welcome any input to this consultation on such matters.

3.

Mortgages and home finance activity

Introduction

- 3.1** In this chapter we propose a number of minor changes to the FCA Handbook to address issues that we have identified while overseeing our rules and guidance relating to mortgages, home finance activity, and consumer buy-to-let (CBTL).
- 3.2** They include:
- amendments to the Glossary, Compensation sourcebook (COMP), Supervision manual (SUP) and Fees manual (FEES) to clarify that CBTL activities are outside the scope of the Financial Services Compensation Scheme (FSCS)
 - minor amendments to the standard forms in SUP to allow firms to report on appointed representatives carrying out CBTL activities
 - an amendment to the Glossary definition of 'residential renovation agreement' to clarify the status of agreements secured on assets other than land
 - an update to a provision relating to sale and rent back agreements in the Perimeter Guidance Manual (PERG) to reflect that it will remain in force
 - amendments to our Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) and Consumer Credit Sourcebook (CONC) clarifying the application of our rules to lenders selling their own mortgages.
- 3.3** This consultation will be of interest to firms conducting activities in relation to mortgages, other home finance activities, or CBTL. It may also be of interest to consumers that have mortgages or other home finance products.
- 3.4** The text of the proposed amendments, and the statutory powers these amendments will be made under, are set out in Appendix 3 of this paper.

Summary of proposals

- 3.5 UK and European Economic Area (EEA) firms performing CBTL intermediation – FSCS**
- The MCD allows Member States not to apply the Directive to CBTL activity where there is an 'appropriate framework' in place at national level. The UK introduced such a framework in the Mortgage Credit Directive Order 2015 (the Order)¹. CBTL activities carried out by firms

¹ The Mortgage Credit Directive Order 2015 (No.910)

that are registered under the Order are not regulated activities under the Financial Services and Markets Act 2000 (FSMA), which means their CBTL activity is not covered by the FSCS. However, we have become aware that, contrary to our policy intention, some CBTL activity is potentially within the scope of the FSCS. This could occur if an authorised firm carries out CBTL intermediation, in breach of the Order, but has not registered to do this.

- 3.6** We propose amendments to the Handbook to ensure that all CBTL activity is outside the scope of the FSCS. This includes CBTL activity carried on by an EEA firm through an establishment in the UK where the firm has chosen to top up any cover provided by a compensation scheme in its home state for its mortgage activities by obtaining cover from the FSCS.
- 3.7** While this change removes an element of consumer protection it ensures a consistent approach for all CBTL activity. This policy position is already reflected in our FEES rules as CBTL firms are not required to pay FSCS levies.²
- 3.8** Following consultation in CP14/20³ we amended COMP to add MCD mortgage credit intermediaries to the types of firms that could obtain top up cover from the FSCS. We propose some consequential amendments to reflect this position in another part of COMP 6, in FEES 6, SUP 13A Annex 1G and in the Glossary.

Q3.1 Do you agree with our proposed changes to the Glossary, SUP, COMP and FEES?

Changes to SUP forms

- 3.9** As a consequence of the new legislative regime for CBTL activity, we propose to make minor changes to the standard forms in SUP used by authorised firms to notify new appointed representatives and report changes to existing appointed representatives. The changes require authorised firms to record whether the appointed representative carries out CBTL activities.

Q3.2 Do you agree with our proposed changes to the forms in SUP?

Residential renovation agreements

- 3.10** In CP15/28, we consulted on two consequential changes to the Consumer Credit sourcebook (CONC) to implement Article 46 of the MCD, which amends the Consumer Credit Directive (CCD) in relation to residential renovation agreements (RRA). It has been brought to our attention that the copy-out of the CCD definition of RRA has had the unintended consequence of disapplying rules in CONC 4.2, 4.3 and 11.2 that ought to apply. This is because the Glossary definition of RRA currently refers only to unsecured credit agreements, meaning an agreement secured on (for example) a portfolio of shares is excluded from the application of these rules even if the purpose of the agreement is the renovation of residential property. Therefore, we propose to amend the Glossary definition so that it refers to agreements not secured on land. This will better align the application of the rules with the effect of articles 60D, 60H and 60HA of the Regulated Activities Order 2001 (RAO).

Q3.3 Do you agree with our proposed change to the definition of a 'residential renovation agreement'?

² FEES 2.1.5G

³ CP14/20 *Implementing the Mortgage Credit Directive and the new regime for second charge mortgages* (September 2014)

PERG 14.5

- 3.11** We propose to update PERG guidance on the 'by way of business' test. At present this guidance includes references to HM Treasury's regulations on sale and rent back which are now out of date. The proposed amendments will reflect the fact that one provision in these regulations is now due to expire on 1 January 2022, with HM Treasury committed to carrying out a review before the end of 2017.

Q3.4 Do you agree with our proposed changes to PERG?**Application of the MCD to lenders carrying out direct sales**

- 3.12** We are proposing several amendments to our Handbook to clarify the application of certain requirements intended to implement the MCD.
- 3.13** In PS15/9, we set out the changes made to the Handbook to implement the MCD. Wherever possible we implemented the Directive using our existing rules and, where this was not possible, copied out the Directive. This approach was designed to cause the least possible disruption to the market, while ensuring consumers were adequately protected.
- 3.14** We have become aware that in so doing, we inadvertently extended the scope of certain provisions beyond that required by the Directive, by applying provisions to lenders carrying out direct sales (i.e. where there is no separate intermediary), when the Directive only imposes obligations where the sale is intermediated. We are therefore consulting on Handbook changes to align the scope of these provisions to that required by MCD. The affected chapters are MCOB 4A, MCOB 5A Annex 2 and, (in relation to Article 3(1)(b) lending), MCOB 14 and CONC 1.2.8.

Q3.5 Do you agree with our proposed changes to MCOB and CONC?**Cost benefit analysis**

- 3.15** 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. We consider that our proposed changes will not result in an increase in costs, or that where they do this will be of minimal significance. This is because our changes are largely clarificatory.
- 3.16** In the case of the MCD application changes we are aligning our rules with the original policy intent to implement the Directive in a way that caused the least possible disruption to firms. We consulted on our rules implementing MCD, and conducted a CBA of their effect in CP 14/20.

Impact on mutual societies

- 3.17** Section 138K(2) of FSMA requires us to provide an opinion on whether the impact of the 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, 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.

Compatibility statement

- 3.18** 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.
- 3.19** We believe that the proposals in this chapter are compatible with our strategic objective of ensuring the relevant markets function well. We also believe that these proposals advance our consumer protection objective with no adverse effects on competition. With regard to the regulatory principles, we also consider that the costs of our proposals are proportionate to the associated benefits.

Equality and diversity

- 3.20** 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 i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.
- 3.21** 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.

4.

Changes to the requirements in the Disclosure Guidance and Transparency Rules

Introduction

4.1 In this chapter we propose changes to the following parts of the Handbook:

- Disclosure Guidance and Transparency Rules sourcebook (DTR)
- Glossary of definitions

4.2 This chapter is for:

- issuers who are subject to the requirements of DTR 7.2
- listed companies who are required by LR 9.8.7AR, LR 14.3.24R or LR 18.4.3R(2) to comply with DTR 7.2 as if they were an issuer to which DTR 7.2 applies
- issuers who are subject to the requirements set out in Chapter 5 DTRs
- firms advising issuers or listed companies
- firms advising persons investing or dealing in securities admitted to trading on a regulated or prescribed market
- firms or persons investing or dealing in securities admitted to trading on a regulated or prescribed market

Summary of proposals

4.3 In this section of the Consultation Paper (CP) we set out the following proposals:

- a change to the definition of a prescribed market in the Handbook Glossary for the purposes of DTR 5 following repeal of the Prescribed Markets and Qualifying Investments Order on 3 July 2016
- the addition of a new rule in DTR 7.2 to implement the new Non-Financial Reporting Directive (2014/95/EU) (EU NFR Directive) requirement for issuers to disclose their diversity policy in the corporate governance statement

Definition of prescribed market (DTR)

Background

- 4.4** Prior to 3 July 2016, the Glossary of definitions defined a ‘prescribed market’ as ‘a market which has been prescribed by the Treasury in the Prescribed Markets and Qualifying Investments Order’⁴. This includes all markets which are established under the rules of a UK recognised investment exchange (RIE) and those which are regulated markets. The Prescribed Markets and Qualifying Investments Order was repealed on 3 July 2016 as part of the implementation of the Market Abuse Regulation (596/2014/EU) (MAR), so we are proposing to update our definition for the purposes of Chapter 5 of DTR and remove reference to the Order.

Proposals

- 4.5** During the implementation of the Transparency Directive (2004/109/EC) in 2007 we copied out the Directive provisions in the new DTRs and, following consultation, added certain super-equivalent requirements to replicate the pre-existing major shareholder notification regime under the Companies Act 1985. One of the super-equivalent requirements introduced at that time extended the scope of the vote holder notification requirements in DTR 5 to include holdings of shares of UK companies traded on exchange-regulated markets (or prescribed markets). When implementing this into our Handbook, we used the existing Glossary definition of ‘prescribed market’ which cross-referred to the Prescribed Markets and Qualifying Investments Order.
- 4.6** However, following MAR coming into effect on 3 July 2016, the Prescribed Markets and Qualifying Investments Order has been repealed. The Market Abuse Regulation Instrument (FCA 2016/31)⁵ was published in April 2016 and included a change to the Glossary definition of ‘prescribed market’ to maintain a reference to the Prescribed Markets and Qualifying Investments Order ‘as it was in force on 2 July 2016’.
- 4.7** We are now proposing to amend the definition of prescribed market in the Glossary of definitions for the purposes of DTR 5. We do not consider that the proposed change to the definition will alter its scope in any way for the purposes of DTR 5, but will instead update it by deleting reference to the Prescribed Markets and Qualifying Investments Order and creating a standalone DTR definition. The new definition will comprise all markets which are established under the rules of a UK RIE. As at May 2016 UK RIEs include⁶:

- Euronext London Limited
- LIFFE Administration and Management
- The London Metal Exchange Limited
- BATS Trading Limited
- CME Europe Limited
- London Stock Exchange plc
- ICE Futures Europe
- ICAP Securities & Derivatives Exchange Limited

⁴ The Financial Services and Markets Act 2001 (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996).

⁵ https://www.handbook.fca.org.uk/instrument/2016/FCA_2016_31.pdf

⁶ The RIEs listed are subject to change.

- 4.8** The draft instrument text at Appendix 4A sets out the proposed amendments to the definition.

Q4.1 Do you agree with our proposal to introduce a revised Glossary definition of ‘prescribed market’ for the purpose of Chapter 5 of the DTRs?

Non-financial reporting (DTR)

Background

- 4.9** In February 2016, the Department for Business, Innovation and Skills (BIS) published a Consultation Paper on its proposed implementation of the EU NFR Directive.⁷ The EU NFR Directive amends the Accounting Directive 2013/34/EU (AD).
- 4.10** The scope of the EU NFR Directive includes large undertakings that are Public Interest Entities (PIEs) employing an average of 500 members of staff over the financial year and that:
- issue transferable securities that are admitted to trading on a regulated market in the EU
 - are credit institutions (a bank or building society, though not a credit union)
 - are insurance undertakings, or
 - are designated by a Member State as a public entity (for instance because of business, size, or the number of employees)
- 4.11** The BIS consultation included a number of options, concerning the scope, to consider when implementing the EU NFR Directive.
- 4.12** Entities within scope of BIS’s draft regulation will be required to include in their management reports a non-financial statement. This will contain information to provide an adequate understanding of the undertaking’s development, performance and position, and the impact of its activity on (as a minimum) environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters. It will also include a brief description of:
- their business model
 - information and outcomes on their policies for the areas listed above, including any due diligence processes that have been implemented
 - the principal risks related to these matters linked to the company’s operations, including, where relevant and proportionate, its business relationships, products and services which are likely to cause adverse impacts in those areas and how the company manages these risks, and
 - any relevant non-financial key performance indicators
- 4.13** The new BIS regulations will apply to reporting years beginning on or after 1 January 2017.
- Proposals**
- 4.14** One of the amendments made to the AD by the EU NFR Directive is the inclusion of a new requirement in article 20 of the AD to include in the corporate governance statement

⁷ Department for Business, Innovation and Skills, *The Non-Financial Reporting Directive* (February 2016) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500760/BIS-16-35-non-financial-reporting-directive-consultation-February-2016.pdf [Accessed 21/04/2016]

a description of the diversity policy applied in relation to the undertaking's administrative, management and supervisory bodies, the objectives of that diversity policy, how it has been implemented and the results in the reporting period. If no such policy is applied, the statement must contain an explanation as to why this is the case.

- 4.15** To implement this new EU NFR Directive requirement we propose introducing a new rule in DTR 7.2 requiring this disclosure in the corporate governance statement. This approach is consistent with, and in addition to, other DTR 7.2 requirements which implement the existing article 20 AD reporting requirements.
- 4.16** Article 20 of the AD applies to public-interest entities whose transferable securities are admitted to trading on a regulated market, irrespective of size. This scope is not changing. However, article 1(2)(d) of the EU NFR Directive provides that the new article 20 diversity reporting requirements 'shall not apply to small and medium-sized undertakings'. To ensure we implement in accordance with the Directive we propose including an exemption for small and medium-sized undertakings in a new DTR 1B.1.7R. The new DTR 7.2.8AR reporting requirement will apply to all other issuers to which DTR 7.2 applies that do not fall within the exemption.
- 4.17** We propose that the new requirement will also apply to listed companies which are required by LR 9.8.7AR, LR 14.3.24R or LR 18.4.3R to comply with DTR 7.2 as if they were an issuer to which DTR 7.2 applies. We also propose to include new guidance provisions in DTR 1B.1.8G and DTR 7.2.8BG. This is to clarify that the new reporting requirement in DTR 7.2.8AR does not apply to a listed company (which is required to comply with DTR 7.2.8AR as if it were an issuer by LR 9.8.7AR, LR 14.3.24R or LR 18.4.3R(2)) if the listed company would meet the criteria in DTR 1B.1.7R if they were a company incorporated in the United Kingdom.
- 4.18** The deadline for EU NFR Directive implementation is 6 December 2016 so we propose that our new rules and guidance enter into force on that day. However, in line with the proposed BIS implementation of the EU NFR Directive, we also propose applying the new reporting requirement for financial years beginning on or after 1 January 2017 rather than the change entering into force with immediate effect. We therefore propose to include transitional provisions to this effect in DTR TP 1 (29) and (30).

Q4.2 Do you agree with our proposal to include a new DTR 7.2.8AR which sets out the new corporate governance statement requirement?

Q4.3 Do you agree with our proposal to exempt small and medium sized issuers from the new DTR requirement?

Q4.4 Do you agree with our proposal to apply the new reporting requirement to those listed companies which are required to comply with DTR 7.2 as if they were an issuer to which DTR 7.2 applies?

Q4.5 Do you agree with our proposal to include new guidance provisions DTR 1B.1.8G and DTR 7.2.8BG?

Q4.6 Do you agree with our proposed transitional provisions in DTR TP 1?

Cost benefit analysis

- 4.19** When proposing new rules, the FCA is obliged under section 138I of FSMA to publish a cost benefit analysis (CBA) unless we consider that the proposals will not give rise to any increase in costs or the increase in costs will be of minimal significance. The CBA is an analysis of the costs and an analysis of the benefits that will arise from the proposals. It is a statement of the differences between the baseline (current position) and the position that will arise if we implement the proposal.
- 4.20** The proposed changes to the DTRs are required to implement the EU NFR Directive diversity reporting requirement. We do not anticipate these proposals having any significant cost or competition implications so a detailed cost benefit analysis has not been prepared.
- 4.21** The new DTR requirement will apply to all issuers of securities admitted to trading on a regulated market to which DTR 7.2 applies except for small and medium sized issuers. Furthermore, given that we do not anticipate our amendment to the Glossary to alter the scope of DTR 5, we do not consider that there are any significant cost or competition implications.

Impact on mutual societies

- 4.22** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. We are satisfied that the proposed amendments will not have a different impact on mutual societies compared to other authorised persons.

Compatibility statement

- 4.23** 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.
- 4.24** We believe that the proposals in this chapter are compatible with our strategic objective, and advance our operational objectives, particularly our consumer protection and market integrity objectives, because they help ensure that the FCA's Handbook continues to be effective and that an appropriate level of information continues to be made available to investors. The proposals demonstrate regard to the regulatory principle of the need to use the FCA's resources in the most efficient and economic way in particular, and the proposals are proportionate to the benefits.

Equality and diversity

- 4.25** We have considered the equality and diversity issues that may arise from the proposals in this chapter of the Consultation Paper.

- 4.26** Overall, we do not consider that the proposals in this chapter of the Consultation Paper adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 4.27** 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.
- 4.28** In the interim we welcome any input to this consultation on such matters.

5.

Changes to the Training and Competence sourcebook (TC)

Introduction

- 5.1** The Training and Competence (TC) sourcebook sets out qualification requirements for individuals carrying out certain retail activities. We consult for one month each time a new qualification is added, or when other minor changes are made, to the list of appropriate qualifications.
- 5.2** This chapter will be of interest to firms and individuals who are subject to our TC requirements. The text of the proposed amendments and the statutory powers they will be made under are set out in Appendix 5.

Summary of proposals

- 5.3** We propose adding three new qualifications to the appropriate qualifications list in TC and updating the name of one existing qualification provider.

New qualifications and amendments

- 5.4** We propose adding three new qualifications to the appropriate qualifications list and updating the name of one existing qualification provider.
- We propose to update the listing for the Chartered Institute of Bankers in Ireland to reflect its current name: The Institute of Banking in Ireland.
 - We propose to add qualifications for the following qualification providers:
 - Chartered Institute for Securities and Investment (CISI) (formerly the Securities and Investment Institute (SII); formerly The Securities Association) – we propose to add the ‘Investment Advice Diploma (where candidate holds three modules including the Financial Planning and Advice module)’. We propose to list this as being appropriate for TC activities 4 and 6 (key a⁸).
 - The Chartered Insurance Institute – we propose adding ‘(LP1) Life and pensions customer operations, (LP2) Financial services products and solutions, and (LP3) Life and pensions principles and practices (where candidate holds all three modules)’. We propose to list these as being appropriate for TC activities 15, 16, 17, 18 and 19 (key 4 and 5⁹).

⁸ Meets the full qualification requirement on, and after, 31 December 2012.

⁹ Apex1 - UK Financial Services Regulation and Ethics examination standard met.

- The Institute of Banking in Ireland (formerly the Chartered Institute of Bankers in Ireland) - 'Professional Certificate in International Investment Fund Services'. We propose to list this as appropriate for TC activities 15, 16 and 17 (key 6¹⁰).

Q5.1 Do you know of any reason why these qualifications should not be added to and/or amended on our list of appropriate qualifications?

- 5.5** These proposals are intended to help ensure that the relevant markets function well and to help secure an appropriate level of protection for consumers. In particular, they build on the consumer protection currently provided by having competent advisers that keep our TC rules up to date (by adding relevant new qualifications and making changes to current qualifications).

Cost benefit analysis

- 5.6** Section 138I of the Financial Services and Markets Act (FSMA) requires us to perform a cost benefit analysis (CBA) of our proposed requirements and to publish the results, unless we consider the proposal will not give rise to any cost or to an increase in costs of minimal significance. This proposal does not incur any costs as it simply updates the list of appropriate qualifications.

