

Handbook Notice No 99

May 2022

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1 Overview

Legislative changes

- 1.1 On 16 May 2022, the Board of the FCA made the relevant changes to the Handbook as set out in the instrument listed below.

CP	Title of instrument	Instrument No	Changes effective
CP21/28	Part 4A Permission (Own-Initiative Variation and Cancellation) Instrument 2022	FCA 2022/14	19/05/2022

- 1.2 On 26 May 2022, the Board of the FCA made the relevant changes to the Handbook as set out in the instruments listed below.

CP	Title of instrument	Instrument No	Changes effective
CP22/4	Perimeter Guidance (Commodity Derivatives Exemption) Instrument 2022	FCA 2022/17	27/05/2022
CP22/4	Technical Standards (Markets in Financial Instruments) (Ancillary Exemption) Instrument 2022	FCA 2022/18	27/05/2022
CP21/27	Listing Rules and Prospectus Regulation Rules (Prospectus Guidance and Guidelines) Instrument 2022	FCA 2022/19	27/05/2022
CP22/4	Investment Firms Prudential Regime (Amendment) Instrument 2022	FCA 2022/20	28/05/2022
CP22/4	Training and Competence Sourcebook (Amendment No 10) Instrument 2022	FCA 2022/21	27/05/2022; 29/07/2022
CP22/4	Listing Rules (Open-Ended Investment Companies) (Amendment) Instrument 2022	FCA 2022/22	27/05/2022
CP22/4	Conduct of Business Sourcebook (MiFID Org Regulation Amendment) Instrument 2022	FCA 2022/23	27/05/2022
CP22/4	Conduct of Business Sourcebook (Amendment) Instrument 2022	FCA 2022/24	27/05/2022

Summary of changes

- 1.3 The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.

Feedback on responses to consultations

- 1.4 Consultation feedback is published in Chapter 3 of this Notice or in separate Policy Statements.

FCA Board dates for 2022

- 1.5 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

FCA board meetings		
June	23	2022
July	21	2022
September	29	2022
October	20	2022
November	24	2022
December	15	2022

2 Summary of changes

- 2.1 This Handbook Notice describes the changes to the FCA Handbook and other material made by the FCA Board under its legislative and other statutory powers on 16 May 2022 and 26 May 2022. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority please see <https://www.bankofengland.co.uk/news/prudential-regulation>.

Part 4A Permission (Own-Initiative Variation and Cancellation) Instrument 2022

- 2.2 The FCA Board has made changes to the Handbook sections listed below:

Glossary
SUP 6.1, 6.2, 6.3, 7.1, 7.2, 7.3 and 7.4
DISP 1.10 and 2.3
COMP 6.2

- 2.3 The FCA Board has also made changes to the following areas outside of the Handbook:

EG 8.1, 8.2, 8.3 and 8.5

- 2.4 In summary, this instrument sets out our new power to vary or cancel firms' permissions, without their consent, when it appears to us that they are carrying on no FCA-regulated activities within the scope of those permissions and when certain additional conditions are met. This instrument also gives guidance as to when and how we may use the power and details associated powers also granted to us by the FS Act.
- 2.5 This instrument comes into force on 19 May 2022. Feedback has been published in a separate [Policy Statement](#).

Perimeter Guidance (Commodity Derivatives Exemption) Instrument 2022

- 2.6 The FCA Board has made changes to the Handbook sections listed below:

Glossary
PERG 2.9 and 13.5

- 2.7 In summary, this instrument makes changes to the Ancillary Activities Test in light of no available overall market data provided by European Securities and Markets Authority (ESMA).

- 2.8 This instrument comes into force on 27 May 2022. Feedback has been published in Chapter 3 of this Handbook Notice.

Technical Standards (Markets in Financial Instruments) (Ancillary Exemption) Instrument 2022

- 2.9 Following consultation in [Consultation Paper \(CP\) 22/4](#), the FCA Board has made changes to the technical standard listed below:

Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business

- 2.10 In summary, this instrument also makes changes to the Ancillary Activities Test in light of no available overall market data provided by ESMA.
- 2.11 This instrument comes into force on 27 May 2022. Feedback has been published in Chapter 3 of this Handbook Notice.

Listing Rules and Prospectus Regulation Rules (Prospectus Guidance and Guidelines) Instrument 2022

- 2.12 The FCA Board has made changes to the Handbook sections listed below:

**Glossary
LR 13.4, App 1.1
PRR 1.1, 2.1, 2.3, 5.4, App 1.1**

- 2.13 In summary, this instrument makes changes to the Handbook consequential to the changes to our [Knowledge Base](#) on which we consulted in Primary Markets Bulletin (PMB) 34 ([PMB 34](#)).
- 2.14 This instrument comes into force on 27 May 2022. Feedback has been published in Chapter 3 of this Handbook Notice.

Investment Firms Prudential Regime (Amendment) Instrument 2022

- 2.15 The FCA Board has made changes to the Handbook sections listed below:

MIFIDPRU 3.6 and TP 7

- 2.16 In summary, this instrument extends the deadline for the MIFIDPRU TP 7.4R(2) (b) notifications until 29 June 2022. It also extends the scope of MIFIDPRU TP 7 to include former IFPRU investment firms and former consolidating UK CRR parent undertakings where those entities did not obtain approvals under the UK CRR before 1 January 2022.

