

Quarterly consultation No.2

September 2013



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The Financial Conduct Authority invites comments on this Consultation Paper.

Comments on Chapters 2, 5, 6, part of 7, 13 and 16 should reach us by 6 October 2013 and comments on all other chapters by 6 November 2013.

Comments may be sent by electronic submission using the form on the FCA's website at www.fca.org.uk/your-fca/documents/consultation-papers/cp13-09-response-form.

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

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Abbreviations used in this paper

AFM	authorised fund manager
AIF	alternative investment fund
AIFM	alternative investment fund manager
AIFMD	Alternative Investment Fund Managers Directive (2011/61/EU)
BIPRU	Prudential sourcebook for Banks, Building Societies and Investment Firms
CAD	Capital Requirements Directive
CASS	Client Assets sourcebook
CCPs	central counterparties
CESR	Committee of European Securities Regulators
CIS	collective investment scheme
COBS	Conduct of Business sourcebook
COLL	Collective Investment Schemes sourcebook
COND	Threshold Conditions sourcebook
CP	consultation paper
CRD	current Capital Requirements Directives consisting of Directive 2006/48/EC and Directive 2006/49/EC. References in chapter 16 to current or existing CRD include the amendments introduced by the CRD II (Directives 2009/111/EC, 2009/27/EC and 2009/83/EC) and CRD III (Directive 2010/76/EC) legislative packages
CRD IV	Capital Requirements Regulation and the Directive
CRR	Regulation (EU) 575/2013 or Capital Requirements Regulation or the Regulation – which forms part of the CRD IV legislative package
DEPP	Decision Procedures and Penalties manual
DIE	designated investment exchange
DTR	Disclosure and Transparency Rules sourcebook

DWP	Department for Work and Pensions
EG	Enforcement Guide
EMIR	European Market Infrastructure Regulation
EMIR SI	EMIR statutory instrument
EMIR SI2	second EMIR statutory instrument
EMPS	Energy Market Participants Guide
ESA	European Supervisory Authority
ESMA	European Securities and Markets Authority
ETFs	exchange-traded funds
FCA	Financial Conduct Authority
FOL	Firms Online
FSA	Financial Services Authority
FSMA	Financial Services and Markets Act 2000
FUND	Investment Funds sourcebook
GABRIEL	GAthering Better Regulatory Information ELEctronically
GEN	General Provisions sourcebook
HMT	Her Majesty's Treasury
ISA	individual savings account
IPRU(INV)	Interim Prudential sourcebook for Investment Firms
LARC	Listing Authority Review Committee
LLP	limited liability partnership
LR	Listing Rules
LSE	London Stock Exchange
MAD	Market Abuse Directive (2003/6/EC)
MiFiD	Markets in Financial Instruments Directive

MLAR	Mortgage Lending and Administration Return
NSM	national storage mechanism
OMPS	Oil Market Participants Guide
OTC	over-the-counter
PD	Prospectus Directive (2003/71/EC)
PERG	The Perimeter Guidance manual
PR	Prospectus Rules sourcebook
PRIN	Principles for Business
PS	policy statement
PSRs	Payment Services Regulations 2009
RDC	Regulatory Decisions Committee
RIE	recognised investment exchange
ROIE	recognised overseas investment exchange
SIPP	self-invested personal pension scheme
SMPIs	statutory money purchase illustrations
STR	suspicious transaction report (as mandated under SUP 15.10.2R and SUP 15.10.3R)
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
TC	The Training and Competence sourcebook
TeX	TISA Exchange Limited
TISA	Tax Incentivised Savings Association
the Referral Fees Regulations	The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013
UCITS	Undertakings for Collective Investment in Transferable Securities
UKLA	UK Listing Authority

1.

Overview

Chapter No	Purpose of proposed changes to Handbook	Consultation closing period
2	Add four new qualifications to the appropriate qualifications list in the Training and Competence sourcebook (TC) and amend the details of three existing qualifications.	6 October 2013
3	Minor amendments to the rules on platform charges and draft rule and guidance clarifying the treatment of legacy business in relation to cash rebates from providers to consumers.	6 November 2013
4	Clarify rules on reporting suspicious transactions.	6 November 2013
5	Amend the Prospectus Rules (PR) to clarify timing and method of filing a prospectus with FCA.	6 October 2013
6	Set out the FCA's approach to using its enforcement powers under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013.	6 October 2013
7	Various minor amendments to reporting mechanisms.	6 October 2013 (changes to controllers and close links reports) 6 November 2013 (all other changes)
8	Changes to chapter 9 of the Supervision manual (SUP) to reflect our decision to discontinue the Listing Authority Review Committee.	6 November 2013
9	Clarify the application of inflation-adjusted projections to in-force pensions business.	6 November 2013
10	Incorporate the ESMA Guidelines on exchange-traded funds (ETFs) and other Undertakings for Collective Investment in Transferable Securities (UCITS) issues into COLL.	6 November 2013

Chapter No	Purpose of proposed changes to Handbook	Consultation closing period
11	Implement the changes made by Treasury to reflect and make firms aware of the FCA's powers set out in further domestic legislation regarding the European Market Infrastructure Regulation (EMIR).	6 November 2013
12	Remove the legacy concept of designated investment exchanges (DIEs) from non-prudential Handbook modules.	6 November 2013
13	Defer the date that rules around the provision of fund information to investors through nominees come into force.	6 October 2013
14	Provide guidance on the AIFM Remuneration Code (SYSC 19B) arising from the issuance of the ESMA guidelines on sound remuneration policies under the AIFMD.	6 November 2013
15	Minor consequential amendments to various sections of the FCA Handbook arising from the implementation of AIMFD.	6 November 2013
16	Implementing CRD IV for investment firms – Consequential changes to the Handbook.	6 October 2013

2. Changes to the Training and Competence sourcebook (TC)

Introduction

- 2.1** The Training and Competence sourcebook (TC) sets out the qualification requirements for individuals carrying out certain retail activities. We consult for one month each time a new qualification is added, removed or amended in the list of appropriate qualifications.
- 2.2** 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, can be found in Appendix 2.

Summary of proposals

- 2.3** We propose to add the following new qualifications to the appropriate qualifications list for various TC activities. These qualifications have been assessed as meeting our exam standards for these activities.
- 2.4** In relation to TC activities 2 and 12¹ we propose to add:
- SIX Swiss Exchange's Certified Securities Trader plus the Swiss Markets Insight course; and
 - Canadian Securities Institute's Canadian Securities Course (CSC) and Conduct and Practices Handbook Course (CPH) (provided it is accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation). Both the CSC and CPH must have been successfully completed.
- 2.5** In relation to TC activities 3 and 13² we propose to add:
- Canadian Securities Institute's Canadian Securities Course (CSC), Conduct and Practices Handbook (CPH), the Futures Licensing Course (FLC), the Derivatives Fundamentals Course (DCF) and the Options Licensing Course (OLC) (provided it is accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation). All the Canadian Securities Institute courses must be successfully completed.

¹ TC activity 2 (advising on securities which are not stakeholder pension schemes, personal pensions or broker funds); and TC activity 12 (advising on and dealing in securities which are not stakeholder pension schemes, personal pensions or broker funds).