Compatibility statement

- 5.7** Section 1B of FSMA requires the FCA, when discharging its general functions, as far as is reasonably possible, to act in a way that is compatible with its strategic objective and advances one or more of its operational objectives. The FCA also needs to, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out its general functions in a way that promotes effective competition in the interests of consumers.
- 5.8** We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in 1C(2) FSMA and the regulatory principles in section 3B.
- 5.9** In preparing the proposals as set out in this consultation, we have considered the FCA's duty to promote effective competition in the interests of consumers. It is our opinion that making changes to the appropriate qualifications lists has no impact on competition, as this simply increases the number of qualifications available.
- 5.10** The proposed changes are not expected to have a significantly different impact on mutual societies.

¹⁰ Technical module appropriate exam standard requirement met.

Equality and diversity

- 5.11** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 5.12** Overall, we do not consider that the proposals in this Consultation Paper adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 5.13** 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.
- 5.14** In the interim we welcome any input to this consultation on such matters.

6. Disapplication of CASS audit requirements to certain debt management firms

Introduction

- 6.1** This chapter proposes minor changes to the application of CASS audit requirements to certain debt management firms.
- 6.2** This chapter will be of interest to debt management firms and auditors of such firms.
- 6.3** The proposed rule amendments, and the statutory powers they will be made under, are set out in Appendix 6.

Summary of proposals

- 6.4** In CP13/10¹¹, we consulted on our requirements for consumer credit firms including debt management firms. Among the rules we consulted on was a requirement on all CASS debt management firms to have an annual audit, carried out by an independent external auditor, on how they comply with rules under Chapter 11 of the Client Assets sourcebook (CASS 11). This requirement was finalised in PS14/3¹² and is set out in Chapter 3 of the Supervision manual (SUP 3).
- 6.5** It has come to our attention that our rules may be interpreted as making all debt management firms subject to the requirement to have a CASS audit whether or not they are entitled to hold client money. The definition of 'CASS debt management firm' captures firms that are not entitled to hold client money.
- 6.6** We propose to make clear that debt management firms that are not permitted to hold client money are not required to have a CASS audit. Where a debt management firm is permitted to hold client money, but claims not to, we would, even after the proposed changes, expect its auditor to provide a statement in accordance with SUP 3.10.4R(2).
- 6.7** We intend for the final rule changes to come into effect in November 2016.

Q6.1: Do you have any comments on our proposed disapplication of CASS audit requirements to certain debt management firms?

¹¹ CP13/10 *Detailed proposals for the FCA regime for consumer credit* (October 2013)

¹² PS14/3 *Detailed proposals for the FCA regime for consumer credit* (February 2014)

Cost benefit analysis

- 6.8** 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.
- 6.9** We do not anticipate our proposal will increase costs on firms, as we are removing a requirement on some firms that is not relevant to them and ensuring our intended policy is achieved. As a result, a detailed CBA has not been prepared.

Compatibility statement

- 6.10** 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 where the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
- 6.11** Our proposal disapplies the CASS audit requirements to those debt management firms, currently subject to the requirements, but which are not entitled to hold client money; it is thought that the application of the CASS audit requirements to such firms is not beneficial. Our proposal promotes effective competition in the interests of consumers by enabling such firms to avoid having to comply with the CASS audit requirements in circumstances where the application of the requirements is not considered beneficial. In preparing the proposal set out in this chapter, we have had regard to the regulatory principles set out in section 3B of FSMA and the importance of taking action intended to minimise financial crime as part of section 1B(5)(b) of FSMA.
- 6.12** In preparing the proposal set out in this chapter, we have had regard to the regulatory principles set out in section 3B of FSMA and the importance of taking action intended to minimise financial crime as part of section 1B(5)(b) of FSMA.
- 6.13** We do not believe that the changes described in this chapter will have a different impact on mutual societies compared to other authorised persons.

Equality and diversity

- 6.14** We have considered the equality and diversity issues that may arise from the proposals in this chapter.
- 6.15** Overall, we do not consider that the proposals in this chapter adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 6.16** 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.
- 6.17** In the interim we welcome any input to this consultation on such matters.

7.

Distribution and promotion of credit union deferred shares and subordinated debt

Introduction

- 7.1** We introduced rules in 2015 (in PS15/14¹³) for the distribution of regulatory capital instruments, including certain mutual society shares. These currently apply to some credit union deferred shares¹⁴ (generally those that do not offer a fixed return). We now seek to modify and extend these rules to cover all credit union deferred shares. In addition, we propose to put in place rules regarding the financial promotion of credit union subordinated debt¹⁵ instruments, which, like deferred shares, contribute to a credit union's regulatory capital. These proposals bring our rules for credit union regulatory capital instruments generally into line with our rules for other mutual societies.
- 7.2** While the size of the markets is small (around £5m for subordinated debt and £1.5m for deferred shares) and there is limited evidence of actual consumer detriment to date, the consequences of making inappropriate investments can be substantial. Although credit union capital instruments are frequently targeted at sophisticated or non-retail investors (e.g. local authorities), there is a risk of these products being targeted at individuals, small businesses or small charities for whom they may not be appropriate.
- 7.3** We also propose some amendments to update the Glossary, to remove redundant reporting requirements, and to provide greater clarity on how credit unions update their standing data (such as a change to their complaints contact).
- 7.4** This chapter may be of interest to:
- a credit union, credit union member or credit union representative body, and
 - anyone with an interest in credit unions, especially their deferred shares or subordinated debt
- 7.5** The text of the proposed amendments and the statutory powers these amendments will be made under are set out in Appendix 4 of this paper.

¹³ PS15/14 *Restrictions on the retail distribution of regulatory capital instruments* (June 2015)

¹⁴ As defined in section 31A of the Credit Union Act 1979.

¹⁵ As defined in 8.2 of the PRA's Credit Union Rulebook Part.

Summary of proposals

Distribution of credit union deferred shares

- 7.6** We propose to modify our requirements concerning the distribution of credit union deferred shares, as defined in section 31A of the Credit Union Act 1979. These capital instruments are available to credit unions in Great Britain (but not Northern Ireland) as a source of regulatory capital. Our proposed approach aims to inform certain purchasers (individuals, small businesses and small charities) of the risks involved and to ensure purchasers meet an appropriateness test.
- 7.7** While we expect distribution to be through self-placement, we have accounted for the (we believe unlikely) possibility that credit unions could engage third-party intermediaries. If this happens, the third party must comply with our requirements, although the credit union is responsible for making sure it does so. Thus, in some places where this chapter refers to 'credit unions' (including in relation to the promotion of subordinated debt), there might be other firms carrying out the tasks for which the credit union is responsible.

Extend existing rules

- 7.8** Our proposed approach modifies and extends the existing rules for mutual society shares in the Conduct of Business sourcebook (COBS) 22.2. We do not believe that the current distinction between deferred shares that fall within or outside COBS 22.2 (in most cases based on whether or not the deferred shares offer a fixed return) is the most relevant determinant of whether or not our distribution rules should or should not apply. We propose to apply the same rules to all credit union deferred shares to create a clearer and simpler regime.

Appropriateness test

- 7.9** These rules include a requirement to conduct an appropriateness test for certain purchasers. This test involves the credit union gathering information from the potential investor about his or her relevant knowledge and experience in order to determine whether or not the product is appropriate.
- 7.10** While this might be seen as presenting challenges to some credit unions, they might implement the appropriateness test, for instance, by developing a set of standard questions to ask each prospective investor, as well as developing a method for assessing what responses or combination of responses would suggest that the investor has the relevant experience or knowledge to understand the risks. If a credit union decides that purchasers are unable to demonstrate that they have sufficient experience or knowledge, the credit union can also consider whether it would be able to raise their knowledge sufficiently by providing additional information.

Key risks requirements and acknowledgement

- 7.11** We also propose to require credit unions to provide individuals, small businesses and small charities with statements setting out the key risks and requiring a signed acknowledgement. These detail the very limited circumstances in which purchasers are able to access their funds. Non-advised, individual investors are also required to confirm that they are not committing more than 10% of their net assets to mutual society shares (excluding credit union shares), credit union deferred shares and credit union subordinated debt. As with other mutual societies, credit unions will not be required to take responsibility for assessing whether or not purchasers make good on the latter commitment. The text of the statements can be read in the draft instrument in Appendix 7.
- 7.12** As with the existing rules for mutual society shares (including some credit union deferred shares), our proposed rules permit distribution to professional investors, retail investors classified as certified sophisticated investors, self-certified sophisticated investors and certified high net-worth investors without the need for these statements. In addition, the commitment to invest

no more than 10% of net assets is not required where the recipient is not an individual or where the sale is advised.

- 7.13** The risk warning, signed acknowledgement and appropriateness test work together. They draw important risks to the attention of potential purchasers, checking that prospective purchasers are sufficiently knowledgeable to understand the risks, and ask them to limit their exposure. We consider that the appropriateness test is likely to offer a valuable protection against the risk of inexperienced purchasers passively receiving and acknowledging risk warnings. This is important, especially because a significant proportion of credit union members (the potential market for these instruments) is likely to be inexperienced in purchasing deferred shares.
- 7.14** As with mutual society shares covered under COBS 22.2 rules, we require credit unions to keep records of compliance with the provisions, including, for example, maintaining a record of the signed acknowledgements. As credit unions are not required to have a dedicated compliance function, we do not specify that a specific function should be responsible for ensuring compliance is appropriately recorded.
- 7.15** Nothing in the proposed rules prevents our requirements from being fulfilled by electronic means, e.g. electronic signatures.

Q7.1: Do you agree with our proposals regarding the distribution of credit union deferred shares, including the content of the statements as set out in Appendix 7?

Financial promotion of subordinated debt

- 7.16** We propose to introduce rules related to the direct offer financial promotion of credit union subordinated debts that meet the requirements of the Prudential Regulation Authority's (PRA) rules to qualify as capital. These are long-term loans to a credit union where the purchaser normally assumes repayment at the end of the loan period; this period lasts for a minimum of five years, as set out in the PRA Credit Union Rulebook Part. Like deferred shares, subordinated debt contributes to a credit union's regulatory capital. While these products may be appropriate for some individuals, small businesses and small charities, primarily those who want to support their credit union and are not reliant on the funds committed, they are likely to be inappropriate for many such investors. We want these investors to be made aware of the risks involved.
- 7.17** Our proposed rules require the use of risk warnings and a commitment not to invest more than 10% of net assets in mutual society shares, credit union subordinated debt and/or credit union deferred shares, which must be acknowledged. The text can be read in the draft instrument at Appendix 7. Again, these requirements are only mandated in relation to certain clients (individuals, small businesses and small charities) and allow for certain exemptions. The commitment not to invest more than 10% of net assets is not required where the investor is advised or is not an individual.
- 7.18** In contrast to our rules for deferred shares, our proposed rules apply to direct offer financial promotions rather than the distribution of the instruments. We expect that direct offer financial promotions will normally precede the sale of subordinated debt and be accompanied by the statements setting out the key risks and requiring a commitment not to invest more than 10% of net assets. Direct offer financial promotions contain an offer or invitation to purchase the instrument, or specify the manner of response and include a form by which a response may be made. The proposed rules would apply irrespective of the method of communication.

7.19 Credit unions need to ensure that individuals, small businesses and small charities (unless exempt) receive and acknowledge the risk warning statements and (in the case of individuals who are non-advised) also the statement committing to not investing more than 10% of net assets. Credit unions must ensure that this has happened before they complete the sale of the product.

7.20 We do not propose to apply the appropriateness test for subordinated debt. This approach fits with the differing nature of these time-limited instruments (in contrast to the perpetual nature of deferred shares).

Q7.2: Do you agree with our proposals regarding the financial promotion of subordinated debt, including the content of the statements as set out in Appendix 7?

Restriction on requiring members to purchase capital instruments

7.21 We are aware of limited instances where credit unions have required members to purchase their capital instruments. We consider forced sales of these products to be inconsistent with our objectives, especially our objective to protect consumers. Therefore, we propose that credit unions must not require their members to purchase deferred shares or subordinated debt (here including subordinated debt that does not count towards regulatory capital).

7.22 While some credit unions might want to require members to purchase a very small amount of deferred shares or subordinated debt (e.g. to show their solidarity with the credit union and to assume membership responsibilities), we do not believe there are compelling reasons for credit unions to be able to force any members, including corporate members, to purchase even the smallest amounts of these instruments.

Q7.3: Do you agree with our proposals to make it clear that credit unions must not require any members to purchase deferred shares or subordinated debt?

Glossary changes

7.23 We propose to amend our Glossary to remove references to version 1 and version 2 credit unions, as these terms are no longer applicable following the changes implemented in PS16/1¹⁶, which we published jointly with the PRA.

7.24 We also propose to update the glossary definitions of credit unions to reflect the Co-operative and Community Benefit Societies Act 2014. Please note that credit unions registered under the 2014 Act include any credit unions registered or treated as registered under the Industrial and Provident Societies Act 1965.

Q7.4: Do you agree with our proposals to update the Glossary?

Reporting changes

7.25 We propose to clarify our Handbook rules to show that credit unions are required to check and report any changes to their standing data to us under SUP 16.10 annually. This means that we will now be applying Supervision manual (SUP) 16.10 to credit unions where it previously did not apply. Standing data includes information such as the firm's name, address, Accounting

¹⁶ PS16/1 *Reform of the legacy Credit Unions sourcebook* (February 2016)

Reference Date and their complaints contact. The full list of standing data items required is set out in the Handbook in SUP 16 Annex 16AR.

- 7.26** This can be submitted by post (for the attention of the static data team) or email (static.data@fca.org.uk). We propose to also allow submission online through Connect (available through the FCA's website¹⁷) for credit unions and firms with permission to carry on only credit-related regulated activity. If email or paper is used to submit the information, we propose that the form set out in SUP 15 Annex 3R should be used. For ease of processing the FCA prefers firms to provide this information online through Connect.
- 7.27** In addition, credit unions are also required to provide us with changes to core information (name, address, telephone number and other applicable regulators) under SUP 15.5 as and when they happen, to ensure this information is up-to-date throughout the year. We do not propose changes to this, but our preference is to receive this information online through Connect.
- 7.28** We will also remove the requirement concerning complaints reporting in the Credit Unions sourcebook (CREDS) 9.2.12R as it is replaced and clarified by the new rules in SUP.
- 7.29** It is important that our records of standing data and core information are accurate to facilitate our communication and interaction with firms, including credit unions. We recognise that many credit unions do already provide us with this information; our proposed change aims to make the requirement clear in our Handbook rules.

Q7.5 Do you have any comments on our proposals to amend credit unions' standing data reporting requirements?

Cost benefit analysis

- 7.30** Sections 138I and 138J of the Financial Services and Markets Act 2000 (FSMA) require us to publish a cost benefit analysis when proposing draft rules. We are required to publish an analysis and estimate of the costs and benefits. This requirement does not apply if there will be no increase in costs or if any increase will be of minimal significance.

Deferred shares and subordinated debt

- 7.31** We expect that the costs for credit unions to implement our rules regarding the distribution and promotion of capital instruments will be considerably lower than for other mutual societies, as credit unions tend to be smaller firms. In addition, credit union capital instruments (especially deferred shares) are generally sold to a much smaller group of investors. Setting up sophisticated IT systems should not be necessary for credit unions and the ongoing costs of processing clients should also be lower. We also recognise it is difficult to quantify the precise costs for credit unions.¹⁸
- 7.32** While costs will only apply to those credit unions that choose to distribute and promote these instruments, we appreciate that for smaller credit unions any increase in costs is important.

¹⁷ <https://www.the-fca.org.uk/firms/standing-data>

¹⁸ In conducting our cost benefit analysis, we have considered the analyses we have previously undertaken in relation to the distribution of mutual society shares (particularly the cost benefit analysis in CP14/23, including the previous work that informed it) as well as the results of a data request we sent to about 50 credit unions, as well as to credit union representative bodies, in December 2015.

Distribution and promotion of capital instruments

- 7.33** We expect costs of these proposals to be relatively small. Given COBS 22.2 applies already to the distribution of certain deferred shares, some credit unions might incur minor adaptation costs (should they wish to issue more deferred shares). Other costs incurred will be by those credit unions wishing to distribute types of deferred shares that would not otherwise have been covered by COBS 22.2. We estimate the greatest costs will be the application of an appropriateness test. We have also considered that there will be costs for tasks including training; client classification and compliance confirmation (where credit unions have chosen to apply the exemptions); requirements for statements; and record keeping. Although we expect the cost for each of these individual tasks to be small, we appreciate that all together they could be important for individual credit unions. While we believe that a total cost estimate (including the development of an appropriateness test) per credit union would not exceed £10,000, we expect that this cost will vary between credit unions depending on factors such as existing experience and expertise.
- 7.34** The costs we considered for subordinated debt were similar, excluding those related to the appropriateness test. We considered the impact of using an approach connected to direct offer financial promotions rather than to distribution. We estimate the overall costs per credit union should not exceed £4,000 but again this will vary depending on circumstances.
- 7.35** In both cases, we expect the costs will be small in cases where a credit union has previously issued the same type of instrument under either these new rules or the existing rules in COBS 22.2.
- 7.36** Given the uncertainty as to which credit unions will issue such instruments, and therefore be caught by the new rules in future, we are not providing an estimated cost for the sector as a whole, in line with section 138I(8) of FSMA. We do not know with any degree of certainty how many credit unions will issue such instruments, and of those how many will have issued them in the past and applied existing rules, such as COBS 22.2. We know that only a fraction of credit unions are active in the market for these instruments (last year there were around 20 with deferred shares and just over twice as many with subordinated debt on their balance sheets, with some limited overlap between them). Data request responses suggest that there are plans for further issuance of these instruments, although from our small sample size we are not reasonably able to have an accurate picture of the total number.
- 7.37** We also appreciate that credit unions may incur indirect costs in implementing our new requirements, such as a higher cost of capital when following the requirements and a possible decreased level of investment by a limited number of investors. We expect that this would only be relevant in a limited number of cases, particularly given the small size of the market, and we note that our requirements will not necessarily prevent any investors from purchasing deferred shares or subordinated debt. We cannot reasonably quantify these indirect costs, as we do not know how many credit unions would be impacted, the level of investment lost, the alternative methods used to raise capital, etc. and so, as provided for under section 138I(8) of FSMA, are not providing a quantified amount for the indirect costs.
- 7.38** The primary benefit of our proposed rules is that individuals, small businesses and small charities will be more aware of and have a better understanding of the risks associated with credit union capital instruments. Therefore, we reduce the likelihood that they will purchase products that are not appropriate for them or that they will invest significant amounts in such products. Under section 138I(8) of FSMA, we do not believe that the benefits can be reasonably estimated or quantified in financial terms. Given the data we possess, it is difficult to predict which alternative financial decisions investors will take as a result of this intervention; the value

of those alternative decisions; or what the financial costs would have been had they invested in products that were not appropriate for them.