- 2.17 The FCA is allowing firms and parent entities to update the terms of non-MIFIDPRU 3-compliant capital instruments issued before 1 January 2022 to make them compliant. In addition, related Handbook guidance is updated to provide further clarity on how these provisions operate.
- 2.18 This instrument comes into force on 28 May 2022. Feedback has been published in Chapter 3 of this Handbook Notice.

Training and Competence Sourcebook (Amendment No 10) Instrument 2022

- 2.19 The FCA Board has made changes to the Handbook section listed below:

TC 2.1

- 2.20 In summary, this instrument makes changes to the Handbook to provide firms and the relevant employees with greater flexibility so that they can choose the most appropriate and effective continuing professional development (CPD) activities. This will in turn:
- increase the CPD options available to retail investment advisers, pension transfer specialists and persons involved in regulated funeral plan activities
 - accommodate more diverse forms of learning
 - enable a greater focus on measurable learning objectives and outcomes
- 2.21 Part 1 of this instrument comes into force on 27 May 2022. Part 2 of this instrument comes into force on 29 July 2022. Feedback has been published in Chapter 3 of this Handbook Notice.

Listing Rules (Open-ended Investment Companies) (Amendment) Instrument 2022

- 2.22 The FCA Board has made changes to the Handbook section listed below:

LR 14.1

- 2.23 In summary, this instrument makes changes to clarify our original policy position by adding a new limb to LR 14.1.1R.
- 2.24 This instrument comes into force on 27 May 2022. Feedback has been published in Chapter 3 of this Handbook Notice.

Conduct of Business Sourcebook (MiFID Org Regulation Amendment) Instrument 2022

- 2.25 The FCA Board has made changes to the Handbook sections listed below:

Glossary

COBS 6.1ZA, 8A.1, 9A.2, 14.3A, 16A.3 and 16A.4

- 2.26 In summary, these changes bring provisions in the Handbook that copy out what was previously an EU delegated regulation into line with changes made by Treasury in 2021 to the onshored version of that regulation.
- 2.27 This instrument comes into force on 27 May 2022. Feedback has been published in Chapter 3 of this Handbook Notice.

Conduct of Business Sourcebook (Amendment) Instrument 2022

- 2.28 The FCA Board has made changes to the Handbook section listed below:

COBS 18 Annex 1

- 2.29 In summary, this instrument makes changes to the research rules for Collective Portfolio Managers in COBS Annex 1 to mirror changes already made in COBS 2.3A so they are subject to the same requirements as investment firms.
- 2.30 This instrument comes into force on 27 May 2022. Feedback has been published in Chapter 3 of this Handbook Notice.

3 Consultation feedback

- 3.1 This chapter provides feedback on consultations that will not have a separate policy statement published by the FCA.

CP 22/4: Perimeter Guidance (Commodity Derivatives Exemption) Instrument 2022 and Technical Standards (Markets in Financial Instruments) (Ancillary Exemption) Instrument 2022

Background

- 3.2 Article 2(1)(j) of the Markets in Financial Instruments Directive (MiFID) II provides an exemption (known as the 'ancillary activities exemption') from the MiFID regime for 'persons dealing in commodity derivatives, emission allowances or derivatives thereof on own account or providing investment services to the customers or suppliers of their main business', subject to a number of conditions. This has the effect of excluding from MiFID-based authorisation and supervision commodity producers whose financial services business is ancillary to their main commodities business. These conditions include requirements that are further set out in onshored Regulatory Technical Standard (RTS) 20 and consist of:
- a 'market share test' to ascertain whether the persons within the group are large participants relative to the size of the financial market in different classes of commodity derivatives
 - a 'main business test' to determine whether the commodity derivatives activity of those persons within the group is so large relative to the main business of the group that those activities cannot be considered to be ancillary to the main business
- 3.3 To be exempt, a person must not exceed any of the thresholds in the market share test and must have been activity judged to be ancillary under the main business test.
- 3.4 When implementing and onshoring MiFID II, the Treasury included a specific exclusion in article 72J of the Regulated Activities Order (RAO) corresponding to the exemption under article 2(1)(j) of MiFID II. This provision enables firms carrying on investment services and activities relating to commodity derivatives and emission allowances on an ancillary basis to their main business to avoid the need for FCA authorisation. One component of the annual calculations to be performed by firms for these purposes is assessing their group's business as a percentage of the overall market in various commodity derivative asset classes, including metals, coals, gas, power and agricultural products, and emission allowances.

- 3.5 The exclusion helps to provide legal certainty to firms while they perform their calculations. Under article 72J of the RAO, firms trading commodity derivatives are not carrying on regulated activities while they perform their annual calculations and, if necessary, while they seek authorisation as a MiFID investment firm, provided that this is done within a specified period. When carrying out their annual calculations, firms have previously been reliant on information by the European Securities and Markets Authority (ESMA) relating to overall market trading in the various asset classes against which they compare the trading of their group. The market share test is based on commodities trading activities in the European Economic Area, as if the UK were still part of the EU.
- 3.6 Following the EU's decision to amend the ancillary exemption, the annual information relating to trading in 2021 is no longer required to be published and the market share test calculations cannot be performed. We proposed to amend MiFID II RTS 20 relating to the ancillary exemption and update our perimeter guidance in chapters 2 and 13 of the Perimeter Guidance manual (PERG) accordingly. We also proposed to amend RTS 20 in order to enable firms to perform the calculations relating to the main business test in a way that enables them to rely on current derogations.