² TC activity 3 (advising on derivatives) and TC activity 13 (advising on and dealing in derivatives).

- Canadian Securities Institute's Canadian Securities Course (CSC), Conduct and Practices Handbook (CPH), the Futures Licensing Course (FLC) and the Derivatives Fundamentals and Options Licensing Course (DFOL) (provided it is accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation). All the Canadian Securities courses must be successfully completed.

2.6 We also propose to make changes to three existing qualifications already on our appropriate qualifications lists:

- add the Chartered Insurance Institute's Certificate in Investment Operations: Individual Savings Account Administration paper (FA5) to TC activity 15;³
- remove SIX Swiss Exchange as a qualification provider from the Certified Derivatives Trader as it should just be Deutsche Borse AG; and
- amend the qualification provider details for the Diploma in Corporate Finance to show it is awarded jointly by The Chartered Institute of Securities and Investment and The Institute of Chartered Accountants in England and Wales.

Q2.1: Do you know of any reason why these qualifications should not be added and/or amended on our appropriate qualifications list?

Cost benefit analysis

2.7 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

2.8 Section 1B of FSMA requires the FCA, when discharging its general functions, so 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.

³ TC activity 15 (overseeing on a day to day basis operating a collective investment scheme of undertaking the activities of a trustee or depositary of a collective investment scheme).

- 2.9** 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 provided by having competent advisers by keeping our TC rules up to date through the addition of relevant new qualifications and changes to current qualifications. Therefore, 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 section 1C(2) of FSMA and the regulatory principles in section 3B.
- 2.10** In preparing the proposals, we have had regard to 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.
- 2.11** The proposed changes are not expected to have a significantly different impact on mutual societies.

Equality and diversity

- 2.12** We have assessed that our proposals do not give rise to discrimination and that the proposals are of low relevance to the equality agenda. We would nevertheless welcome any comments respondents may have on any equality issues they believe arise.

3. Platforms

Introduction

- 3.1** This chapter consults on issues relating to the rules published with PS13/1,⁴ which come into force on 6 April 2014.
- 3.2** The proposed changes to the platform rules and addition of a new rule and guidance will be of interest to:
- platform service providers
 - advisory firms
 - retail investment product providers
 - self-invested personal pension scheme (SIPP) operators
 - life companies
 - managers of collective investment schemes.
- 3.3** Consumers and consumer bodies will be interested in the proposed new rule and guidance clarifying how products with cash rebates already held by retail clients when the new rules come into force should be treated.
- 3.4** The proposed amendments, and the statutory powers they will be made, under are set out in Appendix 3.

Summary of proposals

- 3.5** We propose to make minor amendments to the rules on platform charges in chapter 6.1 of the Conduct of Business sourcebook (COBS) to bring these rules in line with the definition of a platform charge and clarify the exceptions to the ban on platforms receiving payments from other firms.

⁴ PS13/1, *Payments to platform service providers and cash rebates from providers to consumers* (April 2013).

- 3.6** We also propose clarifying the application of the rules which ban payment of cash rebates by providers to retail clients. We are consulting on a new rule and guidance and setting out how these rules apply to 'legacy' business, where retail investment products are already held by a retail client at the time the new rules come into force in April 2014.

Platform charges

- 3.7** The rules relating to platforms in COBS 6, for the most part, refer to 'retail clients' but there are the following exceptions:
- a. COBS 6.1E.1R** - on disclosure of platform charges, refers to 'customer'. This is not in line with the definition of platform charge, as this definition includes 'and which is agreed between the platform service provider and the retail client'. So, we propose to amend this rule to refer to 'retail client'.
 - b. COBS 6.1G** – on re-registration of assets, refers to 'client'. The Tax Incentivised Savings Association (TISA) has introduced a new register (TeX), designed to meet this rule and speed up re-registration to six working days (from July 2013), which covers all clients, not just retail clients. So, we do not propose to amend this rule.

Exceptions to ban on platforms receiving payments from other firms

- 3.8** COBS 6.1E.6R and COBS 6.1E.7R set out exceptions to the ban on platforms receiving any remuneration for their services other than platform charges agreed with retail clients. COBS 6.1E.6R applies to payments from certain firms other than retail investment product providers and COBS 6.1E.7R applies to payments from any firm, including retail investment product providers. To highlight the difference between the two rules, we propose to amend COBS 6.1E.7R to say 'A platform service provider or its associates may solicit and accept payments from any firm, including a retail investment product provider, which are only for ...'.

Ban on cash rebates by providers to retail clients – legacy business

- 3.9** The rules published with PS13/1 include transitional provisions setting out when firms need to switch off payments from providers to platforms on investments already held by a platform, when the rules come into force on 6 April 2014. However, the rules do not include equivalent provisions for cash rebates from providers to consumers, which are banned by the new rules (apart from nominal cash amounts). Our policy intention, as set out in CP12/12⁵, is that cash rebates can continue on investments already held by a consumer on a platform when the rules come into force and which continue to be held. However, queries from the industry have shown that guidance similar to that for payment of trail commission to advisers (contained in COBS 6.1A) would be helpful.
- 3.10** The combined effect of the rules for providers and platforms is that, from 6 April 2014, cash rebates for new business (other than nominal amounts permitted by COBS 6.1E.10R and 6.1E.11G) will only be possible for execution-only business held off-platform as:
- providers are banned by COBS 6.1B.7R(3) from structuring their retail investment products to allow for cash rebates where a personal recommendation is provided to the retail client; and
 - platforms are banned by COBS 6.1E.8R(3) from arranging for a retail client to buy a product with cash rebates for both advised and execution-only business.
- 3.11** The draft rule and guidance we are consulting on do not apply to execution-only off-platform business but do apply to advised off-platform business.

⁵ CP12/12 *Payments to platform service providers and cash rebates from providers to consumers* (June 2012).

3.12 The draft rule and guidance in Appendix 3 clarify that cash rebates to consumers can continue after the rules come into force in the circumstances set out in the table below. The combined effect of the rules for advisers, product providers and platforms in COBS 6 will be that:

- advisers will continue to be able to receive trail commission where this is permitted by COBS 6.1A.4AR and COBS 6.1A.4AAG. Product providers will continue to be able to pay commission in accordance with this rule and guidance, and platforms will continue to be able to facilitate payment of the commission to advisers;
- cash rebates from providers to retail clients will continue to be payable where they meet the proposed new rule and guidance (and also COBS 6.1A.14AR, which says that firms must not make a personal recommendation if they know the product charges are set at a level which allows a cash rebate to be paid to the retail client); and
- payments from providers to platforms will need to stop before 6 April 2016, in accordance with the transitional provisions set out in the rules published with PS13/1.