7.39 A quantifiable assessment of costs versus benefits is difficult due to the lack of quantifiable data. We accept that there may be situations where the monetary value of the capital instruments (i.e. the amount of money that individuals, small businesses or small charities have invested in these instruments and that is thus at risk of not being accessed or recovered) might exceed the costs, particularly in the case of deferred shares. In these instances, we expect that credit unions distributing deferred shares will have acceptable alternative approaches: they might choose to issue larger amounts (either at the same time or in the future), not to distribute the instruments to clients whose investments are captured by our proposed rules, to decrease the number of clients to whom they distribute the deferred shares, or to issue subordinated debt instead of deferred shares (as the cost for implementing these rules should be less expensive, as the appropriateness test would not be required). Credit unions promoting subordinated debt might choose to issue larger amounts (either at the same time or in the future), not to promote the instruments to clients captured by our rules, or to promote the instruments to a smaller number of such clients.

7.40 We expect that overall the costs related to these proposed rules will not be overly burdensome in comparison with the benefits for the sector as a whole.

Restriction on requiring members to purchase capital instruments: costs and benefits

7.41 We expect these rules to impact a very small number of credit unions and anticipate minimal costs, if any, as a result, although it might lead certain credit unions to consider alternative methods of raising capital.¹⁹

7.42 In terms of benefits, this proposal ensures our rules are in line with our expectations of credit unions and decreases the likelihood of members suffering financially by being required to purchase inappropriate products.

Other proposals: costs and benefits

7.43 We do not believe that these proposals will impose significant costs on credit unions.

7.44 The proposed changes should help credit unions save time by clarifying what they should report and reduce the need for us to contact them to request any additional information. The changes should clarify our Handbook rules and increase the accuracy of our records of credit unions' standing data.

Q7.6: Do you have any comments about our cost benefit analysis, including in relation to the likely impact of our proposed changes on you or your credit union or other organisation?

¹⁹ Responses to our December 2015 data request indicated that two credit unions (of those that responded) had required members to purchase subordinated debt; no credit unions indicated that they had required members to purchase deferred shares.

Impact on mutual societies

- 7.45** Section 138K(2) of the Financial Services and Markets Act 2000 (FSMA) requires 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.
- 7.46** These rules are exclusively aimed at mutual societies, specifically credit unions, and are intended to increase consumer protection in regard to the promotions and sales of their deferred shares and subordinated debt, as well as to promote competition and increase market efficiency and effectiveness within the credit union sector. They take into consideration credit unions' business models and the particular needs of the sector.

Compatibility statement

- 7.47** The proposals in this consultation are designed to advance our objective of securing an appropriate degree of consumer protection by ensuring the distribution of certain investments only to consumers for whom they are suitable. We also believe our approach will promote effective competition in the interests of consumers by improving investor awareness of the potential risks involved and reducing information asymmetries. To exert effective competitive pressure, consumers need to assess quality and value adequately. We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in 1C(2) FSMA and the regulatory principles in section 3B.

Equality and diversity

- 7.48** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 7.49** We consider that the capital instruments on which we are consulting may carry particular risks for some people with protected characteristics under the Equalities Act 2010. The elderly and those with learning difficulties or mental capacity limitations may be disproportionately vulnerable to the risk of inappropriate distribution. To mitigate this risk, we are proposing an approach that seeks to protect investors from the risk of mistakenly entering into inappropriate transactions.
- 7.50** Overall, we do not consider that the proposals in this Consultation Paper adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 7.51** 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.

8.

A new ‘pooled investment vehicle’ definition for the marketing restriction rules on NMPIs

Introduction

- 8.1** Broadly speaking, non-mainstream pooled investments (NMPIs) are pooled investments or ‘funds’ characterised by unusual, speculative or complex assets, product structures, investment strategies and/or terms and features. NMPIs include units in unregulated collective investment schemes (UCIS) as well as close substitutes e.g. securities issued by certain special purpose vehicles (SPVs) used to pool investment assets, units in qualified investor schemes and traded life policy investments.
- 8.2** NMPIs are generally high risk, complex and illiquid, and are not subject to the detailed consumer safeguards applicable to the operation of retail-oriented regulated collective investment schemes which govern such matters as investment and borrowing powers, prudent spread of risk, information to investors, fees and (in many cases) coverage by the Financial Ombudsman Scheme and Financial Compensation Scheme. Additionally, performance information may be unavailable or unreliable, and governance controls may be weak. Taken together these factors mean NMPIs tend to be challenging for investors to evaluate. While sophisticated or high net worth retail clients may be better able to protect their own interests, ordinary retail investors face significant risk of detriment from the inappropriate distribution of these investments. In June 2013, we introduced rules restricting the promotion of NMPIs.²⁰ The rules came into force on 1 January 2014.
- 8.3** The promotion of securities issued by pooled investment special purpose vehicles (SPVs) present much the same risks of consumer detriment as the promotion of units in unregulated collective investment schemes (UCIS), which is why they are subject to the NMPI rules. However, we have become aware of problems in the application of the rules to SPVs, specifically that the current Handbook Glossary SPV definition is difficult to interpret in the context of the NMPI rules. This issue creates unhelpful ambiguity about the application of the NMPI rules and could result in a failure to secure the intended degree of consumer protection for a potentially broad range of investment funds, in particular those taking the legal form of a company. We aim to correct this by creating a new definition of ‘pooled investment vehicle’ for the purposes of the NMPI rules.

Summary of proposals

- 8.4** Our Handbook’s Glossary of definitions currently defines a ‘special purpose vehicle’ (except in the Prospectus Rules) as:

²⁰ See CP12/19 *Restrictions on the retail distribution of unregulated collective investment schemes and close substitutes* (August 2012) and PS13/3 *Restrictions on the retail distribution of unregulated collective investment schemes and close substitutes – feedback to CP12/19 including final rules* (June 2013)

a body corporate, explicitly established for the purpose of securitising assets, whose sole purpose (either generally or when acting in a particular capacity) is to carry out one or more of the following functions:

(a) issuing designated investments, other than life policies;

(b) redeeming or terminating or repurchasing (whether with a view to re-issue or to cancellation) an issue (in whole or part) of designated investments, other than life policies;

(c) entering into transactions or terminating transactions involving designated investments in connection with the issue, redemption, termination or re-purchase of designated investments, other than life policies.

- 8.5** We have realised that this definition is unnecessarily complex for the purposes of the NMPI rules and appears to create confusion for firms.
- 8.6** For example, it appears that the reference to a body corporate ‘explicitly established for the purpose of securitising assets’ in the current definition is interpreted by some firms as referring to ‘securitisation SPVs’; a particular type of SPVs typically used in corporate transactions. However, the NMPI rules are intended to capture a broader range of SPVs – essentially, any arrangement used to pool investment assets for purposes broadly comparable to an unregulated collective investment scheme. In addition, we are concerned it might be possible for firms to circumvent the consumer protections intended by the NMPI rules by ensuring that the instrument of incorporation of a pooled investment SPV makes no mention to ‘securitising’ assets.
- 8.7** The existing definition also requires that the SPV should be established for a ‘sole purpose’ concerning designated investments. In the context of the NMPI rules, we believe the courts would focus on the substance of the arrangement in considering whether its purpose (either generally or while acting in a particular capacity) is to engage in one or more of the functions relating to designated investments listed at (a) to (c) in the current definition. Nonetheless, we consider these elements of the definition to be more complex than necessary to give effect to the policy intention underlying the NMPI rules, making them both harder for firms to understand and potentially more difficult for us to supervise and enforce.
- 8.8** Overall, we have reasons to be concerned that the current Handbook Glossary definition of SPV may be interpreted by a number of firms and their compliance advisers as implying a significantly narrower scope for the NMPI rules than indicated in the CP12/19 and PS13/3. On that basis, we consider we need a new the Glossary definition of ‘pooled investment vehicle’ to more clearly reflect our stated policy intention.
- 8.9** We therefore propose to create a new ‘pooled investment vehicle’ definition for the marketing restriction rules on NMPs, focusing on the substance rather than the form of the arrangement. Further, we believe it will clarify the scope of the NMPI definition and reduce opportunities for circumventing the intended consumer protections. Given the technically complex nature of this issue, we are putting forward two options for the new definition on which comments are invited. We welcome feedback on these options and which is preferable.
- 8.10** Our currently preferred, and therefore proposed, new definition (which is ‘Option 1’ in the draft instrument at Annex X)) would cover arrangements which do not have a general commercial or industrial purpose, and which would be collective investment schemes except that they fall into the exclusion in paragraph 5 (debt issues) or in paragraph 21 (bodies corporate etc) of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001. In particular, any body corporate would be a ‘pooled investment vehical’ if they:

- met the definition of collective investment scheme in section 235 of the Financial Services and Markets Act 2000
- did not fall within any other exclusion in that Order
- did not have a general commercial or industrial purpose, and
- was not an open-ended investment company

8.11 An investment issued or offered by that body corporate would be an NMPI if it did not fall within one of the categories of 'excluded security' as defined in the Glossary.

8.12 We believe the courts would focus on the substance of the arrangement in considering whether its purpose was general commercial or industrial. There is existing guidance in PERG 16.2 (Questions 2.18, 2.19 and 2.22) on how to interpret 'general commercial or industrial purpose' in the context of the Alternative Investment Fund Managers Directive (AIFMD), which we believe would be relevant in this context.

8.13 Firms could continue to market investments issued or offered by a pooled investment vehicle, but only to persons listed in COBS 4.12.4R including to certified high net worth investors, certified and self-certified sophisticated investors and professional clients in accordance with that rule. A firm that wished to market such investments to ordinary retail investors could apply to the FCA for the modification of the rules under section 138A of the Act, if the firm could show that the marketing restriction is unduly burdensome or would not meet the purpose of the rules and that such marketing would not adversely affect, in particular, the protection of consumers objective.

8.14 The main alternative way to frame the definition of 'pooled investment vehicle' that we have considered ('Option 2' in the draft instrument in Annex 8) is to effectively replicate the concept of a collective investment undertaking, already in common usage through the implementation of the AIFMD. Overall, we consider that the proposed definition (Option 1) provides greater certainty as well as fitting into the UK regulatory framework for the marketing of collective investment schemes. But we welcome feedback on whether Option 2 would be a better approach. We already provide guidance on what is a 'collective investment undertaking' in PERG 16.2, which firms subject to the NMPI rules may find useful. However, it is important to note that being a collective investment undertaking is only one element of the definition of an alternative investment fund, and similarly, a 'pooled investment vehicle' is only one element of the definition of NMPI. For example, a 'pooled investment vehicle' may or may not be an alternative investment fund for the purposes of the AIFMD rules.

8.15 We propose that the new definition would come into force three months after the date on which it is made by the FCA Board.

Q8.1: Do you have any comments on the proposed new 'pooled investment vehicle' definition?

Cost benefit analysis

8.16 The proposed new definition will bring the marketing restriction for NMPIs into line with the proposals as outlined in CP12/19 and PS13/3. We therefore consider that the cost benefit

analysis in those papers remains relevant and that this new proposal will not lead to any additional costs above those previously set out.

Impact on mutual societies

- 8.17** We do not expect the new definition to have a significantly different impact on mutual societies. Where mutual societies wish to promote securities issued by NMPIs which are pooled investment vehicles, they will be subject to the same requirements as other firms. We do not believe that ordinary retail investors investing with mutual societies should be treated in a different manner to those investing with other firms.

Compatibility statement

- 8.18** As with the cost benefit analysis, the compatibility statement in CP12/19 and PS13/3 remains relevant. In particular, we consider that our new proposal is compatible with our general duties under section 1B(1) and 5(a) of FSMA for the reasons given there.

Equality and diversity

- 8.19** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 8.20** Overall, we do not consider that the proposals in this Consultation Paper adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 8.21** 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.

9. Changes to reporting requirements in the Supervision manual (SUP)

Introduction

- 9.1** We collect a range of regulatory data to help us in the supervision of firms. Many of these data are reported to us under requirements set out in the Supervision manual (SUP) in our Handbook. Through the supervision of and engagement with firms we are able to clarify and improve our reporting requirements and remove data requirements that are no longer applicable or proportionate. This chapter sets out a number of changes to SUP 16 that will help us meet this aim, focusing on regulatory reporting forms and accompanying guidance in the manual.

Summary of proposals

Changes to outdated text in SUP 16

- 9.2** Several areas of SUP 16 contain text that is out of date. We suggest deleting these sections to ensure the Handbook is easier to read and more concise. If required for reference, the deleted text will be available in backdated versions of the Handbook which can be found on our Handbook website.²¹ We are proposing to:
- delete the guidance notes in SUP 16 Annex 25 for FSA020, FSA021, FSA022, FSA023, FSA024 and FSA025 because these forms have been deleted and no longer require guidance text
 - remove guidance text for question 33A in the notes for FSA032 found in SUP 16 Annex 25 because this question has been deleted and no longer needs guidance text
 - remove redundant references to RMAR: Section D6 in SUP 16.12.22A, SUP 16 Annex 18A and SUP 16 Annex 18B

Q9.1: Do you have any comments on our proposals to remove outdated text in SUP 16?

Changes to the Retail Mediation Activities Return (RMAR)

- 9.3** We are proposing to amend questions 21 and 22 of RMAR – Section G to make them consistent with MCOB 4.4A. To do this, we would remove the four options for ‘mortgage advice provided’ listed in questions 21 and 22 and replace them with two new options: limited and unlimited. These amendments would come into force on 31 December 2016 and change the form as it will appear at that date (see Handbook Notice No 30, which amends the form with effect from

²¹ <https://www.handbook.fca.org.uk/>

31 December 2016). Consequently, we also propose to change the guidance notes to RMAR – Section G in SUP 16 Annex 18B to make them consistent with the amends to questions 21 and 22.

- 9.4** We are also proposing to add a new option, ‘Did not provide advice’, to the list of responses available in question 1 of RMAR – Section K. Firms that have not provided any advice during the reporting period should use this answer to respond to question 1. Introducing this additional option will improve data quality and reduce the time taken for these firms to report data. We also propose to change the guidance notes to RMAR – Section K in SUP 16 Annex 18B to help firms answer question 1.

Q9.2: Do you have any comments on our proposals to change RMAR – Section G or RMAR – Section K returns?

Changes to FSA019 Pillar 2 Information

- 9.5** We suggest amending question 1 in FSA019 to ask whether either GENPRU 1.2 or IFPRU 2 apply to the firm. At present question 1 refers only to GENPRU 1.2; however, this return should also be completed by firms that are subject to IFPRU 2. We also propose to amend the guidance notes to FSA019 in SUP 16 Annex 24 so they are consistent with this change.

Q9.3: Do you have any comments on our proposal to amend question 1 of FSA019 Pillar 2 Information?

Changes to consumer credit reporting requirements

- 9.6** We propose to remove the requirement for fee-charging credit broking firms to submit form CCR008. We feel that the requirement to submit CCR008 is no longer proportionate because we have seen significant improvement in the use of domain names by credit broking firms since the rules in PS14/18 were published.
- 9.7** We also suggest making clear that consumer credit firms can use our online system Connect (as well as email, post or hand delivery) to report their standing data to us (see page 7 of Appendix 7). We recognise that many consumer credit firms already use Connect to report this data.

Q9.4: Do you have any comments on our proposals to change consumer credit reporting requirements?

Cost benefit analysis

- 9.8** Sections 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis when proposing draft rules. Section 138L(3) of FSMA provides that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increases will be of minimal significance. Having assessed the changes proposed in this chapter and having considered previous estimates of similar reporting changes, we believe this exemption applies to the items proposed in this chapter, as set out in more detail below.

Changes to outdated text in SUP 16

- 9.9** This change has no cost implications for firms as it simply removes redundant Handbook text.

Changes to Retail Mediation Activities Return (RMAR)

- 9.10** We expect these changes to have minimal cost implications for firms (based on previous estimates of reporting alterations). Some firms may face low one-off costs to implement these changes, but we believe that adding a new option to question 1 in RMAR – Section K will improve the form’s usability and reduce the time taken for firms to report their data to us, reducing the associated costs.

Changes to FSA019 Pillar 2 Information

- 9.11** We do not expect our proposed amendment to FSA019 to increase firms’ costs because it simply clarifies the existing reporting requirements which should not incur additional resource.

Changes to consumer credit reporting requirements

- 9.12** Removing CCR008 for fee-charging credit broking firms will reduce their reporting burden and lower their costs. We estimate the savings to be approximately £300,000 (based off our cost-benefit analysis in Consultation Paper CP15/6 *Consumer Credit – proposed changes to our rules and guidance*²²).

Q9.5: Do you have any comments about any of our cost assessments?

Impact on mutual societies

- 9.13** Section 138K of FSMA requires 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. We are satisfied that the proposed amendments do not impact on mutual societies more than on other authorised firms.

Compatibility statement

- 9.14** Section 1B of FSMA requires us, so far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. We also need to carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 9.15** The proposed changes to the SUP manual in this chapter will allow us to collect more accurate firm data and collect and process data more efficiently. In turn, this will allow more effective supervision of firms and will help us to advance our consumer protection objective.
- 9.16** We do not believe that the proposed changes in this chapter will have an impact on competition. The changes are expected to impose minimal costs on firms and do not affect firms’ incentives or ability to compete in the market.

²² CP15/6 *Consumer credit – proposed changes to our rules and guidance* (February 2015)

Equality and diversity

- 9.17** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 9.18** Overall, we do not consider that the proposals in this Consultation Paper adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 9.19** 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.

10.

Transparency reporting requirements for AIFMs

Introduction

- 10.1** In this chapter, we propose changes to the transparency reporting requirements under the Alternative Investment Fund Managers Directive (AIFMD). These changes will apply to certain UK alternative investment fund managers (AIFMs), as well as to certain non-EEA AIFMs who are marketing their feeder alternative investment funds (AIFs) in the UK.
- 10.2** Current AIFMD reporting data has significantly improved our ability to monitor alternative investment fund information on a regular basis, and our ability to reduce relevant risks with supervisory work. However, it has left some notable information gaps. This is especially the case with master AIFs²³, some of which have large trading footprints in specific market segments, and also have significant leverage relationships with other market counterparties. Our proposals aim to reduce these information gaps so we can more effectively monitor and compare the risk-taking activities of certain AIFMs that are required to report to us, with the aim of supporting increased financial stability and reducing systemic risk.
- 10.3** This chapter is relevant to:
- full-scope UK AIFMs that manage non-EEA AIFs, but do not market them in the EEA, and
 - above threshold non-EEA AIFMs that market feeder AIFs in the UK where the master AIF (whether managed by the same AIFM or by another legal entity in the same fund management group) is not marketed in the UK
- 10.4** This consultation will also be of interest to the custodians and administrators of relevant AIFMs, as well as trade bodies and consultants. It may also be of interest to other categories of AIFMs that are required to report transparency data to us but do not fall within the scope of these proposals. These proposals would not impact consumers directly, as they are only changing the reporting requirements of certain AIFMs to the FCA.

Relevant information for effectively monitoring systemic risk

- 10.5** Article 24 of AIFMD sets out the reporting obligations of above threshold AIFMs to national competent authorities (NCAs) and these have been transposed into our Handbook under FUND 3.4. Of particular relevance is article 24(5), which allows NCAs to require AIFMs to report additional information where necessary for the effective monitoring of systemic risk. The European Securities and Markets Authority (ESMA), in its Opinion of 1 October 2013²⁴, addressed the position of above threshold EU AIFMs managing non-EU master AIFs that are not marketed in the EU. The Opinion said that when such a master AIF has a feeder AIF that is an EU AIF or is marketed in the EU, it is desirable to require information about the master AIF to

²³ A master AIF is a fund into which another AIF – the feeder AIF – invests at least 85% of its assets.