Summary of proposals

- 3.7 We want to ensure that there is clarity as to how the ancillary activities exemption works in the absence of data on a consolidated view of overall market activity from an official source and ensure continuity of the perimeter relating to commodity derivatives trading.
- 3.8 In order to allow for article 72J of the RAO to be fully used in the absence of a consolidated view of overall market activity in 2021 from an official source (ie, from ESMA), we proposed to make clarifications within the PERG 2 and PERG 13 Q&As to remove references that state a need to comply with both the market share test and main business test in order to benefit from the exemption.
- 3.9 Further, we proposed to clarify that for the purposes of relying on the main business test in the absence of the relevant market size data from an official source, firms may rely on the information published by an EU institution or regulator for the last 3 annual calculation periods for which that information is available. For the year 2022, for example, this will mean relying on the data available for the years 2018, 2019 and 2020.
- 3.10 These technical clarifications would enable firms to gain certainty over the status of their activity and are also reflected in the updating of chapters 2 and 13 of our Perimeter Guidance.

Feedback

- 3.11 We received one substantive comment from 2 respondents.
- 3.12 They overwhelmingly supported our proposals but flagged a discrepancy between the numerator and denominator in the calculation periods used for the

purposes of relying on the main business test in the absence of the relevant market size data from an official source.

- 3.13 While we said that firms should rely on the available ESMA data from the years 2018, 2019, and 2020 as the market data used in the denominator, it was flagged that Article 4 of RTS 20 would still require them to use the latest available firm data in the numerator. This would thereby create a discrepancy in the time periods used and may lead to unrepresentative results.

Our response

- 3.14 We are amending RTS 20 to correct this discrepancy and align the time periods to the available data.

- 3.15 In order to provide maximum flexibility for those entities seeking to rely on the exemption, we will enable them to use as a numerator average daily trading figures for either:

- 2019, 2020 and 2021
- the corresponding figures relating to 2018, 2019 and 2020

- 3.16 As such, a firm that relies on figures relating to 2018, 2019 and 2020 as their numerator should be able to continue to rely on the ancillary exemption next year, provided it meets the other conditions of the exemption as set out in PERG 13 Q44.

Cost benefit analysis

- 3.17 We believe that there will be no increase in costs or that the increase will be of minimal significance. We do not believe there will be an increase in costs, as our changes seek to clarify a situation which could otherwise lead to firms seeking to be authorised because of ambiguity in the application of the ancillary activities test, which would entail potentially unnecessary costs to firms. No cost benefit analysis is required in relation to the perimeter guidance.

Equality and diversity statement

- 3.18 We continue to consider that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

CP21/27: Listing Rules and Prospectus Regulation Rules (Prospectus Guidance and Guidelines) Instrument 2022

Background

- 3.19 In [PMB 34](#), published in June 2021, and its associated [Guidance Consultation \(GC\) 21/1](#), we consulted on changes to our [Knowledge Base](#) in relation to the prospectus regime. It set out our intention to:

- adapt, as FCA guidance, the European Securities and Market Authority (ESMA) [Guidelines on disclosure requirements under the Prospectus Regulation](#)
- augment those guidelines with the measures on specialist issuers in the ESMA update of the Committee of European Securities Regulators (CESR Recommendations) in our Handbook in our [Level 3 Materials](#)
- incorporate into technical notes (TNs) certain explanations from the Questions and Answers, Prospectuses (PD Q&As) in our Handbook in our Level 3 Materials

3.20 It also explained our intention to consult in our September 2021 Quarterly Consultation Paper ([CP 21/27](#)) on:

- removing the CESR Recommendations and the PD Q&As from the Level 3 Materials our Handbook
- making consequential amendments to the Prospectus Regulation Rules (PRR) sourcebook

3.21 [PMB 40](#) sets out our feedback on the matters on which we consulted in PMB 34 and explains that we have made changes to the Knowledge Base following that consultation. The changes made to the Knowledge Base were broadly as consulted on.