Table: cases in which payment of cash rebates by providers to retail clients can continue under the proposed new guidance

(a)	no change is made to the retail client's investment in the relevant product or to the level of the retail client's regular contributions into that product
(b)	the retail client's investment in, or regular contribution to, the relevant product is reduced; the retail investment product provider may continue to pay the cash rebate associated with the reduced investment amount
(c)	the retail client's investment in the relevant product is transferred from accumulation units to income units or vice versa
(d)	part of the retail client's investment is switched between funds within a retail investment product such as a SIPP or a retail investment product wrapper such as an individual savings account (ISA); the retail investment product provider may continue to pay the cash rebate associated with the part of the retail client's investment which has not been switched into another fund
(e)	the product is re-registered to another platform service provider, and is otherwise unchanged
(f)	the product is converted to a share class which does not pay a commission, remuneration or benefit of any kind to a firm and is otherwise unchanged

Q3.1: Do you agree that the rules on platform charges in COBS 6.1E should be amended to bring it in line with the definition of a platform charge and to make clearer the exceptions to the ban on platforms receiving payments from other firms?

Q3.2: Do you agree that it should be possible for cash rebates by providers to retail clients to continue in the circumstances listed in the new COBS 6.1B.7ABG in Appendix 3?

Q3.3: Do you have any comments on the draft rule and guidance in Appendix 3?

Cost benefit analysis

- 3.13** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to perform a cost benefit analysis 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. Our proposals simply clarify the rules published with PS13/1 so, do not give rise to any significant new costs or increase in costs.

Compatibility statement

- 3.14** We consulted in CP13/3⁶ on an updated compatibility statement for the PS13/1 rules. This reflected the new FCA objectives, including our duty to consider the impact of our rules on authorised mutual societies. We said in that compatibility statement that we did not expect the rules to have a significant impact on mutual societies and respondents had no comments on this.
- 3.15** The proposals explained in this chapter simply clarify the PS13/1 rules, and we consider that the updated compatibility statement circulated with CP13/3 is also valid for these proposals.

Equality and diversity

- 3.16** The clarifications to the PS13/1 rules we are proposing in the chapter do not affect our previous assessment, as set out in CP12/12 and PS13/1, that the rules we have made do not give rise to any issues for equality and diversity.

⁶ CP13/3 *Quarterly consultation (No 1)* (February 2013)

4.

Clarification of rules on reporting suspicious transactions

Introduction

- 4.1** This chapter proposes a clarification of the existing requirement for firms to submit suspicious transaction reports in the Supervision manual (SUP), namely under SUP 15.10.2R and SUP 15.10.3R.
- 4.2** The Financial Services Authority (FSA) and HM Treasury (HMT) previously consulted on the STR requirements as part of the UK's implementation of the Market Abuse Directive (MAD) in June 2004.⁷
- 4.3** The changes will be of interest to all firms subject to the reporting regime, and persons interested in the FCA's market abuse regime but of particular interest to investment firms.
- 4.4** The text of the proposed amendment, and the statutory powers under which they will be made, can be found in Appendix 4.

Summary of proposals

- 4.5** The STR regime is a key part of our approach in protecting and enhancing the integrity of the UK's financial markets. We believe that the regime is generally working well, with over 1000 STRs received in 2012 from a wide range of market participants on a wide range of asset classes. These STRs have included qualifying investments both traded on a prescribed market and investments whose value depends upon a qualifying investment traded on a prescribed market.
- 4.6** Firms are currently required to submit STRs under SUP 15.10.2R and SUP 15.10.3R of the Handbook. As a result of discussions with industry, we have identified a potential disparity in the scope between these two rules. Therefore, we are seeking to provide enhanced clarity to the industry on these rules.
- 4.7** SUP 15.10.2R stipulates that transactions in 'a qualifying investment admitted to trading on a prescribed market' are reportable. However, SUP 15.10.3R does not and refers simply to the Glossary definition of market abuse which is in accordance with section 118 of the Financial Services and Markets Act 2000 (FSMA). The definition of 'market abuse' under this section includes, for sub-sections 2 (insider dealing) and 3 (disclosure of inside information), 'investments which are related investments in relation to such qualifying investments'.

⁷ HMT and FSA joint consultation: UK Implementation of the EU Market Abuse Directive (Directive 2003/6/EC), June 2004.

- 4.8** To ensure clarity and consistency between the two rules under which STRs are submitted and align SUP 15.10.2R more closely with the text used in article 6(9) of MAD, we propose to remove the reference to a qualified investment admitted to trading on a prescribed market from SUP 15.10.2R.
- 4.9** This does not increase the scope of SUP 15.10 taken in its entirety and we believe that this clarifies any discrepancy that may exist. As a result, any Market Watch articles and issued guidance in relation to STRs will not be affected by this proposed clarification.

Q4.1: Do you agree with the proposed amendment to SUP 15.10.2R?

Cost benefit analysis

- 4.10** Sections 138I and 138J of FSMA require us to publish a cost-benefit analysis of the implications of the proposed amendments.
- 4.11** A cost benefit analysis of the original implementation of the STR regime was considered in the joint HMT and FSA consultation.⁸
- 4.12** We believe that our proposed change to SUP 15.10.2R will affect very few firms. As a result of the current overall effect of SUP 15.10, we believe that the majority of firms that would be affected by the proposed change have already implemented the required systems and controls to comply with the STR regime across all instruments. An analysis of submission rates across the major participants in the markets affected shows that submission rates are high and our experience shows that the largest firms in this area have implemented the requirements of the STR regime.
- 4.13** We exercise a proportionate approach to our expectations of firms and, as such, we recognise that the costs for implementation will vary based on the size and complexity of the business involved. We consider that any additional cost of implementation would arise only in the case that the lack of clarity in the current rules had led to no implementation already. In the case of smaller and simpler firms we expect the costs to be low; predominantly the cost of any enhanced staff training and simple transaction monitoring. In larger, more complex firms, costs of implementation could be greater. However, our experience suggests that all such firms have already implemented the STR rule and would encounter no additional costs.
- 4.14** The benefits include an enhanced clarity for firms in one of our key tools for promoting the integrity of the UK's financial markets. Additionally, we believe this clarification will improve our ability to compel reliable suspicious transaction reporting. Therefore, improving our ability to detect and take action where appropriate in cases of market abuse. We believe this will contribute to the improved functioning of the markets.

⁸ HMT and FSA joint consultation: UK Implementation of the EU Market Abuse Directive (Directive 2003/6/EC), June 2004.

Compatibility statement

- 4.15** The clarifications proposed are compatible with our general duties because they improve the accuracy and usability of the clarified provisions and so, enhance the compatibility of those provisions with our statutory duties. These modifications are made largely in response to requests for enhanced clarity from industry.
- 4.16** So far as is compatible with our consumer protection or integrity objective, we must discharge our general functions (including making rules, guidance and general policy) in a way that promotes effective competition in the interests of consumers (section 1B(4) of FSMA). Our proposed changes will not affect competition in the sectors covered by the STR rules.
- 4.17** The proposed changes are not expected to have a significantly different impact on mutual societies.

Equality and diversity

- 4.18** We have concluded that our proposals do not give rise to discrimination and are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

5.