²⁴ https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-esma-1340_opinion_on_collection_of_information_under_aifmd_for_publication.pdf

be reported under article 24(2) of the AIFMD, in addition to the information under article 24(1). However, ESMA did not consider it useful for NCAs to require this information if the non-EU master AIF and the feeder AIF do not have the same AIFM. We added a rule to the Handbook based on this ESMA Opinion at FUND 3.4.6A, which sets out the requirements for full-scope UK AIFMs.²⁵ We are now proposing to go beyond the ESMA Opinion for some UK AIFMs and require them to begin reporting the article 24(2) data for the non-EEA AIFs that they manage.

- 10.6** We also clarified in our own Q&A on AIFMD reporting that non-EEA AIFMs are only required to report on master funds that are marketed in the UK.²⁶ ESMA now states, in its Q&A dated 21 July 2015²⁷, that when an NCA applies its Opinion of 1 October 2013 on collecting additional information under article 24(5), non-EU AIFMs should report on non-EU master AIFs not marketed in the EU that have either EU feeder AIFs, or non-EU feeder AIFs marketed in the EU. A number of other NCAs have started to collect this information on non-EEA master AIFs to enable them to monitor potential systemic risks in the activities of the AIFMs managing those AIFs more effectively.
- 10.7** We are therefore proposing to amend our rules to take account of ESMA's published interpretation in its Q&A dated 21 July 2015 of the reporting requirements for some non-EEA AIFMs, which has already been adopted by some other NCAs. In addition, we are also proposing to go beyond the ESMA Opinion for non-EEA AIFMs by applying this additional requirement on master AIFs, whether managed by the AIFM or by another legal entity in the same fund management group. We are not proposing to apply this additional requirement on full-scope UK AIFMs when the master AIF and feeder AIF are managed by different legal entities within the same fund management group, because the expected benefits achieved would not be commensurate with the expected costs involved.

Summary of proposals

- 10.8** Our proposals affect how full-scope UK AIFMs complete the FCA's AIF002 transparency reports for their AIFs, and which AIFs managed by above threshold non-EEA AIFMs need to be reported on the AIF002 transparency report.
- 10.9** AIF002 consists of three sections:
- 24(1) – completed by all AIFMs currently submitting AIF002 to the FCA
 - 24(2) – completed by full-scope UK AIFMs managing UK or EEA AIFs or non-EEA AIFs marketed in the EEA, as well as by above threshold non-EEA AIFMs marketing their AIFs in the UK
 - 24(4) – completed by all AIFs that employ leverage on a substantial basis²⁸
- 10.10** We propose to modify the reporting requirements for full-scope UK AIFMs and non-EEA AIFMs as follows:

²⁵ This applied our rules in relation to non-EEA AIF, as opposed to non-EU AIFs, in anticipation of the annexation of AIFMD to the EEA Agreement.

²⁶ <https://www.fca.org.uk/static/documents/qa-reporting-annex-iv.pdf>

²⁷ ESMA Q&A Question 1 on Section III on Reporting to national competent authorities under articles 3, 24 and 42 (updated 21 July 2015)

²⁸ Article 24 of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers, explains the reporting obligations to competent authorities.

Full-scope UK AIFMs

- 10.11** Full-scope UK AIFMs that manage non-EEA AIFs, but do not market them or (in the case of non-EEA master AIFs with a non-EEA feeder AIF) their respective feeder AIFs in the EEA, currently have to report only very limited information on these non-EEA AIFs.²⁹ We propose to require some full-scope UK AIFMs to report the article 24(2) data for the non-EEA AIFs that they manage and for which they do not currently have to report this data.³⁰ This would be in addition to their current requirements. We plan to do this by introducing a new provision in FUND 3.4.6CR to include these AIFs.
- 10.12** We propose applying this additional requirement only to non-EEA AIFs managed by full-scope UK AIFMs in cases where reporting on the AIF is currently required on a quarterly basis. This would ensure the impact of the proposal is reduced to only around 420 AIFs rather than c.1600 AIFs which would have been affected if the proposal were to apply to all AIFs managed by UK AIFMs. This will limit the impact on firms and limit the additional reporting requirement to those AIFs that have the potential to contribute to the build-up of systemic risk. Our proposal relates to full-scope UK AIFMs that manage:³¹
- portfolios of AIFs whose assets under management, calculated in accordance with article 2 of AIFMD, in total exceed €1 billion, or
 - an individual AIF (which is not an unleveraged AIF investing in non-listed companies and issuers in order to acquire control) whose assets under management, including any assets acquired through use of leverage, in total exceed €500 million.
- 10.13** This proposal would not impact the reporting requirements for small authorised UK AIFMs or small registered UK AIFMs. It also would not change the reporting requirements for full-scope UK AIFMs where all their reported funds are unleveraged AIFs investing in non-listed companies and issuers in order to acquire control. The reporting frequency of AIFs impacted by the proposals in this consultation will not be affected by our suggested amendments.
- 10.14** Our CBA shows no significant impact on our resources so we do not anticipate any change in the reporting fee charged by the FCA.

Q10.1: Do you have any comments on our proposal for certain full-scope UK AIFMs to report on their non-EEA AIFs where those AIFs are not marketed in the EEA?

Above threshold non-EEA AIFMs

- 10.15** Non-EEA AIFMs that market a feeder AIF in the UK currently only have to report on the respective master AIF if the master AIF is also marketed in the UK. Under regulation 59(3) of the Alternative Investment Fund Managers Regulations 2013, an above threshold non-EEA AIFM which has given notice of marketing an AIF under the National Private Placement Regime must comply with the implementing provisions of article 24 applicable to full-scope UK AIFMs in so far as those provisions are relevant to the AIFM and the AIF.
- 10.16** We are now proposing to apply a different interpretation of regulation 59(3), to require full reporting in respect of both the feeder AIFs being marketed and their related master AIFs which are not marketed in the UK. We propose that above threshold non-EEA AIFMs should

²⁹ FUND 3.4.3R only applies to those non-EEA funds that are marketed in the UK.

³⁰ This would be the case when neither the master AIF nor any respective feeder AIFs are marketed in the EEA.

³¹ Annex 1 of the ESMA's guidelines on reporting obligations under articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD provides the reporting obligation diagrams.

report information under paragraphs (1), (2) and (if applicable) (4) of article 24 for master AIFs. This would impact those master AIFs which:

- are not marketed in the UK
- have feeder AIFs which are marketed in the UK under article 42, and
- have feeder AIFs which are managed by an AIFM that is subject to quarterly reporting under article 110 of the AIFMD level 2 regulation (see SUP 16.18.4EU) for those feeder AIFs

10.17 This approach is consistent with ESMA's interpretation of AIFMD in the Q&A it published in July 2015. In that ESMA said above threshold non-EU AIFMs should also report information on non-EU master AIFs not marketed in the EU that have feeder AIFs which are marketed in the EU under article 42. We accept this interpretation and think it should equally apply to EEA master AIFs managed by above threshold non-EEA AIFMs and not marketed in the EEA. ESMA is considering whether to update the wording of its Q&A to reflect our proposal.

10.18 We propose this additional reporting should apply only to those master AIFs managed by above threshold non-EEA AIFMs in cases where reporting on the feeder AIF is currently required on a quarterly basis. We propose to include master funds, whether managed by the AIFM or by another legal entity in the same fund management group. Limiting the additional reporting requirement to quarterly reporters will limit the impact on firms and limit the additional reporting requirement to those AIFs that have the potential to contribute to the build-up of systemic risk.

10.19 As with UK AIFMs, our CBA shows no significant impact on our resources and so we do not anticipate any additional charge on above threshold non-EEA AIFMs for reporting on master AIFs which are not marketed in the UK.

Q10.2: Do you have any comments on our proposal for an above threshold non-EEA AIFM to report on its master AIFs not marketed in UK, if the relevant feeder AIF is marketed in the UK?

Cost benefit analysis

10.20 When proposing new rules, we are obliged under section 138I of FSMA to publish a cost benefit analysis, unless we believe there will be no increase in costs or that the increase will be of minimal significance. We are also required to publish an estimate of costs and benefits unless they cannot reasonably be estimated or it is not reasonably practicable to produce them.

10.21 The overall costs incurred by AIFMs when submitting AIFMD transparency reports depend on a variety of factors:

- the frequency of reporting
- complexity and number of the AIFs managed or marketed, and
- whether the AIFM is required to submit reports in other jurisdictions as well as to the FCA

10.22 Based on our interactions with external stakeholders, the average annual reporting costs for AIFs with a quarterly reporting obligation are estimated to range between £2000 and £3000 per AIF, depending on the complexity of the AIF.

10.23 Our analysis suggests that our proposals would impact between 400 and 420 AIFs managed by full-scope UK AIFMs. They would also impact between 300 and 320 AIFs managed by above threshold non-EEA AIFMs. On the basis of the above, using average estimated reporting costs per AIF, the maximum total incremental cost incurred as a result of the proposals would range between £1.5 million and £2.25 million a year. The sections below estimate the average incremental costs separately for full-scope UK AIFMs and non-EEA AIFMs, and present reasons why we expect the actual costs to be lower.

Full-scope UK AIFMs

10.24 Full-scope UK AIFMs are already reporting sections 24(1) and (where relevant) 24(4) for all the AIFs captured by proposals in this consultation. This proposal would require them to report additionally on section 24(2), which constitutes about 67% of the AIF002 transparency return. We propose applying this requirement only to AIFs for which reporting is required on a quarterly basis. By pro-rating the £2000 to £3000 range, we estimate the incremental costs incurred by full-scope UK AIFMs for completing section 24(2) in addition would be in the range of £1300 - £2000 per AIF per year, depending on the complexity of the AIF. The pro-rating does not take into account fixed costs associated with setting up the AIF and reporting to us, which should already be met since the full-scope AIFM already reports some sections of AIF002.

10.25 To target the information most relevant to our needs, we are proposing to apply this requirement only to AIFs which currently report on a quarterly basis. On average, the total incremental cost incurred by full-scope UK AIFMs as a result of these proposals is estimated in the range of between £0.55 million and £0.85 million a year.

Above threshold non-EEA AIFMs

10.26 Above threshold non-EEA AIFMs within the scope of this proposal currently report on their feeder AIFs only. Under this proposal, they would submit AIF002 transparency returns for their respective master AIFs as well (or where managed by a group AIFM where applicable), if the AIFM of the feeder AIF is subject to quarterly reporting obligations for the feeder AIF.

10.27 Our internal analysis indicates that around 70% of above threshold non-EEA AIFMs captured by this proposal currently also provide data to the US SEC through their Form PF report. The cost of a Form PF submission is estimated to be broadly the same as the cost of an AIF002 submission. Based on our discussions with external stakeholders, if an AIFM is submitting Form PF to the SEC, then we estimate the cost to the AIFM of providing the AIF002 return for the same AIF to the FCA would be around 15% of the cost incurred in a Form PF submission. Taking this into account, the total incremental costs incurred by above threshold non-EEA AIFMs as a result of our proposals would range between £0.3 million and £0.4 million per year. However, we estimate that the actual incremental costs would be less, for the following reason.

10.28 The NCAs of Belgium, Luxembourg and the Republic of Ireland have already implemented the extended reporting we are proposing for above threshold non-EEA AIFMs, and another NCA is considering doing so. Our discussions with stakeholders suggest that there are very few above threshold non-EEA firms that market their feeder AIFs in only one EEA country. Hence it is likely that a number of the above threshold non-EEA AIFMs impacted by this proposal are already submitting an equivalent article 24 return for those master AIFs to one of the EEA jurisdictions which have already implemented these proposals. In such a case there would be no material additional expense in collating the data for our AIF002 transparency report. The only additional

expense incurred by such AIFMs would be administrative costs incurred in submitting the transparency returns to us. Those incremental administrative costs are likely to be marginal.

10.29 The impacted master AIFs are not currently set up in our systems. We estimate that it will cost in the range of £0.1 million to £0.3 million to set up and collect data from them.

10.30 The table below summarises the total incremental average costs incurred by full-scope UK AIFMs, above threshold non-EEA AIFMs and the FCA.

	Total costs (£ million)
Annual costs	
Incremental costs for full-scope UK AIFM	0.55 to 0.85
Incremental costs for above threshold non-EEA AIFM	0.3 to 0.4
Total	0.85 to 1.25
One-off cost	
Incremental costs for the FCA	0.1 to 0.3

Benefits

10.31 In its Impact Assessment, the European Commission stated that the activities of an AIFM 'give rise to risks for AIF investors, counterparties, the financial markets and the wider economy over and above the investment risk that is intrinsic to any financial investment'³². Specifically the European Commission identified:

- macro-prudential risks relating, in particular, to the use of leverage
- micro-prudential risks linked to market, liquidity, counterparty and operational risks, and
- risks to market efficiency and integrity

10.32 We utilise data submitted by AIFMs under AIFMD to monitor and analyse these risks and, where necessary, take remedial action.

10.33 The extended reporting measures we propose in this consultation will enable us to monitor and compare the risk-taking activities of AIFMs more effectively, increase financial stability, and reduce macro-prudential risk. The additional data would help us improve our supervision of the alternative fund sector, which would in turn benefit the investors of these alternative funds. As these funds are either managed by UK based managers or are marketed (via feeder funds) in the UK, there is a connection to the UK financial system and to our duties to ensure market integrity and protect UK investors. Thus the main beneficiaries from the new disclosure requirements would be the financial system in general and investors in AIFs in particular.

10.34 In addition, ESMA aggregates data from different NCAs across the EEA to identify build-ups of systemic risk in Europe's financial system. Sharing aggregated information with ESMA will therefore provide further benefits.

10.35 The benefits identified above are difficult to quantify, in particular given the nature of macro-prudential risk. However, considering the size and importance of the AIFMs involved in these

³² See the European Commission's impact assessment.

proposals, the benefits of a marginal reduction in risk is such that they offset the modest recurring cost of the new requirements.

Compatibility statement

- 10.36** When consulting on new rules, we are required by section 138I of FSMA to include an explanation of why we believe the proposed rules are compatible with our strategic objective, advance one or more of our operational objectives and have proper regard to the regulatory principles in section 3B of FSMA. Our proposed rules and guidance outlined in this chapter primarily aim to advance our market integrity objective.

Market integrity objective

- 10.37** This objective requires us to protect and enhance the integrity of the UK financial system. The proposals will allow us to receive key information about a number of funds that are significant enough, in terms of their size and/or activities, to contribute to a build-up of macro-prudential risk in the UK financial system. By improving our ability to monitor funds' activities, we will be better placed to reduce the risk of market disruption.
- 10.38** By limiting the application of these proposals to a subset of AIFMs, we are seeking to ensure we receive a limited number of additional reports that target our information needs. In this way we have had regard to the regulatory principles of using our resources in the most efficient and economical way, and making the burden of the proposed rules and guidance proportionate to the benefits expected to result from them.
- 10.39** We have also had regard to the principle of recognising differences in the nature of business carried on by different persons, by focusing on firms whose fund management activities are likely to contribute to the build-up of systemic risk. This recognises that the activities of many other AIFMs do not give rise to systemic risk concerns.
- 10.40** Our proposals have regard to the importance of taking action intended to minimise financial crime (s1B(5)(b) of FSMA).

Consumer protection objective

- 10.41** This objective requires us to secure an appropriate degree of protection for consumers. We do not believe these proposals will have any adverse impact on consumers.

Competition objective

- 10.42** This objective requires us, in so far as it is compatible with the other objectives, to promote competition in the interest of consumers. We believe that the competition impact of these proposals is likely to be minimal.

Impact on mutual societies

- 10.43** Our proposals relate only to firms authorised to manage AIFs, and do not refer specifically to mutual societies. We do not believe the changes described in this chapter will have a different effect on mutual societies compared to other authorised persons.

Equality and diversity

- 10.44** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 10.45** Overall, we do not consider that the proposals in this Consultation Paper adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 10.46** 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.
- 10.47** In the interim we welcome any input to this consultation on such matters.

Appendix 1

List of questions

- Q2.1:** Do you agree with the changes to ICOBS 8 and COBS 17 to align the Handbook with the Act and, where relevant, preserve the existing policy?
- Q2.2:** Do you have any comments on our cost benefit analysis?
- Q3.1:** Do you agree with our proposed changes to the Glossary, SUP, COMP and FEES?
- Q3.2:** Do you agree with our proposed changes to the forms in SUP?
- Q3.3:** Do you agree with our proposed change to the definition of a 'residential renovation agreement'?
- Q3.4:** Do you agree with our proposed changes to PERG?
- Q3.5:** Do you agree with our proposed changes to MCOB and CONC?
- Q4.1:** Do you agree with our proposal to introduce a revised Glossary definition of 'prescribed market' for the purpose of Chapter 5 of the DTRs?
- Q4.2:** Do you agree with our proposal to include a new DTR 7.2.8AR which sets out the new corporate governance statement requirement?
- Q4.3:** Do you agree with our proposal to exempt small and medium sized issuers from the new DTR requirement?
- Q4.4:** Do you agree with our proposal to apply the new reporting requirement to those listed companies which are required to comply with DTR 7.2 as if they were an issuer to which DTR 7.2 applies?
- Q4.5:** Do you agree with our proposal to include new guidance provisions DTR 1B.1.8G and DTR 7.2.8BG?
- Q4.6:** Do you agree with our proposed transitional provisions in DTR TP 1?
- Q5.1:** Do you know of any reason why these

qualifications should not be added to and/or amended on our list of appropriate qualifications?

- Q6.1:** Do you have any comments on our proposed disapplication of CASS audit requirements to certain debt management firms?
- Q7.1:** Do you agree with our proposals regarding the distribution of credit union deferred shares, including the content of the statements as set out in Appendix 7?
- Q7.2:** Do you agree with our proposals regarding the financial promotion of subordinated debt, including the content of the statements as set out in Appendix 7?
- Q7.3:** Do you agree with our proposals to make it clear that credit unions must not require any members to purchase deferred shares or subordinated debt?
- Q7.4:** Do you agree with our proposals to update the Glossary?
- Q7.5:** Do you have any comments on our proposals to amend credit unions' standing data reporting requirements?
- Q7.6:** Do you have any comments about our cost benefit analysis, including in relation to the likely impact of our proposed changes on you or your credit union or other organisation?
- Q8.1:** Do you have any comments on the proposed new 'pooled investment vehicle' definition?
- Q9.1:** Do you have any comments on our proposals to remove outdated text in SUP 16?
- Q9.2:** Do you have any comments on our proposals to change RMAR – Section G or RMAR – Section K returns?
- Q9.3:** Do you have any comments on our proposal to amend question 1 of FSA019 Pillar 2 Information?
- Q9.4:** Do you have any comments on our proposals to change consumer credit reporting requirements?
- Q9.5:** Do you have any comments about any of our cost assessments?
- Q10.1:** Do you have any comments on our proposal for

certain full-scope UK AIFMs to report on their non-EEA AIFs where those AIFs are not marketed in the EEA?

Q10.2: Do you have any comments on our proposal for an above threshold non-EEA AIFM to report on its master AIFs not marketed in UK, if the relevant feeder AIF is marketed in the UK?

Appendix 2

The Insurance Act 2015

INSURANCE ACT 2015 (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2016

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 (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 November 2016].