Summary of proposals

3.22 In Chapter 6 of CP21/27, we proposed (subject to the outcome of the PMB 34 consultation) to:

- remove 2 documents from the Handbook Level 3 Materials
- make consequential amendments to the PRR to assimilate changes that PMB 34 proposed making to our TNs
- make consequential changes to the Listing Rules (LR) sourcebook

Handbook

3.23 Our Handbook Level 3 Materials include PDFs of the CESR Recommendations and the PD Q&As. We proposed, in CP21/27, removing those 2 documents from our Handbook because they would no longer apply as a consequence of the proposals in PMB 34. More specifically:

- the CESR Recommendations would no longer apply once changes to our Technical Notes are completed, including to the [Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers](#) (Primary Market / TN 619.1), which adapt the ESMA [Guidelines on disclosure requirements under the Prospectus Regulation](#) into FCA guidance,

replacing most of the CESR Recommendations while carrying forward material on specialist issuers that is addressed separately to the ESMA Guidelines

- the PD Q&As would no longer apply when the changes to the procedural note and TNs proposed in PMB 34, and as set out in its associated GC21/1, are completed as these will then incorporate the Q&As

PRR consequential amendments

3.24 PRR 1.1.5G lists a number of documents which we consider relevant to the prospectus regime. Prompted by the changes in PMB 34, and in order to better assist the reader, we consulted on amending that list to:

- remove reference to the CESR Recommendations and the PD Q&As because we are removing those 2 documents from the Handbook, as explained above
- remove ESMA Prospectus Opinions which relate to the Prospectus Directive regime, which was repealed and replaced by the Prospectus Regulation in July 2019 and thus no longer apply
- add in the Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers (Primary Market / TN 619.1)
- include the Guidelines on Alternative Performance Measures, moving it from being a note in PRR 1.1.5G
- include the Q&As on Guidelines on Alternative Performance Measures because it was already one of the PR documents in our Handbook Level 3 Materials
- add in the Guidelines on Risk Factors which was already the subject of a note at the end of PRR 2.2.3UK
- include uniform resource locators (URLs) from documents stored in:
 - the Handbook's [Technical Standards](#)
 - the Handbook's Level 3 materials
 - our Knowledge Base
- add a note to PRR 1.1.5G on the prospectus regime guidance in the Knowledge Base

3.25 Changes were also proposed to PRR 1.1.7G, PRR 5.4.5G and PRR App 1.1 (Relevant definitions) in order to update them for these changes.

LR consequential amendments

3.26 We proposed 4 changes to align the LR with the changes proposed in the PMB 34:

- deleting the definition 'ESMA Prospectus Recommendations', which is the LR's term for the CESR Recommendations and which would no longer apply under the PMB 34 proposals
- inserting a definition for the Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers (Primary Market TN 619.1)
- amending the definition of 'mineral expert's report' to replace 'ESMA Prospectus Recommendations' with a reference to the appropriate part of the Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers (Primary Market / TN 619.1)
- updating LR 13.4.8R (on the acquisition of a scientific research-based company or related assets) to replace its reference to 'ESMA Prospectus Recommendations' with a reference to the appropriate part of the Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers (Primary Market / TN 619.1)

Feedback

- 3.27 Two respondents replied to our proposals in CP21/27. Both responses referred us to comments the respondent had made in response to our consultation in PMB 34.
- 3.28 One response was that the FCA should not amend any of its materials so as to remove reference to the CESR Recommendations unless the contents of paragraphs 173 to 176 of the CESR Recommendations are replicated elsewhere. Paragraphs 173 to 176 of the CESR Recommendations concern the information to be disclosed for the exemptions from the requirement to publish a prospectus for:
- dividends paid in the form of shares
 - employee share issues
- 3.29 The other response concerned:
- a suggestion to amend paragraph 151A of the Guidelines to clarify that an issuer might publish a supplementary prospectus with a new working capital statement if the minimum net proceeds are not raised
 - the fact that TN 619.1 (Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers) need not replicate the reference in Annex 29(c) of the Prospectus RTS Regulation to 'investment companies' because there is no such guidance
- 3.30 The 2 respondents were otherwise in agreement with, or had no other objection to, our proposals.

Our response

- 3.31 The respondents' points concerning PMB 34 have both been addressed in PMB 40 and its final guidance. It has not been necessary to amend our proposals in Chapter 6 of CP21/27 in order to fully address those points. We are therefore making our Handbook changes as consulted on in Chapter 6 of CP21/27.
- 3.32 PMB 40 and its final guidance have addressed the respondents' points as follows:
- We have transposed paragraphs 173 to 176 of the CESR Recommendations into TN 602.3, Exemptions from the requirement to produce a prospectus.
 - We have not amended paragraph 151A of the Guidelines as we state in PMB 40 that the obligation to publish a supplementary prospectus under Article 23 of the Prospectus Regulation is not impeded by the guidance in the FCA Guidelines.
 - We have removed the reference to investment companies as specialist issuers in TN 619.1.
- 3.33 Transposing paragraphs 173 to 176 of the CESR Recommendations means that we can remove that document from the Handbook Level 3 Materials. We have therefore removed both the CESR Recommendations and the PD Q&As from the Handbook Level 3 Materials as proposed.
- 3.34 We have also taken the opportunity to replace part of the note at the end of PRR 2.1.5UK, which read '[Link to follow]', with a cross reference to PRR 1.1.5G, given that it now contains the relevant URL.

Cost benefit analysis

- 3.35 We remain satisfied that our amendments do not increase costs to firms or consumers, or that any increase will be of minimal significance, as they do not create any new obligations. Further, the amendments will result in better signposting of our prospectus-related guidance.

Equality and diversity statement

- 3.36 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

CP22/4: Investment Firms Prudential Regime (Amendment) Instrument 2022

Background

- 3.37 The Investment Firms Prudential Regime (IFPR) came into force on 1 January 2022. It is our new prudential regime for MiFID investment firms.