Changes to the Prospectus Rules sourcebook

Introduction

- 5.1** This chapter consults on changes to the Prospectus Rules sourcebook (PR) to clarify the timing and method of filing a prospectus with the FCA so that we comply with the EU Omnibus Directive (Directive 2010/78/EU).
- 5.2** The Omnibus Directive requires us to report certain items of data which relate to our prospectus review operations to the European Securities and Markets Authority (ESMA) for inclusion in the ESMA Register it is establishing. The data we need to report includes electronic copies of each prospectus and supplementary prospectus we approve and URLs linking to where the document is published.
- 5.3** To help us comply with the Omnibus Directive and fulfil our reporting obligations, we are proposing to amend PR 3 (Filing and publication requirement in relation to prospectuses). Currently, it contains a requirement to 'file' a prospectus or supplementary prospectus with the FCA once it is approved. We propose to amend the requirement to clarify what 'filing' a prospectus means. The new rule will make it clearer that 'filing' means uploading the document to the FCA's national storage mechanism (NSM). This is the FCA's public archive of regulatory information relating to companies subject to the Prospectus Rules, Listing Rules or the Disclosure and Transparency Rules. The facility enables the public to view regulatory announcements and documents published by issuers or persons subject to our rules.
- 5.4** We are also proposing a specific time limit for filing documents in place of the current formulation 'as soon as practicable'.
- 5.5** The proposals will be of interest to issuers or persons subject to the Prospectus Rules. The proposed amendments, and the statutory powers they will be made under, are set out in Appendix 5.

Summary of proposals

Method of filing a prospectus with the FCA

- 5.6** All issuers or persons who have a prospectus or supplementary prospectus approved by the FCA are required, under PR 3.2.1R, to file the document with the FCA after approval and then publish it. These rules are derived from articles 14 and 16 of the Prospectus Directive (PD). PR 3.2.4R (Method of publishing a prospectus) stipulates what is meant by 'publishing' the document but is silent on what is meant by 'filing' it.

5.7 We propose to amend PR 3.2.1R so that it only deals with the 'filing' requirement. A consequential amendment will be made to PR 3.2.2R so that it includes the requirement to publish the prospectus, previously in PR 3.2.1R. We then propose to add a new provision to make it clear that the method for filing a prospectus with the FCA is to upload it to the NSM.

5.8 We have stated this approach on our website but think it would be clearer to include it in the Prospectus Rules, particularly in the light of our new obligation to report data to ESMA and the probability that we will partly fulfil this obligation by submitting data from the NSM. However, we may consider this and similar requirements in the rules if our experience shows that it is sensible to re-think the filing and publication mechanisms in the rules.

Timing of filing a prospectus with the FCA

5.9 ESMA requires us to make notifications in relation to approvals of prospectuses and supplementary prospectuses within 24 hours of us notifying the applicant that their document has been approved. Therefore, we are proposing to insert a new requirement within PR 3.2.1R requiring a prospectus or supplementary prospectus to be filed with the FCA at the same time as it is made available to the public or, if earlier, within 24 hours of being notified that we have approved the prospectus.

5.10 We do not anticipate that this amendment will have a significant impact on issuers or persons subject to the Prospectus Rules, given that the existing requirement for a prospectus to be filed 'as soon as practicable and, in any case, at a reasonable time in advance of, and at the latest at the beginning of, the offer or the admission to trading of the transferable securities involved.' As the document can be uploaded to a website with relative ease, we are satisfied that the 24-hour deadline will not impose any significant additional burden on issuers or other persons subject to the Prospectus Rules.

Q5.1: Do you agree with our proposed amendments to the Prospectus Rules?

Cost benefit analysis

5.11 Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to perform a cost benefit analysis of our proposed requirements and to publish the result, unless we consider the proposal will not give rise to any cost or to an increase in cost of minimal significance. We do not anticipate that the proposals in this chapter will require any change in behaviour of issuers or persons subject to the Prospectus Rules. Therefore, this will not result in any increase in costs for those affected.

Compatibility statement

- 5.12** Section 1B of FSMA requires us, when discharging our general functions, 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, as far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, to carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 5.13** These proposals help us to comply with certain legal obligations under the Omnibus Directive, the European Directive that established the European Supervisory Authorities (ESAs), including ESMA. The role of the ESAs is to deepen the single market, raise supervisory standards and help mitigate crises. The FCA is committed to the success of the ESAs. Therefore, these proposals are compatible with our strategic objective of making markets function well and advances the operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
- 5.14** The ultimate goal of the Omnibus Directive is to improve investors' access to information and reduce research costs. Although designed to facilitate this outcome, our proposed rule changes only set a time limit for compliance with an existing obligation and we do not consider they will have a significant impact on competition themselves.
- 5.15** In preparing these proposals, we have also had due regard to the regulatory principles in section 3B of FSMA. We believe our proposals are compatible with these principles.
- 5.16** Section 138K of FSMA requires the FCA to provide an opinion on whether the impact of proposed rules on authorised persons which are mutual societies is significantly different to the impact on other authorised persons. We do not expect the proposed changes to have a significantly different impact on mutual societies as compared with other authorised persons.

Equality and diversity

- 5.17** We have considered whether equality and diversity issues arise from our proposals and have concluded that these proposals do not give rise to discrimination and are of low relevance to the equality agenda.

6.

Enforcement: Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013

Introduction

- 6.1** The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635) (the Referral Fees Regulations) came into force on 9 July 2013. The Referral Fees Regulations apply various provisions of the Financial Services and Markets Act 2000 (FSMA) to enable the FCA to enforce the rules against referral fees contained in sections 56 to 60 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the LASPO Act).
- 6.2** Section 56 of the LASPO Act prohibits the payment and the receipt of any fee for the referral to another person of claims or potential claims for damages in connection with personal injury or death. The prohibition applies to referral fees authorised persons (defined in the Schedule to the Referral Fees Regulations), which are primarily authorised persons conducting insurance and insurance mediation or in the same group as such authorised persons.
- 6.3** The Referral Fees Regulations give the FCA investigation and sanctioning powers in relation to the contravention of the section 56 prohibition and also in relation to the contravention of requirements imposed by or under the Referral Fees Regulations.
- 6.4** In this chapter, we explain our approach to using these enforcement powers and the amendments which we are proposing to make to the Decision Procedure and Penalties manual (DEPP) and the Enforcement Guide (EG) as a result.
- 6.5** This consultation will be of interest to consumers, insurers and intermediaries, and their trade bodies.
- 6.6** The text of the proposed amendments, and the statutory powers these amendments will be made under, are set out in Appendix 6.

Summary of proposals

Our approach to taking enforcement action under the Referral Fees Regulations

- 6.7** The Referral Fees Regulations apply (with modifications) the investigation and sanctioning powers that the FCA has under FSMA. Therefore, we propose to include new paragraphs in chapter 19 of EG to explain that our approach to using these powers should mirror our approach to using the enforcement powers given to us by FSMA. This is consistent with the approach we already take to using our powers to enforce requirements imposed under legislation other than FSMA, as described in EG 19.