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex A to this instrument.
- E. The Insurance: Conduct of Business sourcebook (ICOBS) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Insurance Act 2015 (Consequential Amendments) Instrument 2016.

By order of the Board
[*date*]

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

17.1 ~~Providing~~ Long term care insurance: providing information to claimants, and dealing with claims, and warranties in policies

...

Rejecting a claim

17.1.3 R An *insurer* and a *managing agent* must not:

(1) unreasonably reject a claim; ~~or~~

Cases where rejection of consumer's claim is unreasonable: contracts or variations before [1 November 2016]

17.1.4 R (2) For contracts entered into or variations agreed before [1 November 2016], except where there is evidence of fraud, an *insurer* and a *managing agent* must not reject a claim for:

(a) non-disclosure of a fact material to the risk which the

(1) *policyholder* could not reasonably have been expected to disclose; or

(b) misrepresentation of a fact material to the risk, unless the

(2) misrepresentation is negligent; or

(c) breach of warranty, unless the circumstances of the claim are

(3) connected to the breach, the warranty is material to the risk and was drawn to the *policyholder's* attention before the conclusion of the contract.

Cases where rejection of consumer's claim is unreasonable: contracts or variations on or after [1 November 2016]

17.1.5 G (1) Cases in which rejection of a *consumer's* claim would be unreasonable (in the *FCA's* view) include, but are not limited to rejection:

(a) for misrepresentation, unless it is a "qualifying misrepresentation" in *ICOBS* 8.1.3R;

(b) for breach of warranty or term, or for fraud, unless the *insurer* is able to rely on the relevant provisions of the Insurance Act 2015; and

- (c) where the policy is drafted or operated in a way that does not allow the *insurer* to reject.
- (2) The Insurance Act 2015 sets out a number of situations in which an *insurer* may have no liability or obligation to pay. For example:
- (a) section 10 provides situations in which an *insurer* has no liability under a *policy* due to a breach of warranty;
- (b) section 11 places restrictions on an *insurer's* ability to reject a claim for breach of a term where compliance is aimed at reducing certain types of risk; and
- (c) sections 12 and 13 provide for the extent to which a *firm* is entitled to reject fraudulent claims.

17.1.6 R For contracts entered into or variations agreed on or after [1 November 2016], a rejection of a *consumer policyholder's* claim for breach of a condition or term (that is not within section 10 or 11 the Insurance Act 2015) is unreasonable unless the circumstances of the claim are connected to the breach.

Warranties in policies

17.1.7 R An *insurer* must ensure that any warranty included in a *long-term care insurance contract*:

(1) operates so that it is connected to the risks to which it relates; and

(2) is material to the risks to which it relates and is drawn to the *customer's* attention before the conclusion of the contract.

...

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
...					
<u>2.25</u>	<u>COBS 17.1.7R</u>	<u>R</u>	<u>An <i>insurer</i> need not comply with COBS 17.1.7R for contracts entered into or variations agreed before [1 November 2016].</u>	<u>From [1 November 2016]</u>	<u>On [1 November 2016]</u>

Annex B

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

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

2.5 Exclusion of liability, conditions, warranties, and reliance on others

...

Warranties in policies

- 2.5.2A R An insurer must ensure that any warranty included in a policy:
- (1) operates so that it is connected to the risks to which it relates; and
 - (2) (for a warranty in a pure protection contract) is material to the risks to which it relates and is drawn to the customer's attention before the conclusion of the contract.
- 2.5.2B R ICOBS 2.5.2AR(2) does not apply to a 'life of another' contract where the warranty relates to a statement of fact concerning the life to be assured.
- 2.5.2C G An insurer may choose to draft its warranties so that they clearly state the particular risks to which they are connected, for the purposes of ICOBS 2.5.2AR(1). Alternatively the insurer may in practice operate the warranties in a way that has the same effect.

...

8.1 Insurers: general

...

Cases where rejection of consumer's claim is unreasonable: contracts before [1 November 2016]

- 8.1.2 R For contracts entered into or variations agreed before [1 November 2016],
~~A~~ a rejection of a consumer policyholder's claim is unreasonable, except where there is evidence of fraud, if it is:
- (1) in relation to contracts entered into or variations agreed on or before 5 April 2013, for:
 - (a) non-disclosure of a fact material to the risk which the policyholder could not reasonably be expected to have disclosed; or
 - (b) non-negligent misrepresentation of a fact material to the risk; or

- (2) in relation to contracts entered into or variations agreed on or after 6 April 2013, for misrepresentation by a *customer* and the misrepresentation is not a qualifying misrepresentation (see *ICOBS 8.1.3R*); or
- (3) for breach of warranty or condition unless the circumstances of the claim are connected to the breach and unless (for a *pure protection contract*):
 - (a) under a ‘life of another’ contract, the warranty relates to a statement of fact concerning the life to be assured and, if the statement had been made by the life to be assured under an ‘own life’ contract, the *insurer* could have rejected the claim under this *rule*; or
 - (b) the warranty is material to the risk and was drawn to the *customer's* attention before the conclusion of the contract.

Cases where rejection of consumer’s claim is unreasonable: contracts on or after November 2016

- 8.1.2A G (1) Cases in which rejection of a *consumer’s* claim would be unreasonable (in the *FCA’s* view) include, but are not limited to rejection:
- (a) for misrepresentation, unless it is a qualifying misrepresentation (see *ICOBS 8.1.3R*):
 - (b) for breach of warranty or term, or for fraud, unless the *insurer* is able to rely on the relevant provisions of the Insurance Act 2015; and
 - (c) where the *policy* is drafted or operated in a way that does not allow the *insurer* to reject.
- (2) The Insurance Act 2015 sets out a number of situations in which an *insurer* may have no liability or obligation to pay. For example:
- (a) section 10 provides situations in which an *insurer* has no liability under a *policy* due to a breach of warranty;
 - (b) section 11 places restrictions on an *insurer’s* ability to reject a claim for breach of a term where compliance is aimed at reducing certain types of risk; and
 - (c) sections 12 and 13 provide for the extent to which a *firm* is entitled to reject fraudulent claims.
- 8.1.2B R For contracts entered into or variations agreed on or after [1 November 2016], a rejection of a *consumer policyholder’s* claim for breach of a condition or term (that is not within section 10 or 11 of the Insurance Act

2015) is unreasonable unless the circumstances of the claim are connected to the breach.

Definition of a qualifying misrepresentation

- 8.1.3 R ~~For the purposes of *ICOBS 8.1.2R(2)*~~ In this section, a “qualifying misrepresentation” is one made by a *consumer* before a consumer insurance contract was entered into or varied if:

...

...

TP 2 Other Transitional Provisions

(1)	<u>(2) Material to which the transitional provision applies</u>	<u>(3)</u>	<u>(4) Transitional provision</u>	<u>(5) Transitional provision: dates in force</u>	<u>(6) Handbook provision: coming into force</u>
...					
4	<u><i>ICOBS 2.5.2AR</i></u>	<u>R</u>	<u><i>An insurer need not comply with <i>ICOBS 2.5.2AR</i> for contracts entered into or variations agreed before [1 November 2016].</i></u>	<u>From [1 November 2016]</u>	<u>On [1 November 2016]</u>

Appendix 3

Mortgages and home finance activity

**MORTGAGES AND HOME FINANCE (MISCELLANEOUS AMENDMENTS)
INSTRUMENT 2016**

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);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 213 (The compensation scheme); and
 - (5) section 214 (General).
- 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 [date].

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)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Supervision manual (SUP)	Annex D
Compensation sourcebook (COMP)	Annex E
Consumer Credit sourcebook (CONC)	Annex F

Amendments to the material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex G to this instrument.

Citation

- F. This instrument may be cited as the Mortgages and Home Finance (Miscellaneous Amendments) Instrument 2016.

By order of the Board
[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 definitions as shown.

<i>participant firm</i>	<p>(1) (except in <i>FEES</i> 1 and <i>FEES</i> 6) a <i>firm</i> or a <i>member</i> other than:</p> <p>(a) (in accordance with section 213(10) of the <i>Act</i> (The compensation scheme) and regulation 2 of the <i>Electing Participants Regulations</i> (Persons not to be regarded as relevant persons) an <i>incoming EEA firm</i> which is:</p> <p>...</p> <p>(vii) <u>an MCD mortgage credit intermediary;</u></p> <p>in relation to its <i>passport activities</i>, unless it has <i>top-up cover</i> ;</p> <p>...</p>
<i>residential renovation agreement</i>	<p>an unsecured <u>a credit agreement</u> entered into on or after 21 March 2016 the purpose of which is the renovation of residential property, as described in paragraph 2a of article 2 of the <i>Consumer Credit Directive</i>, <u>and which is not secured on land.</u></p>
<i>top-up cover</i>	<p>cover provided by the <i>compensation scheme</i> for <i>claims</i> against an <i>incoming EEA firm</i> (which is a <i>credit institution</i>, an <i>IMD insurance intermediary</i>, an <i>IMD reinsurance intermediary</i>, a <i>MiFID investment firm</i>, a <i>UCITS management company</i>, <u>an MCD mortgage credit intermediary</u> or an <i>AIFM</i>) in relation to the <i>firm's passport activities</i> and in addition to, or due to the absence of, the cover provided by the <i>firm's Home State</i> compensation scheme (see <i>COMP</i> 14 (Participation by EEA firms)).</p>

Annex B**Amendments to the Fees manual (FEES)**

In this Annex, underlining indicates new text.

6 Financial Services Compensation Scheme Funding

...

6.6 Incoming EEA firms

- 6.6.1 R If an *incoming EEA firm*, which is a *CRD credit institution*, an *IMD insurance intermediary*, an *MCD mortgage credit intermediary* or *MiFID investment firm*, is a *participant firm*, the *FSCS* must give the *firm* such discount (if any) as is appropriate on the share of any levy it would otherwise be required to pay, taking account of the nature of the levy and the extent of the compensation coverage provided by the firm's *Home State* scheme.

Annex C

**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.

4A Additional MCD advising and selling standards

...

4A.2 Adequate explanations

4A.2.1 R (1) An *MCD mortgage lender* or *MCD mortgage credit intermediary* must provide, orally or in a *durable medium*, adequate explanations to the *consumer* of the proposed *MCD regulated mortgage contract* and any ancillary services, before any binding offer is issued to that *consumer*, to enable the *consumer* to assess whether the proposed *MCD regulated mortgage contract* and ancillary services meets their needs and financial situation.

[**Note:** article 16(1) of the *MCD*]

(2) The explanations must, where applicable, include:

- (a) the pre-contractual information to be provided in accordance with:
 - (i) the *ESIS* or *illustration*; and
 - (ii) in the case of an *MCD mortgage credit intermediary* who is not also an *MCD mortgage lender* carrying out direct sales only, *MCOB* 4.4A.1R(1) and *MCOB* 4.4A.1R(2), *MCOB* 4.4A.4R, *MCOB* 4.4A.8R(1)(a), (c), (d) and (2), and *MCOB* 4A.1.1R to *MCOB* 4A.1.7R

...

5A Instructions to complete the ESIS
Annex
2R

...

4 (Where ~~applicable~~ there is a credit intermediary who is not the lender) Section ‘2. Credit intermediary’

4.1 R Where an *MCD mortgage credit intermediary* (other than the lender) provides an *ESIS* to a *consumer*, the *MCD mortgage credit intermediary* must include the following information:

...

...

14.1 Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements

...

14.1.3 R ...

- (2) MCD article 3(1)(b) credit intermediaries, who are not also MCD article 3(1)(b) creditors carrying out direct sales only, must additionally comply with the following provisions in *MCOB*. These provisions apply with such changes as are necessary to apply them to *MCD article 3(1)(b) credit agreements* and activity undertaken in relation to those agreements:

...

...

Annex D

Amendments to the Supervision manual (SUP)

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

The form at SUP 12 Annex 3R (Add an appointed representative or tied agent form) is amended as shown.

12 Annex Add an appointed representative or tied agent form
3R

Add an appointed representative or tied agent form

Notification under *SUP 12.7.1R* (i.e. the form in *SUP 12 Ann 3R*)

Firm name (i.e. the principal firm)[†]

("The firm")

Firm reference number[§]

Address[§]

Please return the form to:

Financial Conduct Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

United Kingdom

Telephone +44 (0) 300 500 0597

Facsimile +44 (0) 207 066 0017

E-mail iva@fca.org.uk

Website <http://www.fca.org.uk>

Registered as a Limited Company in England and Wales No 1920623. Registered Office as above.

[†] These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

* These questions should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online

[§] Denotes a mandatory field

NOTES

This form should be used to notify the FCA of a new appointed representative or tied agent. It is the form required by SUP 12.7.1R which is set out in SUP 12 Ann 3R.

For the purposes of this form, references to 'appointed representative' include 'tied agent' unless the context otherwise requires

Personal details

Section A

1 Contact name for this form (this is not necessarily the same person making the declaration at the end of the form) †

§

2 Contact's details:

a position in the *firm* †

b daytime telephone number †

c e-mail address †

d individual reference number (IRN), if applicable *

e business address †

f post code †

g mobile phone †

h fax number †

† These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

* These questions should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online

§ Denotes a mandatory field

New Appointed Representative Details

Section B

1	Name of the appointed representative [†] §	§
	Appointed Representative FRN (if known) *	
	Address of the appointed representative [†] §	§
2		
		Postcode:
3	Trading name(s) of the appointed representative, if different to the name given in question 1 above [†]	
4	Telephone number of the appointed representative [†]	
5	Fax number of the appointed representative [†]	
6	Email address of the appointed representative [†]	
7	Website address of the appointed representative [†]	
8	Legal status of the appointed representative [†] §	

Private limited company	<input type="checkbox"/>	Public limited company	<input type="checkbox"/>
Partnership	<input type="checkbox"/>	Limited partnership	<input type="checkbox"/>
Limited liability partnership	<input type="checkbox"/>	Unincorporated association	<input type="checkbox"/>
Sole trader	<input type="checkbox"/>	Other, please specify below	<input type="checkbox"/>

[†] These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

* These questions should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online

§ Denotes a mandatory field

Date of appointment (if an appointed representative carrying on insurance mediation activities or a tied agent) or commencement of activities (if any other kind of appointed representative) † §

§

- | | | Yes | No |
|------------|---|--------------------------|--------------------------|
| 10 | Is the appointed representative an introducer appointed representative? §† | <input type="checkbox"/> | <input type="checkbox"/> |
| 11 | Will the appointed representative undertake designated investment business? †§ | <input type="checkbox"/> | <input type="checkbox"/> |
| 12 | Will the appointed representative undertake home finance activities? † | <input type="checkbox"/> | <input type="checkbox"/> |
| 12A | <u>Will the appointed representative undertake consumer buy-to-let mortgage business? †</u> | <input type="checkbox"/> | <input type="checkbox"/> |
| 13 | Is the application in respect of: †§ | | |
| | (1) an appointed representative who will carry on insurance mediation activities? | <input type="checkbox"/> | <input type="checkbox"/> |

If question 13(1) is answered “yes”, you must complete the 3 fields immediately below:

Name of main contact for Financial Services register:

Title †

Forename(s) †

Surname(s) †

or

- | | | | |
|-----------|---|--------------------------|--------------------------|
| 14 | (2) a tied agent? | <input type="checkbox"/> | <input type="checkbox"/> |
| 14 | Will the appointed representative undertake credit- related regulated activities? † § | <input type="checkbox"/> | <input type="checkbox"/> |

† These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

§ Denotes a mandatory field

Warning[†]

Knowingly or recklessly giving the FCA information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000).

SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided.

Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the Appropriate Regulator.

It should not be assumed that information is known to the FCA merely because it is in the public domain or has previously been disclosed to the FCA or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Data Protection[†]

For the purposes of complying with the Data Protection Act, the personal information in this form will be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation. It will not be disclosed for any other purposes without the permission of the applicant.

Review and submission[†]

The ability to submit this form is given to an appropriate user or users by the firm's principal compliance contact.

Some questions do not require supporting evidence. However, the records, which demonstrate the applicant firm's compliance with the rules in relation to the questions, must be available to the FCA on request.

Declaration[†]**By submitting this notification:**

- **I/we confirm that this information is accurate and complete to the best of my knowledge and belief and that I have taken all reasonable steps to ensure that this is the case.**
- **I am/we are aware that it is a criminal offence knowingly or recklessly to give the FCA information that is false or misleading in a material particular.**
- **I/we will notify the FCA immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.**

Signature *

Name of signatory [†]Date[†]Position in firm [†]

Individual Registration Number (if applicable)

Tick here to confirm you have read and understood this declaration:

* These questions should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online.

[†] These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7.

...

The form at SUP 12 Annex 4R (Appointed representative notification form) is amended as shown.

12 Annex 4R **Appointed representative ~~notification form~~ or tied agent – change details**

Appointed representative or tied agent – change details

Notification under *SUP 12.7.7R* (i.e. the form in *SUP 12 Ann 4R*)

Firm name (i.e. the *principal firm*)[†]

("The firm")

Firm reference number[§]

Address*

[†] These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

[§] These questions should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online.

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Facsimile +44 (0) 207 066 0017
E-mail iva@fca.org.uk
Website <http://www.fca.org.uk>

Registered as a Limited Company in England and Wales No 1920623.
Registered Office as above

NOTES

This form should be used to change the details of an existing appointed representative or tied agent. It is the form required by SUP 12.7.7R which is set out in SUP 12 Ann 4R.

For the purposes of this form, references to 'appointed representative' include 'tied agent' unless the context otherwise requires.

N.B. if all the changes made on the form do not take effect from the same date, you should use more than one form for each set of changes that take effect on the same date.

Personal details

Section A

1 Contact name for this form (this is not necessarily the same person making the declaration at the end of the form)[†]

§

2 Contact's details:

a position in the *firm*[†]

§

b daytime telephone number[†]

§

c e-mail address[†]

d business address[†]

e post code[†]

[†] These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

f mobile phone[†]

g fax number[†]

Change Details of an Existing Appointed Representative

Section B

What is the name of the appointed representative whose details are to be amended? [†]

§

What is this appointed representative's Firm Reference Number? (If not known, this can be found on the Financial Services Register on our website at www.fca.org.uk) [†]

§

Yes

- 1 a. **Do you wish to suspend** the appointed representative? [†]

If 'Yes', please give the reasons for this: [†]

If you have any additional information to add to the reason above please attach it to this form [†]

Yes

- b. **Do you wish to reinstate** the appointed representative? [†]

[†] These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

I have supplied further information related to this page in Section 3 [†]

YES NO

2 Do you wish to change the name of the appointed representative? [†]

Yes

If 'Yes', what is the new name of the appointed representative? [†]

§

Yes

Do you wish to change the legal status of the appointed representative? [†]

3a

If 'Yes', what is the new legal status of the appointed representative? [†]

Private limited company

Public limited company

Partnership

Limited partnership

Limited liability partnership

Unincorporated association

Sole trader

Other, please specify below

§

Yes No N/A

3b Has the name change been approved by Companies House? [†]

N.B. If the appointed representative is a UK registered company or LLP, the name of the appointed representative can only be changed if the change has already been approved by Companies House.

Yes

4 Do you wish to change the address of the appointed representative? [†]

If 'Yes', please enter the new address: [†]

§

Postcode:

[†] These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

- 5 Do you wish to change the trading name(s) of the appointed representative? [†] Yes

If 'Yes', please provide details below. If you wish to amend a trading name please enter the name to be deleted in the box on the left and add the new one in the box on the right.