- 3.38 FCA investment firms and UK parent entities that were not subject to the UK Capital Requirements Regulation (CRR) immediately before 1 January 2022 were required to notify us, under MIFIDPRU TP 7, if they wanted to treat existing capital instruments as own funds under MIFIDPRU 3. We set a deadline of 1 January 2022 for this TP 7.4R(2)(b) notification within Chapter 14 of PS21/9.
- 3.39 We were concerned that we received significantly fewer notifications than we anticipated despite alerting firms several times of the notification deadline. Further, we received a number of notifications after the deadline. Despite this, we believe that this 'self-certification' approach was a proportionate solution to transition existing FCA investment firms to the new MIFIDPRU standards and had significant practical benefits for firms and for the FCA.
- 3.40 In CP22/4, we consulted on a proposal to extend the deadline for TP 7.4R(2)(b) notifications until 29 June 2022. We also proposed updated guidance to help firms complete the notification.

Summary of proposals

- 3.41 We proposed the following changes in connection to MIFIDPRU 7:
- Extend the deadline for the MIFIDPRU TP 7.4R(2)(b) notifications until 29 June 2022.
 - Extend the scope of MIFIDPRU TP 7 to include former IFPRU investment firms and former consolidating UK CRR parent undertakings, where those entities did not obtain approvals under the UK CRR before 1 January 2022.
 - Allow firms and parent entities to update the terms of non-MIFIDPRU 3-compliant capital instruments issued before 1 January 2022 to make them compliant. Firms and parent entities would be able to then benefit from notification under MIFIDPRU TP 7 (rather than make a MIFIDPRU 3 application), provided that this can be done before the new 29 June 2022 notification deadline.
 - Update related Handbook guidance to provide further clarity on how these provisions operate.
- 3.42 We explained that our proposals would not affect any firm or parent undertaking that had already submitted a valid MIFIDPRU TP 7 notification on or before 1 January 2022. TP 7 notifications would continue to be valid in relation to the instruments specified in the notification. Any late TP 7 notifications we received after the 1 January 2022 deadline would also be valid (if the notification deadline was extended to 29 June 2022).

Extending the TP 7 notification deadline

- 3.43 We proposed an extension until 29 June 2022 because 30 June 2022 is a reference date for the MIF001 own funds report that must be submitted by all FCA investment firms. We explained that this will allow us to identify those firms

that have not made a notification under MIFIDPRU TP 7 and have not obtained any other FCA approvals for their capital instruments.

- 3.44 We stated that a 6-month extension to the notification deadline would be the most efficient use of our supervisory resources and would allow us to signpost the notification further.
- 3.45 FCA investment firms must make the TP 7 notification through Connect. A parent undertaking that is not regulated by the FCA (and does not have access to Connect) will be able to [notify us using this form](#). Those parent undertakings should return the form to ifprquery@fca.org.uk.

Allowing updates to the terms of instruments issued before 1 January 2022 that are not compliant with the MIFIDPRU 3 requirements to benefit from TP 7

- 3.46 In [CP22/4](#), we explained that a FCA investment firm or a parent undertaking could have pre-existing capital instruments that, on 1 January 2022, did not meet the MIFIDPRU 3 conditions. It was possible that the terms of those pre-existing instruments could be amended before 29 June 2022 to make them compliant with MIFIDPRU 3. We therefore proposed an update to the rules in MIFIDPRU TP 7 to make it clear that a firm or parent undertaking can make a notification under TP 7 in relation to pre-existing instruments that did not meet the MIFIDPRU 3 conditions on 1 January 2022, but which have been made MIFIDPRU 3 compliant by the time that the notification is submitted. However, a TP 7 notification would not be permitted for new instruments issued on or after 1 January 2022.

Extending the scope of MIFIDPRU TP 7 to cover former IFPRU investment firms and former consolidating UK CRR parents that did not obtain UK CRR approvals

- 3.47 The current rules in MIFIDPRU TP 7 do not apply to an FCA investment firm that was formerly an IFPRU investment firm. In some cases, the former IFPRU investment firms or their consolidating parent undertakings may not have obtained the relevant approvals. Nonetheless, the underlying capital instruments issued by those entities satisfy the substantive conditions to be recognised as own funds under MIFIDPRU 3.
- 3.48 We proposed an extension to the scope of MIFIDPRU TP 7 to clarify that former IFPRU investment firms and former consolidating UK CRR parent undertakings can also make a TP 7 notification in relation to instruments for which they did not previously obtain the relevant approvals.

Feedback

- 3.49 We received 1 response to our consultation. The response supported our proposals in full. It also notified us of a small drafting error within paragraphs (2) and (2)(a) of MIFIDPRU TP 7.4R (there was an incorrect reference to a table in MIFIDPRU 7.5R instead of MIFIDPRU TP 7.5R).
- 3.50 We received a total of 179 MIFIDPRU TP 7 notifications between 1 January 2022 and the closure of our consultation on 11 April 2022. 35 of those 179 notifications were received during the CP22/4 consultation period (4 March 2022

to 11 April 2022). We consider that the submission of 179 notifications after the original 1 January 2022 deadline in PS21/9 indicates support for a deadline extension from those firms.