Penalty and suspension policies

- 6.8** The Referral Fees Regulations give the FCA the sanctioning powers, listed below, in respect of a referral fees authorised person that contravenes a relevant requirement and an approved person that has been knowingly concerned in such a contravention. A relevant requirement is defined in regulation 2 as a restriction imposed by section 56 of the LASPO Act or any requirement imposed by or under the Referral Fees Regulations.
- Regulations 14 and 15 give the FCA the power to publicly censure.
 - Regulation 16 gives the FCA the power to impose a penalty.
 - Regulation 17 gives the FCA the power, in respect of a referral fees authorised person, to impose restrictions in relation to the carrying on of a regulated activity. A restriction may have effect for no more than 12 months.
 - Regulation 18 gives the FCA the power, in respect of an approved person, to suspend any approval of their performance of any functions to which the approval relates, or to impose restrictions in relation to their performance of any function to which any approval relates. A suspension or restriction may have effect for no more than two years.
- 6.9** Regulation 29 applies sections 69(1) and 210(1) of FSMA and requires the FCA to prepare and issue statements of policy for the imposition and amount of penalties, and for the imposition and length of suspensions (in respect of approved persons) and restrictions, under the Referral Fees Regulations.
- 6.10** We propose to apply the existing policies in DEPP 6 (penalties) and DEPP 6A (suspensions) to these powers. These policies (introduced in March and August 2010, respectively) are intended to be flexible and to cover all enforcement cases. For this reason, we consider that they can be applied in enforcement cases under the Referral Fees Regulations and that it is unnecessary to add more specific sections to DEPP to deal with these particular types of cases.
- 6.11** We propose to mention that this will be our approach in EG 19.

Decision-making procedures

- 6.12** Regulation 30 of the Referral Fees Regulations applies section 395(5) of FSMA and requires the FCA to issue a statement of its procedure for giving warning notices and decision notices under the Referral Fees Regulations. Regulation 24 applies Part 25 of FSMA (with modifications) and requires the FCA to issue a warning notice and decision notice when it proposes and decides to exercise its power under section 384 of FSMA to require a referral fees authorised person to provide restitution. Regulations 25 and 26 provide that the FCA must issue warning notices and decision notices when it proposes and decides to use any of its powers under regulations 14 to 18.
- 6.13** The Regulatory Decisions Committee (RDC) makes warning notice and decision notice decisions on behalf of the FCA in respect of all existing disciplinary powers that the FCA has under FSMA and other legislation. The RDC also makes warning notice and decision notice decisions in respect of the FCA's use of the section 384 power to require restitution. Therefore, to ensure we have a consistent approach, we propose that decisions to issue warning and decision notices under the Referral Fees Regulations should be made by the RDC.

- 6.14** We propose to amend DEPP 2 Annex 1 to reflect this. We also propose to mention that this will be our approach in EG 19.

Q6.1: Do you agree with our proposed amendments to DEPP and EG?

Cost benefit analysis

- 6.15** There is no requirement under the Referral Fees Regulations to carry out a cost benefit analysis of our proposed enforcement approach. Nevertheless, we have considered the impact of applying our enforcement powers as a matter of good practice.
- 6.16** The costs and benefits of the legislation prohibiting the payment of referral fees were set out in the impact assessment published by the Government.⁹ The FCA will enforce this law in respect of the financial services firms it regulates under powers given to it by the Referral Fees Regulations.
- 6.17** The changes we are proposing to DEPP and EG are a direct result of the new enforcement powers we have been given. The proposals presented here merely set out the FCA's intended approach to using its new enforcement powers. Our proposals to adopt an enforcement approach which mirrors our enforcement approach under FSMA, to apply our existing policies for imposing penalties, suspensions and restrictions, and for the RDC to make all decisions to give warning notices and decision notices under the Referral Fees Regulations, will benefit the FCA and firms by ensuring we have a consistent approach to exercising our enforcement powers.

Compatibility statement

- 6.18** We have had regard to the regulatory principles set out in regulation 3 of the Referral Fees Regulations, which are based on the regulatory principles set out in section 3B of FSMA. We believe the proposed changes are compatible with all these principles as our general approach to taking enforcement action under the Referral Fees Regulations will mirror our general approach to enforcement under FSMA.
- 6.19** The proposed changes in this chapter do not impact on mutual societies any differently than any other authorised person to whom the Referral Fees Regulations apply.

Equality and diversity

- 6.20** We have considered whether equality and diversity issues arise from these proposals and have concluded that they do not give rise to discrimination and are of low relevance to the equality agenda.

⁹ www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/referral-fees-ia.pdf

7.

Changes to close links and controllers reports

Introduction

- 7.1** This chapter sets out our proposals to make amendments to several parts of chapters 11 and 16 of the Supervision manual (SUP).
- 7.2** The proposals will be of interest to:
- firms required to submit close links and controllers reports;
 - firms required to submit the Mortgage Lending and Administration Return (MLAR);
 - authorised payment institutions; and
 - personal investment firms subject to SUP 16.12.11R.
- 7.3** The proposed amendments, and the statutory powers they will be made under, are set out in Appendices 7A and 7B.

Summary of proposals

Changes to controllers and close links reporting

- 7.4** SUP 11.9, 16.4 and 16.5 require firms to submit controllers and close links reports. These are two of the few remaining scheduled returns currently submitted manually by email or post. Although these reports are shown on the GABRIEL (GATHERING BETTER REGULATORY INFORMATION ELECTRONICALLY) electronic reporting system, this serves only as a reminder that they are due to be submitted.
- 7.5** Close links and controllers reports are processed manually, incurring a time delay between being received by the FCA and recorded on GABRIEL. This results in uncertainty for firms as to whether their report has been received.
- 7.6** To remove the uncertainty and inefficiency of the manual processing approach, we would like to change the mechanism of submitting close links and controllers reports to full electronic submission through GABRIEL. We propose to implement this change for returns with a reporting period ending on or after 31 December 2013.

- 7.7** The PRA will make corresponding changes in its Handbook. Firms will not be required to submit paper/email-based reports to the PRA and must submit those reports through GABRIEL to the FCA. Data collected by the FCA within the GABRIEL system will be shared with the PRA in the same way as other data collected through this system.

Close links reporting (SUP 11.9 and SUP 16.5)

- 7.8** We are proposing to amend SUP 11.9 and SUP 16.5 to require submission of monthly and annual close links reports by completing the Close Links Report through the GABRIEL system. This will replace the current excel-based Close Links Notification Form. The content of the report is unaffected as we are proposing only to change the method of submission.
- 7.9** Event-driven close links notifications required by SUP 11.9.4AR(1) will be unaffected and the excel-based method of submission will remain, as the GABRIEL system is not yet designed to receive unscheduled reports.

Q7.1: Do you agree with our proposal to amend SUP 11.9 and SUP 16.5 to require submission of monthly and annual close links notifications by electronic means made available by the FCA?

Controllers reporting (SUP 16.4)

- 7.10** We are proposing to amend SUP 16.4 to require submission of annual controllers' information by completing a Controllers Report through GABRIEL. This will replace the current optional excel-based Controllers reporting template published in January 2013 and other mechanisms allowed by SUP 16.4. The content of the report is unaffected as we are proposing only to change the method of submission.

Q7.2: Do you agree with our proposal to amend SUP 16.4 to require submission of Controllers notifications by completing the Controllers Report and to require submission of annual Controllers Reports by electronic means made available by the FCA?