Please detail the trading name(s) to be deleted below: [†]

Please detail the trading name(s) to be added below: [†]

- 6 Do you wish to change the telephone number of the appointed representative? [†] Yes

If 'Yes', please enter the new telephone number: [†]

- 7 Do you wish to change the fax number of the appointed representative? [†] Yes

If 'Yes', please enter the new fax number: [†]

- 8 Do you wish to change the E-mail address of the appointed representative? [†] Yes

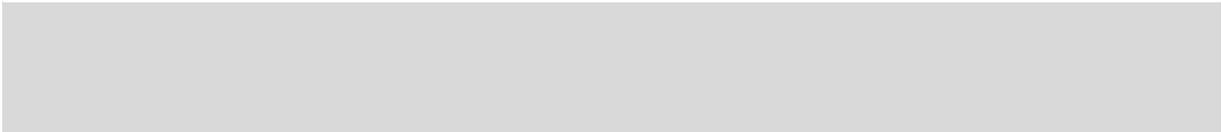
If 'Yes', please enter the new e-mail address[†]

- 9 Do you wish to change the website address of the appointed representative? [†] Yes

If 'Yes', please enter the new website address: [†]

- 10 Is the appointed representative currently an introducer appointed representative? [†] Yes No
- Do you wish to change this? If 'Yes', please provide details below: [†]

[†] These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

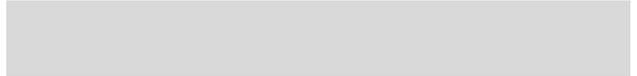


Yes No

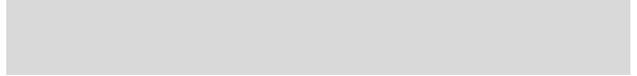
11 Do you wish to change the details of the Main Contact for the Financial Services Register for this appointed representative? †

If 'Yes', please give the new details:

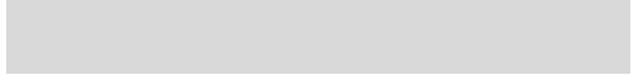
Title †



Forename(s) †



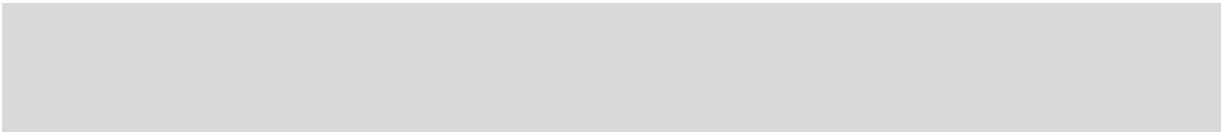
Surname(s) †



Yes No

12 Does the appointed representative undertake home finance activities? †

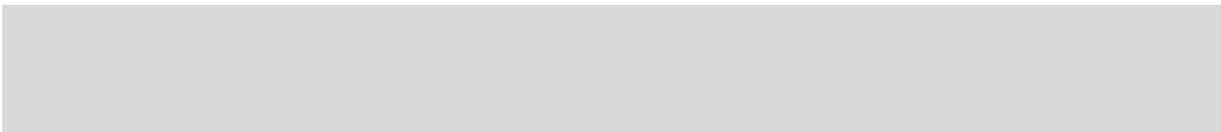
Do you wish to change this? If 'Yes', please provide details below: †



Yes No

12A Does the appointed representative undertake consumer buy-to-let mortgage business? †

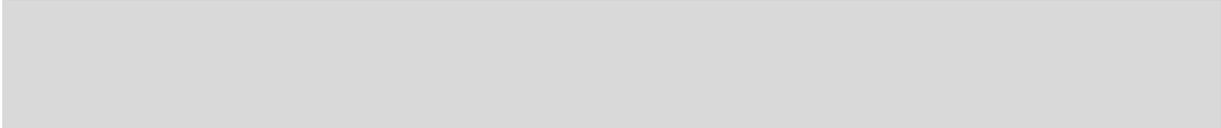
Do you wish to change this? If 'Yes', please provide details below: †



Yes No

13 Does the appointed representative undertake designated investment business activities? †

Do you wish to change this? If 'Yes', please provide details below: †



† These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.7

13A Does the appointed representative undertake credit-related regulated activities? Yes No

Do you wish to change this? If "Yes", please provide details below: †

14 Is the change in respect of an appointed representative who is carrying on or proposes to carry on insurance mediation activities or a tied agent? Yes No

If so please provide details below: †

15 Please enter the date on which these changes take effect: †

§ / /

† These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.

3.01 Is there any other information the approved person or the firm considers to be relevant to the application? †

Yes

No

If so, please provide full details†

3.02 Please indicate clearly which question the supplementary information relates to. †

Question	Information

3.03 How many additional sheets are being submitted? †

† These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.

Supporting Documents

Indicate the required supporting documents to accompany this form[†].

Documents	Mode (Send by email, Post, or Fax)

Other information (please specify)[†]:

--

[†] These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.

Declaration and signature

Warning[†]

Knowingly or recklessly giving the FCA information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FCA. It should not be assumed that information is known to the FCA merely because it is in the public domain or has previously been disclosed to the FCA or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Data Protection[†]

For the purposes of complying with the Data Protection Act, the personal information in this form will be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation. It will not be disclosed for any other purposes without the permission of the applicant. Some questions do not require supporting evidence. However, the records, which demonstrate the applicant firm's compliance with the rules in relation to the questions, must be available to the FCA on request.

Declaration[†]

By submitting this notification:

- **I/we confirm that this information is accurate and complete to the best of my knowledge and belief and that I have taken all reasonable steps to ensure that this is the case.**
- **I am/we are aware that it is a criminal offence knowingly or recklessly to give the FCA information that is false or misleading in a material particular.**
- **I/we will notify the FCA immediately if there is a significant change to the information given in the form. If I/we fail to do so, this may result in a delay in the application process or enforcement action.**

Signature^{*}

Name of signatory[†]

Date[†]

Position in *firm*[†]

Individual Registration Number (if applicable)

Tick here to confirm you have read and understood this declaration:

*The above questions should only be completed if the form is being submitted in one of the ways set out in SUP 15.7 other than online submission. It should not be completed if the submission of this form is online.

[†]These questions should be completed whether submission of this form is online or in one of the other ways set out in SUP 15.

[∞] These questions should only be completed if submission of this form is online. It should not be completed if the form is being submitted in one of the other ways set out in SUP 15.7.

...

Amend the following as shown.

13A Annex 1G Application of the Handbook to Incoming EEA Firms

...

1) Module of Handbook	(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	(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
------------------------------	--	---

...

COMP	Applies, except in relation to the <i>passport activities</i> of a <i>MiFID investment firm</i> , a <i>CRD credit institution</i> (other than an electronic money institution within the meaning of article 1(3)(a) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <i>CRD</i>), an <i>IMD insurance intermediary</i> , a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i> , <u>an <i>MCD mortgage credit intermediary</i></u> and an incoming AIFM branch carrying on either <i>AIFM management functions</i> for an <i>unauthorised AIF</i> or non-core services under article 6.4 of <i>AIFMD</i> (see the definition of " <i>participant firm</i> "). However, a <i>firm</i> specified above may be able to apply for <i>top-up cover</i> in relation to its <i>passport activities</i> (see <i>COMP 14</i> (Participation by EEA Firms)).	Does not apply in relation to the passport activities of an <i>MiFID investment firm</i> , a <i>CRD credit institution</i> , an <i>IMD insurance intermediary</i> , <u>an <i>MCD mortgage credit intermediary</i></u> or a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i> or an <i>incoming EEA AIFM</i> regarding <i>AIFM management functions</i> carried on for an <i>unauthorised AIF</i> or non-core services under article 6.4. Otherwise, <i>COMP</i> may apply, but the coverage of the <i>compensation scheme</i> is limited for non-UK activities (see <i>COMP 5</i>).
-------------	---	--

...

Annex E

Amendments to the Compensation sourcebook (COMP)

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

5 Protected claims

...

5.6 Protected home finance mediation

...

5.6.3 R This section does not apply in respect of a *regulated mortgage contract* which is:

(1) a legacy CCA mortgage contract; ~~or~~

(2) a CBTL credit agreement.

...

6 Relevant persons and successors in default

...

6.2 Who is a relevant person?

...

6.2.2 G (1) An *incoming EEA firm*, which is a *credit institution*, an *IMD insurance intermediary*, ~~or a MiFID investment firm~~ or an MCD mortgage credit intermediary, and its *appointed representatives*, are not *relevant persons* in relation to the *firm's passported activities*, unless it has *top-up cover*. (See definition of "*participant firm*").

...

Annex F**Amendments to the Consumer Credit sourcebook (CONC)**

In this Annex, underlining indicates new text.

1 Application and purpose and guidance on financial difficulties

...

1.2 Who? What? Where?

...

Application to MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries

1.2.8 R Subject to *CONC* 1.2.10R:

...

- (3) the following provisions of *CONC* additionally apply to an *MCD article 3(1)(b) credit intermediary* who is not also an *MCD article 3(1)(b) creditor carrying out direct sales only*:

...

Annex G

Amendments to the Perimeter Guidance manual (PERG)

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

14 Guidance on home reversion and home purchase activities

...

14.5 The “by-way-of-business” test

...

Q38E Will I meet the business test if I only enter into one sale and rent back agreement?

Yes, provided you are an *SRB agreement provider* that is not a *related party* in relation to the *SRB agreement seller*.

This is because of an amendment to the *Business Order* made by the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order ~~2011 (SI 2011/2304)~~ 2014 (SI 2014/3340) which came into force on ~~16 September 2011~~ 31 December 2014. This Order also provides that the amendment will cease to have effect on 1 January ~~2015~~ 2022. The Treasury is required to review the operation and effect of the amendment and to publish a report before the end of ~~2012~~ 2017. Following the review, the Treasury will decide whether the amendment should be allowed to expire, be revoked early, or be maintained in force with or without amendments. A further instrument would be needed to maintain the amendment in force or to revoke the amendment early.

Appendix 4A

Changes to the prescribed market definition

**DISCLOSURE GUIDANCE AND TRANSPARENCY RULES SOURCEBOOK
(MISCELLANEOUS AMENDMENTS) INSTRUMENT 2016**

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 73A (Part 6 Rules);
 - (2) section 89A (Transparency rules);
 - (3) section 89B (Provision of voteholder information);
 - (4) section 89C (Provision of information by issuers of transferable securities);
 - (5) section 89D (Notification of voting rights held by issuer);
 - (6) section 137A (The FCA’s general rules);
 - (7) section 137T (General supplementary powers); and
 - (8) 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 [*date*].

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Disclosure Guidance and Transparency Rules Sourcebook (Miscellaneous Amendments) Instrument 2016.

By order of the Board
[*date*]

Annex

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

- prescribed market*
- (1) (except in, and for the purpose of, DTR 5) a market which had been prescribed by the Treasury in the *Prescribed Markets and Qualifying Investments Order* as it was in force on 2 July 2016.
 - (2) (in, and for the purpose of, DTR 5) a market which is established under the rules of a UK RIE.

Appendix 4B

Changes to the requirements in the Disclosure Rules and Transparency Rules

**DISCLOSURE GUIDANCE AND TRANSPARENCY RULES SOURCEBOOK
(MISCELLANEOUS AMENDMENTS NO 2) INSTRUMENT 2016**

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 73A (Part 6 Rules);
 - (2) section 89O (Corporates governance rules);
 - (3) section 137A (The FCA’s general rules);
 - (4) section 137T (General supplementary powers); and
 - (5) 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 [*date*].

Amendments to the Handbook

- D. The Disclosure Guidance and Transparency Rules sourcebook (DTR) is amended in accordance with the Annex to this instrument.

Notes

- E. In the Annex to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Disclosure Guidance and Transparency Rules Sourcebook (Miscellaneous Amendments No 2) Instrument 2016.

By order of the Board
[*date*]

Annex

Amendment to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

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

1B Introduction (Corporate governance)

1B.1 Application and purpose (Corporate governance)

...

Application: Corporate governance statements

1B.1.5 R Except as set out in *DTR 1B.1.6R* and *DTR 1B.1.7R*, *DTR 7.2* applies to an *issuer*:

- (1) whose *transferable securities* are admitted to trading; and
- (2) which is a company within the meaning of section 1(1) of the Companies Act 2006.

~~Exemption~~ Exemptions

1B.1.6 R The *rules* in *DTR 7.2.2R*, *7.2.3R*, ~~and *7.2.7R*~~ and *7.2.8AR* do not apply to an *issuer* which has not issued *shares* which are *admitted to trading* unless it has issued *shares* which are traded on an *MTF*.

[**Note:** article 20(4) of the *Accounting Directive*]

1B.1.7 R *DTR 7.2.8AR* does not apply to an *issuer* which:

- (1) qualifies as a small company under sections 382 to 383 of the Companies Act 2006; or
- (2) qualifies as a medium company under sections 465 to 466 of the Companies Act 2006,

in relation to the financial year to which the corporate governance statement relates.

[**Note:** article 20(5) of the *Accounting Directive*]

1B.1.8 G *DTR 7.2.8AR* does not apply to a *listed company* which:

- (1) is required to comply with *DTR 7.2* as if it were an *issuer* by *LR 9.8.7AR*, *LR 14.3.24R* or *LR 18.4.3R(2)*; and
- (2) would meet the criteria in *DTR 1B.1.7R* if it were a company incorporated in the *United Kingdom*.

...

7 Corporate governance

...

7.2 Corporate governance statements

...

- 7.2.8A **R** (1) The corporate governance statement must contain a description of:
- (a) the diversity policy applied to the issuer's administrative, management and supervisory bodies, for aspects including age, gender, educational and professional backgrounds;
 - (b) the objectives of the diversity policy in (a);
 - (c) how the diversity policy in (a) has been implemented; and
 - (d) the results in the reporting period.
- (2) If no diversity policy is applied by the issuer, the corporate governance statement must contain an explanation as to why this is the case.

[Note: article 20(1)(g) of the *Accounting Directive*]

- 7.2.8B **G** DTR 7.2.8AR does not apply to an issuer which qualifies as a small or medium company under DTR 1B.1.7R.

...

[Editor's note: The numbering of the transitional provisions below takes into account the changes suggested by Appendix 3 of CP16/8 *Quarterly Consultation Paper No. 12* (March 2016), as if they were made.]

TP 1 Disclosure and transparency rules

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
...					
[29]	<u>DTR 1B.1.7R and DTR 7.2.8AR</u>	R	<u>DTR 1B.1.7R and DTR 7.2.8AR apply for a financial year of an issuer beginning on or after 1</u>	<u>From [] 2016</u>	<u>[] 2016</u>

			<u>January 2017.</u>		
[30]	<u>DTR 1B.1.8G</u> and <u>DTR</u> <u>7.2.8BG</u>	<u>G</u>	<u>DTR 1B.1.8G applies for a financial year of a listed company beginning on or after 1 January 2017.</u> <u>DTR 7.2.8BG applies for a financial year of an issuer beginning on or after 1 January 2017.</u>	From [] 2016	[] 2016

Appendix 5

Changes to the Training and Competence sourcebook (TC)

**TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS
AMENDMENTS NO [15]) INSTRUMENT 2016**

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 138C (Evidential provisions).
- 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 [*date*] 2016.

Amendments to the Handbook

- D. The Training and Competence sourcebook (TC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Training and Competence Sourcebook (Qualifications Amendments No [15]) Instrument 2016.

By order of the Board
[*date*] 2016

Annex

Amendments to the Training and Competence sourcebook (TC)

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

Appendix 4 Appropriate Qualification tables

App 4.1.1E

...

Part 2: Appropriate Qualifications Tables

...

Qualification provider	Qualification	Activity Number(s)	Key
...			
Chartered Institute of Bankers in Ireland	Fellow or Associate	15, 16, 17, 18, 19	4
...			
Chartered Institute for Securities and Investment (CISI) - (Formerly the Securities and Investment Institute (SII); formerly The Securities Association)	Investment Advice Diploma (where candidate holds 3 modules including the private client advice module)	4 and 6	a
	<u>Investment Advice Diploma (where candidate holds 3 modules including the Financial Planning and Advice module)</u>	<u>4 and 6</u>	
	...		
...			
Chartered Insurance Institute	...		
	Financial Planning Certificate - Paper 2	18, 19	6

	<u>(LP1) Life and pensions customer operations, (LP2) Financial services products and solutions, and (LP3) Life and pensions principles and practices (where candidate holds all 3 modules)</u>	<u>15, 16, 17, 18, 19</u>	<u>6</u>
...			
Swiss Finance Institute	...		
<u>The Institute of Banking in Ireland – (Formerly the Chartered Institute of Bankers in Ireland)</u>	<u>Fellow or Associate</u>	<u>15, 16, 17, 18, 19</u>	<u>4</u>
	<u>Professional Certificate in International Investment Fund Services</u>	<u>15, 16, 17</u>	<u>6</u>
...			

Appendix 6

Disapplication of CASS audit requirements to certain debt management firms

CLIENT ASSETS SOURCEBOOK (AMENDMENT NO [10]) INSTRUMENT 2016

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); and
 - (2) section 137T (General supplementary powers).
- 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 [*date*] 2016.

Amendments to the Handbook

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Client Assets Sourcebook (Amendment No [10]) Instrument 2016.

By order of the Board
[*date*] 2016

Annex A

Amendments to the Supervision manual (SUP)

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

3 Auditors

3.1 Application

...

3.1.2 R Applicable sections (see SUP 3.1.1R)

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...			
(5B) [FCA]	<i>CASS debt management firm <u>which is not subject to a requirement stating that it must not hold client money or a requirement to the same effect</u></i>	<i>SUP 3.1 SUP 3.10 SUP 3.11</i>	<i>SUP 3.1 SUP 3.10</i>
...			

...

Appendix 7

Distribution and promotion of credit union deferred shares and subordinated debt

CREDIT UNIONS SOURCEBOOK (AMENDMENT NO [9]) INSTRUMENT 2016**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 (General rule-making power);
 - (2) section 137R (Financial promotion power);
 - (3) section 137T (General supplementary powers); and
 - (4) 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 on [*date*] 2016.

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)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Supervision manual (SUP)	Annex C
Credit Unions sourcebook (CREDS)	Annex D

Citation

- H. This instrument may be cited as the Credit Unions Sourcebook (Amendment No [9]) Instrument 2016.