Our response

- 3.51 We believe that an extension of the TP 7.4R(2)(b) deadline to 29 June 2022 is the most efficient use of our supervisory resources. It also allows us to signpost the notification further to firms who may have originally missed its significance.
- 3.52 We are therefore adopting our original proposals in CP22/4 in full.
- 3.53 The final amendments to our rules (including updated guidance) are the same as our original consultation text. Those amendments include a correction to the drafting error in MIFIDPRU TP 7.4R which was also highlighted by the respondent.
- 3.54 We received 179 MIFIDPRU TP7 notifications between the 1 January 2022 deadline and the closure of our consultation on 11 April 2022. Those TP 7 notifications will now be accepted, as will any further TP 7 notifications submitted up to 29 June 2022. We remind firms that a TP 7 notification is only valid where the underlying instruments to which it relates meet the applicable eligibility conditions in MIFIDPRU 3.
- 3.55 Our updated guidance will help to explain the circumstances in which firms and parent undertakings can submit a TP 7 notification. Firms should also refer to Appendix 2 of [CP22/4](#) – for example, scenarios of when TP 7 notifications might be required.

Materiality

- 3.56 In our opinion, the changes to our existing rules in MIFIDPRU 3.6 and MIFIDPRU TP 7 are not material under section 143I(4) and (5) FSMA. We do not consider that they materially change any risks to consumers, the market or the UK financial system. The proposals have no relevance to the carbon target in section 1 of the Climate Change Act 2008, as they relate to pre-existing issued capital instruments. We also consider that the rationale set out in paragraphs 7.27 to 7.29 of CP22/4 for why these changes are not material continues to apply to the finalised amendments.

Cost benefit analysis

- 3.57 The cost benefit analysis in [CP21/7](#) remains unchanged and is applicable to our final made rules. We originally consulted on the notifications in [CP21/7](#) and we assumed that all relevant firms would have notified us by our original deadline. Extending the permitted deadline for notifications does not, therefore, impose any additional costs on firms.

Equality and diversity statement

- 3.58 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

CP22/4: Training and Competence Sourcebook (Amendment No 10) Instrument 2022

Background

- 3.59 In 2006, we conducted a Retail Distribution Review (RDR) to increase the professional standards of retail investment advisers (RIAs). We did this to improve the quality of advice provided to customers.
- 3.60 As part of this, we introduced continuing professional development (CPD) requirements. We require firms to ensure that RIAs complete at least 35 hours of appropriate CPD per year. The 35 hours must include 21 hours of structured CPD activities (see 2.1.15R and 2.1.16R of the Training and Competence sourcebook (TC)).
- 3.61 In 2020, we also introduced CPD requirements for pension transfer specialists (PTSs), where PTS must complete at least 15 hours of appropriate CPD per year of which at least 9 hours must be structured CPD activities. From 29 July 2022, CPD will also apply to persons involved in regulated funeral plan (FP) activities. They will also be required to complete at least 15 hours of appropriate CPD per year.
- 3.62 In TC, we provide guidance (see TC 2.1.22G and cross-referred to in the PTS and FP requirements) setting out what CPD should involve – for example, it should be relevant to the employee’s current role and any anticipated changes to that role and should contribute to the employee’s professional skills and knowledge.
- 3.63 However, due to the increasing demand for shorter, more targeted, and incremental learning, our view is that our present guidance – which suggests that only activities of at least 30 minutes should be viewed as structured CPD activities – is no longer fit for purpose and it is increasingly limiting opportunities for broader learning options for advisers undertaking CPD activities.
- 3.64 Given the above and the similar views expressed in our engagement with major training providers in the financial sector, in [CP22/4](#), we proposed to amend our CPD framework to provide greater flexibility for firms and advisers adapting to new ways of learning.

Summary of proposals

- 3.65 In [CP22/4](#), we proposed to amend our existing guidance in TC 2.1.20G to remove the minimum 30-minute time requirement for structured CPD activities. We also proposed to introduce guidance reflecting that appropriate CPD activities should be relevant and long enough in duration to meet the aims of CPD set out in TC 2.1.22G, even though there is no minimum time limit. This includes, for example, making sure the learning is measurable, contributes to their knowledge and skill, and can be independently verified.

- 3.66 We also proposed a consequential change to reflect these amendments in the CPD provisions for pensions transfer specialists (TC 2.1.23BG).

Feedback

- 3.67 We received 3 responses. All respondents agreed with our proposals.

Our response

- 3.68 Given the support we received following our consultation, we are proceeding with our proposals. Further, in line with the changes set out in [CP22/4](#), we are introducing a consequential change to TC 2.1.23IG to reflect these amendments in the CPD provisions for persons involved in regulated funeral plan activities. This change ensures that we provide flexibility in meeting CPD requirements to all firms and advisers.
- 3.69 While these changes provide firms, RIAs, PTSs and persons involved in regulated FP activities with more flexibility, our CPD requirements and standards must still be met. For RIAs, for example, this includes making sure the learning is measurable, contributes to their knowledge and skill, and can be independently verified.
- 3.70 Firms should note that an activity is unlikely to contribute to an individual's continued development if the activity is so short that it cannot reasonably be viewed as relevant to the aims set out in TC 2.1.22G.