Other related amendments

- 7.11** In addition to the amendments proposed above, we propose to delete SUP 16.4.8G and SUP 16.5.7G which allows firms to submit a joint controllers and close links report. The guidance conflicts with the current regulatory framework under which the two notifications have separate requirements that do not overlap and so, submission of a joint report is not possible in practice.
- 7.12** We also propose to clarify, in SUP 16.5.4R, that firms who do not have close links are not required to submit an organisation chart.
- 7.13** The consultation period for changes to controllers and close links reporting will end on 6 October 2013.

Q7.3: Do you agree with our proposals to delete SUP 16.4.8G and SUP 16.5.7G and to amend SUP 16.5.4R?

Changes relating to data item FSA056 – Capital Adequacy for Authorised Payment Institutions

- 7.14** The Payment Services Regulations 2009 (PSRs) allows payment institutions three alternative methods for calculating their own funds requirements: Methods A, B and C. Firms agree the method they will use at authorisation stage and then demonstrate compliance by annual submission of data item FSA056.

New data element

- 7.15** Following consultation in CP09/07¹⁰ and confirmation in PS09/08¹¹, we have been basing our fees for authorised payment institutions in fee-block G3 on the income measure set out under Method C of the PSRs. However, we have to write separately to the 319 payment institutions that do not use Method C asking them to email us the figure that is needed by FEES 4 Annex Part 3 to calculate the firm's fee.

- 7.16** This is inefficient and resource intensive, both for us and firms, creating a separate reporting and validation exercise in addition to their normal regulatory reporting. To create a simpler and more cost-effective method of collecting the information that firms already provide, we are proposing to add a new field to FSA056.

- 7.17** We believe that it would be more efficient to ask firms to provide the data at the same time as they complete the rest of their regulatory reporting on payment services, when they will have the appropriate documentation to hand and have programmed in the person hours they will need to complete the task. Therefore, we are not requesting additional information and simply changing the reporting processes.

- 7.18** To achieve this outcome, we propose to introduce a new data element whereby payment institutions who use methods A or B to record their own funds requirement are required to record their total annual income in Euros – element 67B.

- 7.19** The changes would be enforced subject to consultation and FCA Board approval from 31 December 2013.

Guidance amendment to element 10B of FSA056

- 7.20** The PSRs require payment institutions using Method B to calculate:

'the total amount of payment transactions executed by the authorised payment institutions in the preceding financial year divided by the number of months in that year'

- 7.21** This information is reported in element 10B of FSA056. However, the guidance for this field in SUP 16 Annex 27B incorrectly states that firms should record:

"the total value (in Euros) of payment services transactions for the year."

- 7.22** We believe that this guidance is misleading and want to ensure that firms are reporting the correct values. We are proposing to amend the guidance for element 10B so that it clearly states that firms should report the average monthly value of payment services transactions for the year.

¹⁰ CP09/07 *Regulatory fees and levies – Rates proposals 2009/10* (February 2009).

¹¹ PS09/08 *Consolidated Policy Statement on our fee-raising arrangements and regulatory fees and levies 2009/10 – Including feedback on CP08/18, CP09/7 and 'made rules'* (June 2009).

- 7.23** The changes would be made subject to consultation and FCA Board approval from 31 December 2013.

Q7.4: Do you agree with our proposals to add a new data element to FSA056 and amend the guidance relating to data element 10B?

Changes relating to the Mortgage Lending and Administration Return (MLAR)

- 7.24** The MLAR was originally designed to collect data via the Firms Online system, which only allowed firms to report in sterling. However, when the GABRIEL system was rolled out in 2008, it allowed firms to report in a number of currencies to support the requirements for FSA00x data items. Using GABRIEL enables firms to choose one of seven reporting currencies and set it for all their reporting on GABRIEL (when not specifically requested to report in sterling by the SUP 16 reporting rules and guidance).
- 7.25** We are proposing to remove the restriction that is written into the MLAR guidance annex (SUP 16 Annex 19BG) that states firms must report in sterling, to be consistent with how the GABRIEL system operates and all other data items collected via the GABRIEL system. We are also going to amend the title of SUP 16 Annex 19AR, which incorrectly states 'Mortgage Lending and Administration Return'. This will be changed to the correct title of 'Mortgage Lenders and Administrators Return'.
- 7.26** The changes will be subject to consultation and FCA Board approval and will come into effect on 31 December 2013.
- 7.27** The consultation period for the above changes to the FSA056 and MLAR will run until 6 November 2013.

Cost benefit analysis

- 7.28** Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments. This requirement does not apply if there will be no increase in costs or if any increase will be of minimal significance.

Controllers and close links reports

- 7.29** The proposed change in reporting is unlikely to result in any significant costs for firms or additional regulatory costs for the FCA. This expectation is informed by early discussions with firms of varying size currently providing this data. The changes will standardise and enhance the quality of information collected from firms, as well as enabling us to focus supervisory resources more effectively to help us meet our consumer protection objective. We believe these changes will also benefit firms as they will receive an immediate notification of a successful receipt of their submission on GABRIEL and avoid firms having to chase their submissions. It will also bring controllers and close links reporting in line with other SUP 16 scheduled reporting that is already submitted using GABRIEL.

Changes to FSA056

- 7.30** The changes proposed to FSA056 will make the collection of data required for the calculation of fees for efficient for both firms and the FCA, through a more streamlined process. Affected firms will not need to make a separate communication to the FCA as they are required to do now, potentially reducing costs. The resource intensive process of writing to affected firms will be removed for the FCA. The guidance change will add clarity to the correct way to submit the data required by the PSRs. Therefore, we do not believe that there is a need to undertake any further cost benefit analysis on these proposals.

MLAR currency change

- 7.31** The change proposed to the MLAR does not require firms to do anything differently. It is simply bringing an out-dated point of guidance in line with actual reporting processes in the GABRIEL system. Therefore, we do not believe that there is a need to undertake any further cost benefit analysis on this proposal.

Q7.5: Do you have any questions in relation to our cost benefit analysis?

Compatibility statement

- 7.32** Section 1B of FSMA requires us, when discharging our general functions, 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, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 7.33** These proposals are intended to help ensure that the relevant markets function well and to help secure an appropriate level of protection for consumers. Therefore, we are satisfied that these proposals are compatible with our general duties under FSMA.
- 7.34** In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers. It is our opinion that making changes to the SUP 16 reporting has no impact on competition, as our proposed changes are not designed to change firm behaviour.
- 7.35** For these reasons, we believe that we have had regard to the principles of good regulation and consider these proposals to be the most appropriate way of meeting our statutory objectives.
- 7.36** The proposed changes are not expected to have a significantly different impact on mutual societies either.

Equality and diversity

- 7.37** The proposals do not raise any equality and diversity concerns because online submission programme that we propose to use (GABRIEL reporting) is Disability Discrimination Act compliant. We believe the proposals are of low relevance to the diversity agenda.

8.