By order of the Board
[*date*] 2016

Annex A

Amendments to the Glossary of definitions

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

<i>charity</i>	(in <i>BCOBS</i> , and <i>BIPRU</i> <u>and in the definition of <i>relevant credit union client</i></u>): ...
<i>credit union</i>	a body corporate registered under the Industrial and Provident Societies Act 1965 <u>Co-operative and Community Benefit Societies Act 2014</u> as a credit union in accordance with the Credit Unions Act which is an <i>authorised person</i> or a body corporate registered under the Credit Unions (Northern Ireland) Order 1985 which is an <i>authorised person</i> or a body corporate registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 as a credit union which is an <i>authorised person</i> .
<i>Great Britain credit union</i>	a body corporate registered under the Industrial and Provident Societies Act 1965 <u>Co-operative and Community Benefit Societies Act 2014</u> as a <i>credit union</i> in accordance with the Credit Unions Act which is an <i>authorised person</i> .
<i>mutual society share</i>	a <u>share, excluding a deferred share issued by a credit union,</u> which: (a) meets the requirements for common equity Tier 1 capital instruments under article 28 or 29; and (b) is issued by an institution which is of a type listed in article 27; in each case of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.
<i>non-readily realisable security</i>	a <i>security</i> which is not any of the following: ... (d) a <i>mutual society share</i> ; (e) <u>a deferred share issued by a credit union; or</u>

	(f) <u>credit union subordinated debt.</u>
<i>small business</i>	(in <i>COMP</i> and in the definition of <i>relevant credit union client</i>) a <i>partnership, body corporate</i> , unincorporated association or mutual association with an annual turnover of less than £1 million (or its equivalent in any other currency at the relevant time).
<i>version 1 credit union</i>	a <i>credit union</i> whose <i>Part 4A permission</i> includes a <i>requirement</i> (whether for all or for particular purposes) that it must not lend more than £15,000, or such lesser amount as may be specified, in excess of a member's shareholding; in this definition a "member's shareholding" means any shares held by a member of the <i>credit union</i> in accordance with sections 5 and 7 of the Credit Unions Act 1979 or articles 14 and 23 of the Credit Unions (Northern Ireland) Order 1985 (as appropriate).
<i>version 2 credit union</i>	a <i>credit union</i> which is not a <i>version 1 credit union</i>.

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

<i>credit union subordinated debt</i>	a subordinated loan to a <i>credit union</i> that meets the conditions in part 8.2(5) of the Credit Unions Rulebook Part of the <i>PRA Rulebook</i> .
<i>relevant credit union client</i>	(in <i>CREDS</i>): <ol style="list-style-type: none"> (a) an individual; (b) a <i>charity</i> which has an annual income of less than £1 million; or (c) a <i>small business</i>.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

4.7 Direct offer financial promotions

...

Non-readily realisable securities

...

4.7.11 G COBS 4.7.7R does not apply in relation to *credit union subordinated debt* or to deferred shares issued by a *credit union*. Firms are reminded that CREDS 3A contains requirements regarding the retail distribution and *financial promotion* of these instruments.

...

9.3 Guidance on assessing suitability

...

Investments subject to restrictions on retail distribution

...

9.3.5 G (1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *investments*:

...

(d) *mutual society shares* are subject to specific requirements in relation to *dealing* and *arranging* activities (see COBS 22.3);

(e) deferred shares issued by a *credit union* are subject to specific requirements in relation to *dealing* and *arranging* activities (see CREDS 3A.5);

(f) *credit union subordinated debt* is subject to a restriction on *direct offer financial promotions* (see CREDS 3A.5).

...

22.2 Requirements on the retail distribution of mutual society shares

...

22.2.1A G COBS 22.2 does not apply in relation to deferred shares issued by a *credit*

union. Firms are reminded that CREDS 3A contains requirements regarding the retail distribution of these shares.

...

Annex C

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

...

16.1 Application

...

- 16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17)

(1) Section (s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
<i>SUP</i> 16.10	All categories of <i>firm</i> except:	Entire section
	(a) an <i>ICVC</i> ;	
	(b) a <i>UCITS</i> <i>qualifier</i> ; <u>and</u>	
	(c) a <i>credit union</i> ; <u>and [deleted]</u>	
	(d) a <i>dormant account fund operator</i> .	
...		

...

16.10 Verification of standing data

Application

- 16.10.1 G The effect of *SUP* 16.1.1R is that this section applies to every *firm* except:
- (1) an *ICVC*;

- (2) a *UCITS* qualifier;
- (2A) an *AIFM* qualifier; and
- (3) ~~a *credit union*~~; and [deleted]
- (4) a *dormant account fund operator*.

...

Requirement to check the accuracy of standing data and to report changes to the FCA

...

- 16.10.4A R (1) ...
- (2) A *credit union* or a *firm* with *permission* to carry on only *credit-related regulated activity* must submit any corrected standing data under *SUP* 16.10.4R(3):
 - (a) to static.data@fca.org.uk or via post or hand delivery to the *FCA* marked for the attention of the 'Static Data team'; or
 - (b) by using the appropriate online systems available from the *FCA*'s website.

...

Annex D

Amendments to the Credit Unions sourcebook (CREDS)

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

3A.2 Shares and deposits

...

Deposits including child trust funds

...

3A.2.4 G ...

Sale of deferred shares

3A.2.5 R *A credit union must not require any of its members to purchase deferred shares or purport to do so.*

3A.3 Borrowing

...

3A.3.2 G ...

3A.3.3 R *A credit union must not require any of its members to make a subordinated loan to the credit union or purport to do so.*

Insert the following new section after *CREDS* 3A.4. The text is all new and is not underlined.

3A.5 Requirements on the retail distribution and financial promotion of capital instruments

Application

3A.5.1 R (1) The requirements in this section apply:

- (a) (excluding the requirements in *CREDS* 3A.5.6R and *CREDS* 3A.5.7R) to a *firm* when *dealing* in or *arranging* a deal in a *deferred share* with or for a *relevant credit union client* where the *relevant credit union client* is to enter into the *deal* as buyer; and
- (b) (excluding the requirements in *CREDS* 3A.5.3R to *CREDS*

3A.5.5R) to a *firm* when:

- (i) *communicating a direct offer financial promotion relating to credit union subordinated debt to a relevant credit union client; or*
- (ii) *approving a direct offer financial promotion relating to credit union subordinated debt for communication to a relevant credit union client.*

(2) The requirements in this section do not apply if the *deal* relates to the trading of a *deferred share* or *credit union subordinated debt* in the secondary market.

(3) The requirements in this section, other than *CREDS 3A.5.8R*, *CREDS 3A.5.9R* and *CREDS 3A.5.10R*, do not apply if the *firm* has taken reasonable steps to ensure that the *relevant credit union client* is a *certified high net worth investor*, a *certified sophisticated investor* or a *self-certified sophisticated investor* in accordance with *COBS 22.2.4R*, as adapted by *CREDS 3A.5.8R* for the purposes of this section.

3A.5.2 G The effect of *CREDS 3A.5.1R(1)(a)* is that the requirements of this section apply to a *credit union* where it is *dealing* in its own *deferred shares*.

Statements requirement relating to the retail distribution of deferred shares

3A.5.3 R (1) The *firm* must:

- (a) give the *relevant credit union client* a risk warning in the form in (2) on paper or another *durable medium*; and
- (b) obtain confirmation in writing from the *relevant credit union client* that the *relevant credit union client* has read it,

in good time before the *relevant credit union client* has committed to buy the *deferred share*.

(2) “The investment to which this communication relates is a deferred share. Direct investment in deferred shares can be high risk and is very different to investment in deposit accounts or other savings products. In particular, you should note that:

- (a) the entire amount you pay for the deferred share is at risk;
- (b) the sum you pay is only repayable to you in limited circumstances, specifically if:
 - (i) the credit union has obtained specific regulatory permission to make the repayment; or
 - (ii) the credit union is wound up, and there are funds

remaining after all creditors, including savers and holders of subordinated debt, have been repaid;

- (c) the sum you pay for deferred shares is not covered by the Financial Services Compensation Scheme;
- (d) a deferred share may only be sold to a member of the same credit union and may be difficult to sell on; and
- (e) investing more than 10% of your savings or net investment portfolio in deferred shares issued by a credit union, credit union subordinated debt and mutual society shares is unlikely to be in your best interests.”

3A.5.4 R (1) The *firm* must:

- (a) give the *relevant credit union client* a statement in the form in (2) on paper or another *durable medium*; and
- (b) obtain confirmation in writing from the *relevant credit union client* that the *relevant credit union client* has signed it,

in good time before the *relevant credit union client* has committed to buy the *deferred share*.

(2) “I make this statement in connection with my proposed investment in deferred shares issued by a credit union. I have been made aware that investing more than 10% of my net assets in deferred shares issued by a credit union, credit union subordinate debt and mutual society shares is unlikely to be in my best interests. I declare that the proposed investment would not result in more than 10% of my net assets being invested in deferred shares issued by a credit union, credit union subordinated debt and mutual society shares. Net assets for these purposes mean my financial assets after deduction of any debts I have, and do not include:

- (a) the property which is my primary residence, any amount owed under a mortgage relating to the purchase of that property, or any money raised through a loan secured on that property;
- (b) any rights of mine under a contract of insurance; or
- (c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are) or may be entitled.

I accept that the investment to which this statement relates will expose me to a significant risk of losing all the money invested.

Signature:

Date: ”

- (3) The requirement in (1) to give a *relevant credit union client* the statement, and to obtain written confirmation that the statement has been signed, applies only where the *relevant credit union client*:
- (a) is an individual; and
 - (b) is not receiving advice that constitutes a *regulated activity* on the *deferred share*.

Assessing the appropriateness of an investment in deferred shares

- 3A.5.5 R If the *relevant credit union client* is not receiving advice that constitutes a *regulated activity* on the *deferred share*, the *firm* must assess whether investment in the *deferred share* is appropriate for the *relevant credit union client*, complying with the requirements in *COBS 10* as if the *firm* were providing non-advised *investment services* in the course of *MiFID* or *equivalent third country business*.

Statements requirement in the case of a direct offer financial promotion relating to subordinated debt

- 3A.5.6 R (1) The *firm* must:
- (a) include a risk warning in the form in (2) for any *direct offer financial promotion* to a *relevant credit union client* relating to *credit union subordinated debt*; and
 - (b) obtain confirmation in writing from the *relevant credit union client* that the *relevant credit union client* has read the risk warning,
- in good time before the *relevant credit union client* makes the subordinated loan to the *credit union*.
- (2) “The investment to which this financial promotion relates is credit union subordinated debt. Making a subordinated loan to a credit union can be high risk and is very different to investment in deposit accounts or other savings products. In particular you should note that:
- (a) the entire amount you lend is at risk;
 - (b) the loan will not be repaid to you until at least five years from the date on which you lend the amount to the credit union;
 - (c) if the credit union is wound up the sum you lend is only repayable to you if there are funds remaining after all creditors (excluding holders of deferred shares) have been repaid;
 - (d) the entire amount you lend is not covered by the Financial

Services Compensation Scheme;

- (e) to the fullest extent possible, you will be required to waive any right to set off any amount you owe to the credit union against any amount the credit union owes to you under the subordinated loan; and
- (f) investing more than 10% of your savings or net investment portfolio in credit union subordinated debt, deferred shares issued by a credit union and mutual society shares is unlikely to be in your best interests.”

3A.5.7 R (1) The *firm* must:

- (a) include a statement in the form in (2) in any *direct offer financial* promotion to a *relevant credit union client* relating to *credit union subordinated debt*; and
- (b) obtain confirmation in writing from the *relevant credit union client* that the *relevant credit union client* has signed the statement,

in good time before the *relevant credit union client* makes the subordinated loan to the *credit union*.

- (2) “I make this statement in connection with my proposed making of a subordinated loan to a credit union. I have been made aware that investing more than 10% of my net assets in credit union subordinated debt, deferred shares issued by a credit union and mutual society shares is unlikely to be in my best interests. I declare that the proposed investment would not result in more than 10% of my net assets being invested in credit union subordinated debt, deferred shares issued by a credit union and mutual society shares. Net assets for these purposes mean my financial assets after deduction of any debts I have, and do not include:
 - (a) the property which is my primary residence, any amount owed under a mortgage relating to the purchase of that property, or any money raised through a loan secured on that property;
 - (b) any rights of mine under a contract of insurance; or
 - (c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are) or may be entitled.

I accept that the investment to which this statement relates will expose me to a significant risk of losing all the money invested.

Signature:

Date: ”

- (3) The requirement in (1) to include the statement in a *direct offer financial promotion*, and to obtain written confirmation that the statement has been signed, applies only where the *relevant credit union client*:
- (a) is an individual; and
 - (b) is not receiving advice that constitutes a *regulated activity* on the *credit union subordinated debt*.

Application of exemptions in COBS 22.2.4R

- 3A.5.8 R (1) Where a *firm* applies any exemption set out in *COBS 22.2.4R* under *CREDS 3A.5.1R(3)(a)*, any reference in *COBS 22.2.4R* to *mutual society share* must be read as though it includes a *deferred share* or *credit union subordinated debt*, as applicable.
- (2) For the purposes of any assessments or certifications required by the exemptions in *COBS 22.2.4R*, as applied for the purposes of this section under *CREDS 3A.5.1R(3)(a)*, any reference in *COBS 4.12* provisions to *non-mainstream pooled investments* must be read as though it is a reference to *deferred shares* or *credit union subordinated debt*, as applicable.
- (2) If the *firm* is relying on the exemptions for *certified high net worth investors*, *certified sophisticated investors* or *self-certified sophisticated investors* to comply with this section, the statement the investor must sign should have any reference to *non-mainstream pooled investments* replaced with a reference to *deferred shares* or *credit union subordinated debt*, as applicable.
- (4) The *firm* must give the *relevant credit union client* a written copy of any risk warning or statement that the *relevant credit union client* has been asked to sign for the purposes of compliance with this section.
- 3A.5.9 G *COBS 22.2.4R* contains the requirements that must be met before an individual can be exempted from the requirements of this section as a *certified high net worth investor*, a *certificated sophisticated investor*, or a *self-certified sophisticated investor*.

Record keeping

- 3A.5.10 R A *firm* which carries on an activity which is subject to this section must comply with the following record-keeping and disclosure requirements:
- (1) the *firm* must make a record at or near the time of the activity certifying it complies with the requirements set out in this section;
 - (2) the record in (1) must include information and evidence demonstrating compliance with each of the requirements in this

section, as applicable;

- (3) if the requirements of this section did not apply because the *firm* relied on one of the exemptions, the record in (1) must include which exemption was relied on, together with the reason why the *firm* is satisfied that that exemption applies;
- (4) where the *firm* relies on the *certified high net worth investor*, the *certified sophisticated investor* or the *self-certified sophisticated investor* exemption, the record required in (1) must include a copy of the certificate or investor statement (as signed by the investor) and of the warnings or indications required by the exemption; and
- (5) the *firm* must retain the record required in (1) for three years.

Electronic documents

3A.5.11 G In this section:

- (1) any requirement that a document is signed may be satisfied by an electronic signature or electronic evidence of assent; and
- (2) any references to writing should be construed in accordance with *GEN 2.2.14R* and its related *guidance* provisions.

Responsibility of the credit union

3A.5.12 R Where the requirements of this section apply to a *firm* other than the *credit union* that issues the *deferred shares* or receives the *credit union subordinated debt*, the *credit union* must ensure that the *firm* complies with the requirements of this section.

Amend the following as shown.

9.2 Reporting

...

9.2.12 R ~~For the purpose of inclusion in the public record maintained by the FCA, a credit union must provide the FCA, at the time of its authorisation, with details of a single contact within the credit union for complainants, and must promptly submit a notification of any subsequent change to static.data@fea.org.uk or via post or hand delivery to the FCA marked for the attention of the 'Static Data team'. [deleted]~~

9.2.12A G SUP 16.10.4R requires credit unions to check the accuracy of standing data and to report changes, including any change to the complaints contact or complaints officer, to the FCA.

- 9.2.13 G The contact point in *CREDS* 9.2.1R and ~~*CREDS* 9.2.12R~~ can be by name or job title and may include, for example, a telephone number.

...

10 Application of other parts of the Handbook to Credit unions

10.1 Application and purpose

...

Application of other parts of the Handbook and of Regulatory Guides to Credit Unions

- 10.1.3 G

Module	Relevance to Credit Unions
...	
Conduct of Business sourcebook (<i>COBS</i>)	<p><i>A credit union</i> which acts as a <i>CTF provider</i> or provides a <i>cash-deposit ISA</i> will need to be aware of the relevant requirements in <i>COBS</i>. <i>COBS</i> 4.6 (Past, simulated past and future performance), <i>COBS</i> 4.7.1 R (Direct offer financial promotions), <i>COBS</i> 4.10 (Systems and controls and approving and communicating financial promotions), <i>COBS</i> 13 (Preparing product information) and <i>COBS</i> 14 (Providing product information to clients) apply with respect to accepting deposits as set out in those provisions, <i>COBS</i> 4.1 and <i>BCOBS</i>. <u><i>A credit union that communicates with clients, including in a financial promotion, in relation to the promotion of deferred shares and credit union subordinated debt will need to be aware of the requirements of COBS 4.2 (Fair, clear and not misleading communications) and COBS 4.5 (Communicating with retail clients).</i></u></p>
...	

...

Sch 1 Record keeping requirements

- Sch 1.1G ~~There are no requirements relating to record keeping in *CREDS*. *CREDS* 3A.5.10R contains record keeping requirements relating to the retail distribution and *financial promotion of capital instruments*.~~

Appendix 8

A new ‘pooled investment vehicle’ definition for the marketing restriction rules on NMPIs

**PRODUCT INTERVENTION (POOLED INVESTMENT VEHICLES) INSTRUMENT
2016**

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”):
- (a) section 137A (General rule-making power);
 - (b) section 137D (Product intervention rules);
 - (c) section 137R (Financial promotion rules);
 - (d) section 137T (General supplementary powers); and
 - (e) section 139A (Power of the FCA to give guidance).

Commencement

- B. This instrument comes into force on [*three months after date of instrument*].

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Product Intervention (Pooled Investment Vehicles) Instrument 2016.

Notes

- E. In the Annex to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

By order of the Board
[*date*]

Annex

Amendments to the Glossary of definitions

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

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

[*Editor's note:* Please see Chapter 8 of the corresponding July QCP narrative for the rationale behind here providing two alternate options for the new definition of 'pooled investment vehicle'].

[Option 1]

pooled investment vehicle an arrangement that meets the following conditions:

- (a) it would amount to a *collective investment scheme* if either of the following exemptions in the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 did not apply:
 - (i) paragraph 5 (debt issues), except for paragraph 5(1)(c); or
 - (ii) paragraph 21 (bodies corporate etc); and
- (b) it does not have a general commercial or industrial purpose.

[Note: Readers may find it helpful to consider the guidance in *PERG* 16.2 (Questions 2.18, 2.19 and 2.22) on what arrangements have a general commercial or industrial purpose.]

[Option 2]

pooled investment vehicle an *undertaking*, other than a *collective investment scheme*, with the following characteristics:

- (a) the *undertaking* does not have a general commercial or industrial purpose;
- (b) the *undertaking* pools together capital raised from its investors for the purpose of investment with a view to generating a pooled return for those investors; and
- (c) at least some of the investors in the *undertaking* do not have direct and on-going day-to-day discretion or control over operational matters relating to the daily management of the

undertaking's assets.

[Note: The definition of “pooled investment vehicle” is substantially drawn from the definition of a “collective investment undertaking” set out in ESMA/2013/611. Readers may find it helpful to consider the guidance in *PERG* 16.2 on what arrangements are collective investment undertakings.]

Amend the following definitions as shown.