Cost benefits analysis

- 3.71 We continue to believe that these changes are unlikely to have cost implications, as firms will not be required to make any changes to their existing CPD arrangements. To the extent that these proposals do result in an increase in costs, we consider that the increase will be of minimal significance.
- 3.72 Further, these changes offer clear benefits, as they introduce additional flexibility in meeting CPD requirements. This in turn could lead to further improvements in the quality of retail investment and pension transfer advice. We expect that these amendments will be net beneficial.

Equality and diversity

- 3.73 We continue to believe that these changes will not materially impact any of the groups with protected characteristics under the Equality Act 2010. No comments were raised during the consultation.

CP22/4: Listing Rules (Open-Ended Investment Companies) (Amendment) Instrument 2022 Background

Background

- 3.74 In Handbook Notice 84, we made changes to the Listing Rules (LRs) to create a more proportionate listing regime for open-ended investment companies (OEICs) in standard listing, while ensuring that existing investor protections

were maintained. Previously, equity shares in OEICs were listed under LR 16 in the premium listing segment.

- 3.75 In making these changes, we introduced a new chapter – LR 16A – setting out requirements for OEICs that are consistent with standard listing, to replace LR 16 in its entirety. We also proposed consequential changes to align our listing requirements for OEICs more closely with standard listing for shares in LR 14 (Standard listing (shares)).
- 3.76 Prior to the changes above, which came into force on 4 January 2022, there was a general exclusion preventing investment entities from having a standard listing of equity shares under LR 14, subject to exceptions for investment entities that already had a premium listing of a class of equity shares.
- 3.77 We have become aware that, because of the changes made to LR 14, the new rules could be interpreted as saying that the restriction on standard listing of equity shares in funds in LR 14.1.1R apply only to closed-ended investment funds, rather than other “investment entities” that are not OEICs.
- 3.78 This interpretation goes beyond the policy intention in Handbook Notice 84 (moving OEICs to standard listing) by changing the types of investment entities that would be allowed in Standard Listing. This was never an intended consequence of the changes to LR 14.
- 3.79 In CP 22/04, we therefore proposed changes to add a new limb to LR 14.1.1 to reflect the original policy position for investment entities other than OEICs prior to the amendments introduced by Handbook Notice 84. We proposed amending the rules to provide that LR 14 does not apply to equity shares issued by an investment entity unless:
- it has a premium listing of a class of its equity shares as a closed-ended investment fund under LR 15; or
 - it is an open-ended investment company to which LR 16A applies.
- 3.80 The question of whether investment entities should be eligible for a standard listing and under the definition of “investment entity” was one of the key areas discussed and consulted on during the Investment Entities Listing Review, which ran from 2006 to 2008.
- 3.81 The intent behind the use of “investment entity” in LR 14 was to clarify that funds of any type (whether open-ended, closed-ended or otherwise, and whether they are diversified) would not be eligible for standard listing of equity shares unless they already had a class of equity shares listed under LR 15 or (at the time) LR 16, and then applied to list a further class of equity shares.
- 3.82 This dates back to our policy intention as expressed in the consultations from 2006 to 2008 on listed investment entities. The original policy intent arose as a result of strong feedback from stakeholders that standard listing should not be

available to funds and that the protections afforded to investors in funds by the premium listing regime was regarded as particularly important. It remains our policy that (subject to the exceptions set out above) investment entities should only be able to list equity shares only where the protections of the premium listing regime are available.

Feedback and our response

- 3.83 We received no feedback during the consultation. As such, we are implementing the proposals as consulted on.

Cost benefit analysis and compatibility statement

- 3.84 These rule changes are made using our powers in the Financial Services and Markets Act 2000 ('FSMA'). The cost benefit analysis and compatibility statement set out in CP22/4 indicated that we considered that there will be no increase in costs, or the increases will be of minimal significance, such that we did not provide a CBA (s138L of FSMA). This was because there had been no applications for standard listing by investment entities other than OEICs since 4 January 2022, when the rule changes took effect. As such, these changes simply prevent any prospective applications in future that may have sought to interpret the new wording to mean that standard listing under LR 14 is now available to investment entities other than OEICs.
- 3.85 Similarly, as stated when we consulted, we consider the final rules (being unchanged from consultation) are consistent with our strategic objectives, and advances one or more of our operational objectives (in this case, consumer protection and market integrity), as required by s138I (2) of FSMA. We have also had regard to the regulatory principles in s3B of FSMA and consider the changes to be consistent with the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.
- #### Equality and diversity issues
- 3.86 We do not believe that our final rule changes will adversely impact any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation), as set out in the consultation paper. We received no comments on our original assessment in response to CP22/04.

CP22/4: Conduct of Business Sourcebook (MiFID Org Regulation Amendment) Instrument 2022

Background

- 3.87 Last year, the Treasury made several changes to conduct of business rules in the UK Markets in Financial Instruments Directive (MiFID) delegated regulation (under the EU Withdrawal Act the delegated regulation was onshored in a statutory instrument). The changes aimed at reducing regulatory burdens

without compromising standards of investor protection and were similar to changes introduced by the EU.