Discontinue the Listing Authority Review Committee (LARC)

Introduction

- 8.1** This chapter sets out our proposals to delete chapter 9.5 of the Supervision manual (SUP) to reflect our decision to discontinue the Listing Authority Review Committee (LARC).
- 8.2** The proposals will be of interest to:
- UK and overseas issuers with UK-listed securities or considering a UK listing of their securities;
 - firms advising on the issuance of UK-listed securities; and
 - firms or persons investing or dealing in UK-listed securities.
- 8.3** The text of the proposed amendments, and the statutory powers they will be made under, are set out in Appendix 8.

Background

- 8.4** SUP 9.5 gives persons who disagree with individual FCA guidance on the Part VI rules made under the Financial Services and Markets Act 2000 (FSMA), the right to request that the guidance be reviewed at a meeting of senior FCA staff. Part VI deals with Listing Rules (LR), Disclosure Rules and Transparency Rules (DTR) and Prospectus Rules (PR). Where that person disagrees with the decision of senior FCA staff, they can request the guidance to be reviewed by LARC, whose decisions are final.
- 8.5** LARC was established in 2000 with the transfer of the listing function from the London Stock Exchange (LSE) to the Financial Services Authority (FSA). It is a legacy from the time when the UK Listing Authority (UKLA) was part of the LSE, where it operated as the Quotations Committee and was made up of practitioners available to reconsider decisions taken at staff level.
- 8.6** At the FSA, LARC was established as a committee of the Board to act as an appeals body on decisions that sit outside the statutory notice regime, dealt with by the Regulatory Decisions Committee (RDC) or the Upper Tribunal. It is composed of a Chair, who must be a director of the FCA, and other members who are senior staff or practitioners appointed by the Chair.
- 8.7** We propose to discontinue LARC and delete SUP 9.5 from the Handbook. Our view is based on the following considerations.

- 8.8** LARC is anomalous and exceptional. There is no other similar formal review body with the potential for practitioner involvement leading to a definitive FCA opinion as to the meaning and application of the FCA rules.
- 8.9** Discontinuing LARC would not put persons seeking individual guidance on Part VI rules at a disadvantage compared with regulated firms seeking individual guidance under SUP 9. The Complaints Scheme is available for lodging complaints against the FCA, and could be used by issuers as it is occasionally used by other firms where they disagree with individual guidance. So far as regulatory decisions involving the issue of warning and decision notices (such as suspension of listing or delisting) are concerned, persons have recourse to the RDC or the Upper Tribunal.
- 8.10** Finally, LARC has convened only once since its establishment.

Q8.1: Do you agree with our proposal to delete SUP 9.5 to reflect our decision to discontinue LARC?

Cost benefit analysis

- 8.11** Section 155 of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost-benefit analysis of the implications of the proposed amendments. This requirement does not apply if there will be no increase in costs or if any increase will be of minimal significance. Since LARC has not been used for several years, we do not anticipate that the proposals in this chapter will require any change in or result in any increase in costs for firms.

Compatibility statement

- 8.12** Section 1B of FSMA requires us, when discharging our general functions, so far as is reasonably possible, to act in a way that is compatible with our strategic objectives and advances one or more of our operational objectives. We also need, as far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, to carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 8.13** The proposal helps us to organise ourselves and use our resources in the most efficient and effective way by discontinuing a committee which has proved to be ineffective and not useful. Discontinuing LARC also puts all persons seeking individual guidance from the FCA on an equal basis in that they have access to the Complaints Scheme where individual guidance is concerned, or the RDC and the Upper Tribunal where the subject for complaint is a regulatory decision. Therefore, the proposal is compatible with our strategic objective of making markets function well and advance operational objective of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
- 8.14** The proposed changes are not expected to have a significantly different impact on mutual societies.

Equality and diversity

- 8.15** We have considered whether equality and diversity issues arise from our proposals and have concluded that these proposals do not give rise to discrimination and are of low relevance to the equality agenda.

9. Inflation-adjusted pension projections

Introduction

- 9.1** In March 2013, the Financial Services Authority (FSA) published PS13/2¹² which contained our rules for inflation-adjusted projections for personal and stakeholder pensions. These rules will come into force on 6 April 2014. They meet our longstanding intention of making our rules for projections more consistent with those for the yearly statutory money purchase illustrations (SMPIs) required by the Department for Work and Pensions (DWP).
- 9.2** This chapter addresses certain queries received since the publication of our policy statement that were not raised during our consultation. We propose two amendments to the rules which are intended to clarify the policy position relating to in-force business. We have also taken this opportunity to remove a redundant rule.
- 9.3** In this chapter, we use the following terms:
- Nominal terms – projections which are not adjusted for inflation but reflect current values.
 - Real or inflation-adjusted terms – projections which are adjusted to show the effect of inflation.
- 9.4** The proposals will be of interest to life insurers and other providers of personal pensions (including self-invested personal pensions (SIPPs)) and also to firms that advise on personal pensions.
- 9.5** The proposed amendments, and the statutory powers they will be made under, are set out in Appendix 9.

Clarifications

Allowing for inflation within projections for in-force business

- 9.6** We have been asked whether we intended projections for in-force pension business (such as for increases in contributions) to be inflation-adjusted in the same way as projections issued at the point of sale. Since our aim is consistency with SMPIs, we did intend for projections for in-force business to be inflation-adjusted. We propose to amend COBS 13 Annex 2, 1.2R to make this clear. This is particularly relevant to deterministic projections issued for in-force business which may be the result of an SMPI triggering a review of an investor's pension provision. In these circumstances, projecting in nominal terms would cause consumer confusion. Similarly, confusion will arise if separate automatic nominal projections are provided each year in addition to SMPIs.

¹² PS13/2 *Final rules for inflation-adjusted illustrations for personal pensions and new guidance on preparing product information* (March 2013).

- 9.7** The default basis for in-force business is to provide projections in real terms in accordance with COBS 13 Annex 2. However, there may be circumstances where an existing stakeholder pension or personal pension client specifically requests a projection of their fund value or annuity in nominal terms. For example, if they are considering transferring to another arrangement. Therefore, we have inserted a new rule 1.11 in Annex 2 to permit a standard deterministic projection in nominal terms where a retail client requests one.

Q9.1: Do you have any comments on the need for all deterministic projections for in-force personal pensions business to be in real (inflation-adjusted) terms unless a client specifically requests otherwise?

Intermediate growth-rate exemption

- 9.8** The current omission of the intermediate growth rate from a standard deterministic projection for in-force personal and stakeholder pensions means a consumer does not have a projection comparable with that in an SMPI. Therefore, if an SMPI triggers a request for a projection of increased contributions, the consumer will not have the information they need to assess the possible impact of the increase on their total pension. PS13/2 removed the exemption in COBS 13 Annex 2, 1.10R allowing the omission of the intermediate growth rate with effect from 6 April 2014.
- 9.9** Unfortunately, the wording we used in the rule had the effect of removing the intermediate-rate exemption for life insurance policies as well as that for pensions. This was not our intention so, we are proposing amendments to COBS 13 Annex 2, 1.10R to make this clear.

Q9.2: Do you have any comments on the proposed correction to reinstate the exemption allowing the intermediate growth rate to be omitted for life business?