<i>non-mainstream pooled investment</i>	<p>any of the following <i>investments</i>:</p> <p>...</p> <p>(c) a security <u>an investment</u> issued or offered by a special purpose vehicle <u>pooled investment vehicle</u>, other than an <i>excluded security</i>;</p> <p>...</p>
<i>excluded security</i>	<p>any of the following <i>investments</i>:</p> <p>(a) a security <u>whereby where</u> the issuer's ability to fulfil its payment obligations to the investor, or the <i>investment</i> returns received in connection with the <i>security</i>, are wholly or predominantly linked to, contingent on, highly sensitive to or dependent on, the performance of or changes in the value of <i>shares, debentures</i> or <i>government and public securities</i>, whether or not such performance or changes in value are measured directly or via a market index or indices, and provided the relevant <i>shares</i> and <i>debentures</i> are not themselves issued by special purpose vehicles <u>pooled investment vehicles</u>;</p> <p>...</p> <p>(i) <u>a P2P agreement facilitated by a person who has Part 4A permission to operate an electronic system in relation to lending.</u></p>
<i>CoCo fund</i>	<p>an <i>unregulated collective investment scheme, qualified investor scheme</i> or a special purpose vehicle <u>pooled investment vehicle</u> under which the investment returns received by the investor, or the scheme or vehicle's ability to fulfil any payment obligations to the investor, are wholly or predominantly linked to, contingent on, highly sensitive to or dependent on, the performance of or changes in the value of <i>contingent convertible instruments</i>.</p>

Appendix 9

Changes to reporting requirements in the Supervision manual (SUP)

**SUPERVISION MANUAL (REPORTING No [x])
INSTRUMENT 2016**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers); and
 - (c) 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.
 - (1) Part 1 of the Annex on 31 October 2016; and
 - (2) Part 2 of the Annex on 31 December 2016.

Amendments to the Handbook

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Supervision Manual (Reporting No [x]) Instrument 2016.

By order of the Board
[*date* 2016]

Annex

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 31 October 2016

16 Reporting requirements

...

16.12 Integrated Regulatory Reporting

...

16.12.3 R ...

(3) Paragraph (2) does not apply to:

...

(aa) ~~data item CCR008 from RAG 12, where SUP 16.3.6R to SUP 16.3.10G will apply; (FCA Handbook only) [deleted]~~

...

Regulated Activity Group 7

...

16.12.22A R ...

Description of <i>Data item</i>	<i>Firms'</i> prudential category and applicable <i>data item</i> (note 1)
...	
Note 23	Where a <i>firm</i> submits data items for both RAG 7 and RAG 9, the <i>firm</i> must complete both Sections <u>Section D1 and D6</u> RMAR.

...

Regulated Activity Group 12

...

16.12.29C R ...

Description of data item	Data item (note 1)	Frequency		Submission deadline
		Annual revenue from <i>credit-related regulated activities</i> up to and including £5 million (note 2)	Annual revenue from <i>credit-related regulated activities</i> over £5 million	
...				
Credit broking websites (note 10)	CCR008	Quarterly (note 11)	Quarterly (note 11)	30 <i>business days</i> [deleted]
...				
Note 10	This data item applies to a firm that carries on credit broking where a fee or charge is or may become payable by a customer in connection with the credit broking activities. Firms are also reminded of the requirement to check the accuracy of standing data (including trading name(s) of the firm and website address) and to report changes to the FCA under SUP 16.10.4R and the requirement to give the FCA reasonable advance notice of a change in any business name under which the firm carries on a regulated activity or ancillary activity either from an establishment in the United Kingdom or with or for clients in the United Kingdom under SUP 15.5.1R. [deleted]			
Note 11	Quarters end on 31 March, 30 June, 30 September and 31 December. [deleted]			

...

16 Retail Mediation Activities Return ('RMAR')
Annex
18AR

Section D6 of the form is deleted in its entirety. The deleted text is not shown.

...

Amend SUP 16 Annex 18B (Notes for Completion of the Retail Mediation Activities Return ('RMAR')) as shown.

16
Annex
18BG

**NOTES FOR COMPLETION OF THE RETAIL MEDIATION ACTIVITIES
RETURN ('RMAR')**

...

**Section D6: Capital Resources – Personal Investment Firms subject to
IPRU(INV) chapter 13**

Base requirement	<p>The minimum capital resources requirement for a firm is set out in <i>IPRU(INV)</i> 13.3.2R(2).</p> <p>Firms must be aware of the Transitional Provisions in <i>IPRU(INV)</i> Chapter 13.</p>
Expenditure based requirement	<p>The requirement is calculated as 1/4 of the firm's fixed annual expenditure as required by <i>IPRU(INV)</i> 13.3.2R(1).</p> <p>For the purposes of the calculation fixed expenditure is that which is inelastic relative to fluctuations in the <i>firm's</i> level of business. Fixed expenditure is likely to include most salaries and staff costs, office rent, payment for the rent or lease of office equipment, and insurance premiums. It may be viewed as the amount of funds which a <i>firm</i> would require to enable it to cease business in an orderly manner, should the need arise. Staff bonuses, <i>employees</i> and <i>directors'</i> profit shares, some interest charges, shared commission and fees payable, emoluments of directors, partners or a sole trader, and other variable expenditure can be deducted for the purposes of the calculation, but the <i>firm</i> will need to identify for itself which costs amount to fixed expenditure.</p> <p><i>Firms</i> must be aware of the Transitional Provisions in <i>IPRU(INV)</i> Chapter 13.</p>
Capital resources requirement per <i>IPRU(INV)</i> 13.3.2R (higher of above)	<p><i>Firms</i> are required to meet the capital resources requirement which is the higher of:</p> <p>(1) the base requirement; and</p>

	(2) the expenditure-based requirement.
Additional capital resources requirement for PII (if applicable)	If the <i>firm</i> has increased excesses or exclusions on its PII policies, the total of the additional capital resources requirements required by <i>IPRU(INV)</i> 13.1.23R and 13.1.27R should be recorded here. See also section E of the <i>RMAR</i> .
Other <i>FCA</i> capital resources requirements (if applicable)	The <i>FCA</i> may from time to time impose additional requirements on individual <i>firms</i> . If this is the case for your <i>firm</i> , you should enter the relevant amount here. This excludes capital resources requirements in relation to PII, which are recorded above.
Total capital resources requirement	Appropriate totals from above.
Capital Resources—as below	This field should be filled in using the figure for capital resources as calculated in the second part of this Section.
Surplus/deficit of capital resources	This should show the amount of the <i>firm's</i> capital resources in relation to its capital resources requirement.

Capital resources calculation—per *IPRU(INV)* 13.3.10R

Paid-up share capital excluding preference shares redeemable by shareholders within 2 years	Exclude redeemable preference shares which fall due within two years. If preference shares are not redeemable by the shareholder within 2 years, they must be treated in accordance with 13.3.1R and 13.3.14R.
Eligible LLP members' capital	
Balances on proprietor's or partners' capital and current accounts, less excess LLP members' drawings and excess of current year drawings over current year profits	
<i>Share</i> premium account	
Retained profits (losses)	Retained profits (or losses) do not need to be audited

plus current year net profits (losses) plus other reserves	and current year net profits (or losses) do not need to be verified.
Revaluation reserves	
Subordinated loans	Subject to the limits set out in 13.3.11R to 13.3.14R.
Less: Intangible assets	Deduct intangible assets in full.
Less: Contingent liabilities	Deduct any contingent liability (including the overdraft of any other company that the firm has guaranteed).
Less: Deficiencies in <i>subsidiaries</i>	Include a deduction for the amount by which the liabilities of any <i>subsidiary</i> (excluding its capital and reserves) exceed its tangible assets. This requirement applies only to the extent that the <i>firm</i> has not already made such a provision in its balance sheet.
Less: Non-trade debtors (including from <i>group</i> and <i>connected</i> companies)	Deduct amounts in full.
Less: Trade debtors (including from <i>group</i> and <i>connected</i> companies)	Deduct amounts due and unpaid for more than 90 days.
Less: Land and buildings (net of any liabilities secured by a charge on the assets)	Deduct 30% of the net book value of land and buildings.
Less: <i>Investments</i>	Deduct the applicable percentage for investments as specified in Table 13.3.10.
Less: Accrued income	Deduct amounts receivable after more than 90 days.
Less: Prepayments	Deduct amounts which relate to goods or services to be received or performed after more than 90 days.
Less: <i>Deposits</i>	Deduct amounts other than: (a) cash and balances on current accounts and on deposit accounts with an approved bank or National Savings Bank that can be withdrawn within 90 days; (b) money on deposit with a UK local authority that can be withdrawn within 90 days; (c) money deposited and evidenced by a certificate of tax <i>deposit</i> .

Less: Other illiquid assets	Deduct amounts in full.
Personal assets of partnerships or sole traders	A sole trader or a partnership may include personal assets (based on a current independent valuation) to make up any shortfall in the required capital resources needed to meet its capital resources requirement. The assets must be discounted by the factors used for the calculations above in this Table and must not be needed to meet liabilities arising from personal activities or another business activity not regulated by the FCA. [deleted]

...

Amend SUP 16 Annex 38A (Data Items relating to Consumer Credit activities) and SUP 16 Annex 38BG (Notes for completion of Data Items relating to Consumer Credit activities) as shown.

**16
Annex
38AR** **Data Items relating to Consumer Credit activities**

...

CCR008 Credit broking websites

For each domain name used or owned by the *firm* during the reporting period:

Domain name	If the <i>firm</i> acquired or first used the domain name during the reporting period, the date of acquisition or first use	If the <i>firm</i> disposed of or ceased using the domain name during the reporting period, the date of disposal or cessation [deleted]

...

**16
Annex
38BG** **Notes for completion of Data Items relating to Consumer Credit activities**

...

NOTES FOR COMPLETION OF THE DATA ITEMS RELATING TO CONSUMER CREDIT ACTIVITIES

Contents

...

CCR008: ~~Credit broking websites~~

...

CCR008 — Credit broking websites

~~The purpose of this data item is to give the FCA an understanding of the ownership of websites used by firms undertaking the credit-related regulated activity of credit broking.~~

~~Where a firm has not acquired or disposed of a domain name in the reporting period, columns B and C should be left blank.~~

Column A: Domain name

~~A firm should record all website domain names held by it during the reporting period, regardless of whether they were acquired or disposed of during the reporting period.~~

~~The domain names should be the full website addresses, beginning with either http:// or https://~~

~~For example, http://www.fca.org.uk~~

Column B: If the firm acquired or first used the domain name during the reporting period, the date of acquisition or first use

~~If the website was purchased or used for the first time during the reporting period, the date of this should be entered here. Otherwise, this field should be left blank.~~

Column C: If the firm disposed of or ceased using the domain name during the reporting period, the date of disposal or cessation

~~If the firm stopped using or sold the website during the reporting period, the date of this should be entered here. Otherwise, this field should be left blank.~~

...

Part 2: Comes into force on 31 December 2016

Appendix 9

Amend SUP 16 Annex 18AR (Retail Mediation Activities Return ('RMAR')) and SUP 16 Annex 18BG Notes for Completion of the Retail Mediation Activities Return ('RMAR') as shown.

16 Annex 18AR Retail Mediation Activities Return ('RMAR')

...

SECTION G: Training & Competence

...

Mortgages (and second and subsequent charge mortgages)

	A	B	C	D
	Independent (Whole of Market plus option of fee-only) <u>Limited</u>	Whole of Market (without fee-only option) <u>Unlimited</u>	Restricted- Multi-tie	Restricted- Single-tie
21 Which types of mortgage advice were provided by the firm in the reporting period?				
22 What types of second (and subsequent) charge mortgage advice were provided by the firm in the reporting period?				

16 Notes for Completion of the Retail Mediation Activities Return ('RMAR')
Annex
18BG

...

Section G: Training & Competence ('T&C')

...

Mortgages (and second and subsequent charge mortgages)		
21 and 22	<p>Which types of mortgage advice were provided by the <i>firm</i> in the reporting period?</p> <p>What types of second (and subsequent) charge mortgage advice were provided by the <i>firm</i> in the reporting period?</p>	<p>For each type of advice, the <i>firm</i> should indicate whether or not advice has been provided on that basis / business type.</p> <p>In relation to their home finance mediation activities, firms are not required by MCOB 4.4A to use a label to describe the service they provide to customers. In filling out this section they should simply answer "no" for each category relating to their home finance mediation activities.</p> <p>Independent (whole of market plus option of fee-only)</p> <p>To hold itself out as acting independently, a firm carrying on home finance mediation activity must consider products from across the whole of the market, and offer its clients the opportunity to pay by fee.</p> <p>Whole of market (without fee-only option)</p> <p>A firm carrying on home finance mediation activity provides whole of market recommendations when it has considered a large number of products that are generally available from the market as a whole.</p> <p>Restricted—Multi-tie</p> <p>A firm provides advice on products selected from a limited number of provider firms.</p> <p>Restricted—Single-tie</p> <p>A firm provides advice on products selected from one provider firm only.</p> <p><u>Firms should refer to MCOB 4.4A when answering these questions.</u></p>

...

Section K: Adviser charges

...

Guide for completion of individual fields

In row 1, firms should select one of ‘Independent/Restricted/Both/Did not provide advice’ to indicate the type(s) of advice provided by the *firm*. *Firms* providing *independent advice* only should then complete sections 1, 3 and 4. *Firms* providing *restricted advice* only should then complete sections 2, 3 and 4. *Firms* providing both independent advice and restricted advice should complete all four sections. *Firms* that did not provide advice during the reporting period should select ‘Did not provide advice’ and complete the accounting basis question; other sections should be left blank.

...

Amend SUP 16 Annex 24R (Data items for SUP 16.12) and SUP 16 Annex 25BG (Guidance notes for data items in SUP 16 Annex 24R) as shown.

**16
Annex
24R** **Data items for SUP 16.12**

...

FSA019 Pillar 2 information

...

B

yes/no

1 Does either *GENPRU 1.2* or *IFPRU 2* apply to your firm?

...

**16
Annex
25G** **Guidance notes for data items in SUP 16 Annex 24R**

...

FSA019 – Pillar 2 questionnaire

...

1B Does either *GENPRU 1.2* or *IFPRU 2* apply to your firm?

If you are a *BIPRU firm*, see *GENPRU 1.2.1R* and *GENPRU 1.2.44G* to *GENPRU 1.2.59R*. If you are an *IFPRU investment firm*, see *IFPRU 2.2.45R* to *IFPRU 2.2.49R*. The answer is either ‘Yes’ or ‘No’.

...

FSA020 – Balance sheet (ELMIs)

There are no definitions for this data item.

FSA020 – Balance sheet (ELMIs) validations

Internal validations

Data elements are referenced by row then column.

Validation number	Data elements		
1	10A	=	1A+2A+3A+4A+5A+6A+7A+8A+9A
2	12A	≤	11A
3	20A	=	15A+16A+17A+18A+19A
4	23A	=	20A+21A-22A
5	26A	=	24A+25A
6	28A	=	26A+27A
7	29A	=	23A+28A
8			{deleted – replaced by validation 10}
9	33A	=	10A
10	33A	=	11A+13A+14A+20A- 21A+28A+30A+31A+32A
11	22A	≥	6A+8A

External validations

Validation number	Data elements		
1	11A	=	FSA022.2A

2	29A	=	FSA022.1A
3	3A	=	FSA025.3A
4	4A	≥	FSA025.3A
5	11A	=	FSA025.5A [deleted]

FSA021 – Income statement (ELMis)

There are no definitions for this data item.

FSA021 – Income statement (ELMis) validations

Internal validations

There are no validations for this data item. [deleted]

FSA022 – Capital adequacy (ELMis)

There are no definitions for this data item.

FSA022 – Capital adequacy (ELMis) validations

Internal validations

Data elements are referenced first by row then by column.

Validation number	Data element		
1	4A	=	1A/(maximum 2A, 3A)

External validations

Validation number	Data element		
1	1A	=	FSA020.29A
2	2A	=	FSA020.11A [deleted]

FSA023 – Foreign exchange risk (ELMIs)

There are no definitions for this data item

FSA023 – Foreign exchange risk (ELMIs) validations**Internal validations**

Data elements are referenced first by row then by column.

Validation number	Data element		
1	9A	=	1A+2A+3A+4A+5A+6A+7A+8A
2	10B	=	1B+2B+3B+4B+5B+6B+7B+8B
3	11C	=	Maximum 9A, 10B
4			[deleted – replaced by validation 5]
5			[deleted – replaced by validation 8]
6	15C	=	13C-12C
7	16C	=	14C-12C
8	12C	=	11C*8%-[deleted]

FSA024 – Large exposures (ELMIs)

There are no definitions for this data item

FSA024 – Large exposures (ELMIs) validations**Internal validations**

Validation number	Data element		
1	1BT	=	$\Sigma 1B$
2	1CT	=	$\Sigma 1C$ [deleted]

FSA025 – Liquidity (ELMIs)

There are no definitions for this data item.

FSA025—Liquidity (ELMIs) validations

Internal validations

Data elements are referenced first by row then by column.

Validation number	Data elements		
1			{deleted—see external validation 5}
2	6A	=	4A/5A (≥ 1)
3			{deleted—see external validation 6}
4			{deleted—replaced by validation 5}
5	4A	\leq	1A+2A+3A

External validations

Validation number	Data elements		
1	2A	=	FSA020.3A
2			{deleted—replaced by validation 4}
3	5A	\equiv	FSA020.11A
4	3A	\leq	FSA020.4A
5	1A	=	FSA020.1A+FSA020.2A
6	4A	\equiv	1A+2A+(min (FSA020.29A*20%), 3A) [deleted]

...

FSA032 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

...

Description	Data element	Guidance
...		

Regulatory capital test(s)		
...		
If your firm does not hold a Comparable Guarantee or equivalent cover and is not exempt, does the firm currently hold PII?	33A	This is either 'Yes' or 'No'.
...		

FSA048 Enhanced Mismatch Report

...

Completion and submission to the ~~FSA~~ FCA

...

Appendix 10

Transparency reporting requirements for AIFMs

**ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (REPORTING)
INSTRUMENT 2016**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in 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); and
 - (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 [*date*].

Amendments to the Handbook

- D. The Investment Funds (FUND) sourcebook is amended in accordance with the Annex to this instrument.

Notes

- E. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Alternative Investment Fund Managers Directive (Reporting) Instrument 2016.

By order of the Board
[*date*]

Annex A

Amendments to the Investment Funds (FUND) sourcebook

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

3 Requirements for alternative investment fund managers

...

3.4 Reporting obligations to the FCA

...

Additional information

...

3.4.6C R In addition to the information in FUND 3.4.2R, an AIFM must regularly report to the FCA the information in FUND 3.4.3R for each non-EEA AIF it manages that is not marketed in the EEA if the AIFM is subject to quarterly reporting under article 110 of the AIFMD level 2 regulation (see SUP 16.18.4EU) for that AIF.

[Note: article 24(5) of AIFMD]

...

10 Operating on a cross-border basis

...

10.5 National private placement

...

Marketing under ~~Article~~ article 42 of the directive

...

10.5.11B G An above-threshold non-EEA AIFM should report on a quarterly basis to the FCA the information in FUND 3.4.2R, FUND 3.4.3R and (if applicable) FUND 3.4.5R for each AIF that is not marketed in the UK if:

- (1) that AIF is a master AIF managed by the AIFM or an AIFM in the same group;
- (2) the AIFM markets the feeder AIF of that master AIF in the UK; and
- (3) the AIFM is subject to quarterly reporting under article 110 of the

AIFMD level 2 regulation (see SUP 16.18.4EU) for the feeder AIF.

Financial Conduct Authority



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