3.88 When implementing MiFID in 2018, we copied out the conduct rules in the MiFID delegated regulation into the Conduct of Business sourcebook (COBS) and included associated definitions in the Glossary. We did this for 2 reasons:

- First, to help investment firms see all their conduct rules in a single place.
- Second, as required by MiFID, to apply similar conduct rules to those in MiFID to certain firms ('Article 3 firms') – mainly financial advisers – that conduct investment business but that were exempted from authorisation under MiFID as investment firm.

3.89 The changes the Treasury made to the UK MiFID delegated regulation therefore meant that our Handbook did not correctly set out the rules applying to investment firms and applied more onerous rules to Article 3 firms than to investment firms.

Summary of proposals

3.90 In [CP22/4](#), we proposed to amend COBS and the Glossary to bring them into line with the changes the Treasury made to the onshored MiFID delegated regulation. Those changes included:

- making electronic communications the default mode of communication with professional clients
- disapplying the detail of costs and charges disclosure requirements when dealing with professional clients
- enabling delayed costs and charges disclosures to be made in certain circumstances
- turning off certain reporting requirements for dealings with professional clients, including the requirement to inform a client when the value of their portfolio falls by 10% within a quarter

Feedback and response

3.91 We received one response to the consultation, which supported the proposals. As such, we have now made our proposals as consulted on in [CP22/4](#).

Cost benefit analysis

3.92 These changes advance our operational objective of consumer protection by removing the potential for confusion about firms' regulatory requirements in certain areas and removing the burden of certain disclosure requirements that are not valued by professional clients.

Equality and diversity statement

- 3.93 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

CP22/4: Conduct of Business Sourcebook (Amendment) Instrument 2022

Background

- 3.94 In November 2021, we published our policy statement (PS) on changes to the UK Markets in Financial Instruments Directive's (MiFID's) conduct and organisational requirements ([PS21/20](#)). The PS set out our final policy position and Handbook rules making changes to the existing inducement rules on research. The changes to the research rules came into force on 1 March 2022.
- 3.95 The policy objective we were seeking from these changes to research was to increase the research coverage of small and medium-sized enterprises (SMEs) issuers and to create a regime that is proportionate to the risks of inducements that arise. The policy intent was to make changes that ensured consistency across all the rules on research and inducements for investment firms and collective portfolio managers (CPMs). However, we did not make all the necessary rule changes to achieve this outcome – in particular, the changes we made to the list of minor non-monetary benefits in Conduct of Business sourcebook (COBS) 2.3A were not mirrored in changes to the list of minor non-monetary benefits in COBS 18 Annex 1.

Summary of proposals

- 3.96 Our proposals amended COBS 18 Annex 1 to mirror changes already made in COBS 2.3A, bringing the rules applicable to CPMs in line with those for investment managers by:
- creating an exemption from the inducement rules for research on SMEs below a market capitalisation of £200m
 - creating an exemption from the inducement rules for third-party research that is received by a firm providing investment services or ancillary services to clients, when it relates to fixed income currencies and commodities (FICC) instruments.
 - creating an exemption for research provided by research providers that do not offer execution services and that are not part of a financial services group that includes a firm offering execution or brokerage services
 - creating an exemption on written material that is made openly available from a third party to any firms wishing to receive it or to the general public

Feedback and response

- 3.97 We did not receive any responses to the consultation on the changes proposed in the QCP chapter. As such, we have now implemented the changes we consulted on.

Cost benefit analysis

- 3.98 These changes complete the extension of the changes to the research rules for CPMs that were introduced in PS20/21. The overall impact of our proposals, while likely to be low for the last 2 bullets above and higher for the remaining two, is dependent on the extent to which CPM firms (whether conducting Individual discretionary Portfolio Management activity or not) choose to use the options provided by in our new rules. Their optionality means that such costs do not have to be incurred by firms should they not wish to make use of the exemptions that are extended for CPMs.

Equality and diversity statement

- 3.99 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

4 Additional information

Making corrections

- 4.1 The FCA reserves the right to make correctional or clarificatory amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

Publication of Handbook material

- 4.2 This Notice is published on the FCA website and is available in hardcopy.
- 4.3 The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, reference number or module at www.handbook.fca.org.uk/instrument. The definitive version of the Handbook at any time is the version contained in the legal instruments.
- 4.4 The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.
- 4.5 The consolidated text of the Handbook can be found on the FCA's website at www.handbook.fca.org.uk/. A print version of the Handbook is available from The Stationery Office's shop at www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/.
- 4.6 Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website.

Obligation to publish feedback

- 4.7 This Notice, and the feedback to which paragraph 1.3 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost benefit analysis and a statement under section 138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

Comments

- 4.8 We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, they should be sent to handbookproduction@fca.org.uk (or see contact details at the front of this Notice).

Handbook Notice 99

This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 16 May 2022 and 26 May 2022.

It also may contain information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

General comments and queries on the Handbook can be addressed to:

Lisa Oceró

Tel: 020 7066 0198

Email: Lisa.Ocero@fca.org.uk

However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Contact Centre:

Tel: 0300 500 0597

Fax: 0207 066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

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