Removal of out-of-date rule

- 9.10** We have taken this opportunity to remove the rule in COBS 13 Annex 2, 1.7R(2) that allowed a projection to be prepared on any reasonable basis, when it was intended to determine the maximum level of contributions which could be made to a personal pension scheme. This is redundant now that maximum contributions depend on a fixed contribution allowance.

Q9.3: Do you have any comments on the removal of the rule relating to projections intended to determine maximum permissible personal pension contributions?

Cost benefit analysis

- 9.11** The policy intention in relation to inflation-adjusted projections was reflected in the cost benefit analysis (CBA) in PS13/2. As the proposals here merely clarify the rules that were made, we do not consider that any further updates to the CBA published with PS13/2 are required.

Q9.3: Do you have any comments on the CBA for the proposals relating to inflation-adjusted projections for personal pensions?

Compatibility statement

- 9.12** In PS13/2, the FSA said that they considered that the compatibility statement we consulted on in CP12/29 continued to be appropriate. However, the compatibility statement in CP12/29, while adequate, did not explicitly take into account the new FCA objectives and duties, in particular, our duty to consider the impact of our rules on authorised mutual societies. We do not expect the impact of the rules to be different for authorised mutual societies from the impact on other authorised firms and this is still the case. So, we consider that the compatibility statement in PS13/2 is still valid and does not need to be updated.

Equality and diversity

- 9.13** The clarifications and our view that the compatibility statement for PS13/2 is still valid do not affect the previous assessment, as set out in PS13/2, that the rules for inflation-adjusted projections do not give rise to any issues for equality and diversity.

10.

Amendments to the Collective Investment Schemes sourcebook

Introduction

- 10.1** On 18 December 2012, the European Securities and Markets Authority (ESMA) published 'Guidelines on ETFs and other UCITS issues'.¹³ These guidelines cover a number of substantive areas, including disclosure requirements for exchange-traded funds (ETFs) and other schemes under the Undertakings for Collective Investment Transferable Securities (UCITS) Directive. There are also specific guidelines on index-tracking, collateral management and the eligibility of financial indices for investment by UCITS.
- 10.2** ESMA provided a two-month transitional period for national regulators to decide whether they would comply with the guidelines or explain their reasons for non-compliance. Within this time, the UK indicated that it would comply with the guidelines. This consultation seeks to ensure that the guidelines are considered, where appropriate, alongside the existing rules and guidance in the Collective Investment Schemes sourcebook (COLL).
- 10.3** This chapter will be of interest to managers of UCITS funds.
- 10.4** The proposed amendments, and the statutory powers they will be made under, are set out in Appendix 10.

Summary of proposals

- 10.5** In line with our approach to other guidelines published by ESMA, we are proposing to include a link to the guidelines in relevant sections of COLL. Authorised fund managers whose funds will be affected by the guidelines will need to have regard to any additional requirements placed on them, over and above the existing rules in COLL.
- 10.6** Given that the guidelines cover several different areas, we have added a number of links – these have been added wherever possible into sections that already make reference to other ESMA guidelines, such as COLL 4.7 and 5.3. Where this was not possible, new provisions have been created in COLL 4.2, 4.5, 5.2 and 5.4.
- 10.7** COLL 5.2.20BG(4) contained a reference to other guidelines from ESMA's predecessor body, the Committee of European Securities Regulators (CESR). In the interests of consistency in COLL, we have replaced this reference with a link to the guidelines alongside the 'Guidelines on ETFs and other UCITS issues' in the new section COLL 5.2.36G.

¹³ www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

- 10.8** The ESMA guidelines established a defined term for 'UCITS ETF', and stated that UCITS funds of this type should use the term in its name, prospectus and other disclosures and marketing communications to identify it as an ETF. In addition, the guidelines state a UCITS which does not fall within this definition should avoid use of the term 'ETF' or 'exchange-traded fund'. To make this important point clear, we have added guidance setting out the guidelines' definition of a UCITS ETF and where the term should and should not be used.
- 10.9** We may undertake a more detailed transposition of the guidelines when COLL is merged into the new Investment Funds sourcebook (FUND). However, we believe the current method of linking to the guidelines within COLL is sufficient for those affected by them.

Q10.1: Do you agree with our proposed addition of links to the ESMA guidelines on ETFs and other UCITS issues within COLL?

Cost benefit analysis

- 10.10** ESMA published a full cost-benefit analysis, which can be viewed on their website¹⁴, as part of their consultation on the guidelines. Costs for firms of adopting the guidelines include relevant updates to documents, such as the prospectus, key investor information document and marketing communications, as well as adaptations of the composition of collateral and investment portfolios where required. UCITS schemes may also stop investing in some strategy indices as a result of the guidelines. Benefits of these changes include improvements in the quality of information delivered to investors, investors being better able to understand the strategy of an underlying index and a clear explanation of the term 'UCITS ETF'.

Compatibility statement

- 10.11** The incorporation of the ESMA guidelines into the COLL rules assist in ensuring that the relevant markets function well by ensuring AFMs are aware of the guidelines and make reference to them in assessing their regulatory requirements. By choosing to comply with the guidelines, the FCA also looks to secure an appropriate degree of protection for consumers by improving the quality of information they receive and increasing transparency in funds affected by the guidelines.
- 10.12** We do not anticipate any competition implications arising as a result of these proposals.

Equality and diversity

- 10.13** We have assessed that these proposals do not give rise to discrimination and are of low relevance to the equality agenda. However, we would welcome any comments respondents may have on any equality issues they believe arise as a result of these proposals.

¹⁴ Annex I of the Report and Consultation Paper, Guidelines on ETFs and other UCITS issues (ESMA 2012/474), 25 July 2012: www.esma.europa.eu/system/files/2012-474.pdf

11.

Implementing the European Regulation on OTC derivatives, central counterparties and trade repositories (EMIR)

Introduction

- 11.1** The European Regulation on over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories, known as the European Market Infrastructure Regulation (EMIR), came into force on 16 August 2012 and the technical standards to implement EMIR came into force on 15 March 2013. EMIR applies to any entity established in the EU that is a legal counterparty to a derivatives contract, including both non-financial and financial counterparties. EMIR aims to improve transparency and reduce the risks associated with the derivatives market by introducing requirements to:
- report, to a trade repository, any derivative contract entered into;
 - harmonise regulatory requirements across the EU for CCPs;
 - clear, through a CCP, those OTC derivatives subject to a mandatory clearing obligation; and
 - implement stricter risk management processes and margin for all non-cleared OTC derivatives trades.
- 11.2** Earlier this year, HM Treasury made changes to domestic legislation to implement EMIR. The FCA's Handbook was amended on 1 April 2013 to reflect the FCA powers in domestic legislation. These changes were consulted on in chapter 9 of CP12/27.¹⁵
- 11.3** HM Treasury have now made a number of additional changes to the domestic legislation (EMIR SI2). These changes were laid before the UK Parliament on 31 July 2013.¹⁶
- 11.4** We are now consulting on a number of changes to the Handbook that aim to reflect the recent changes to the domestic legislation.
- 11.5** The proposed amendments, and the statutory powers they will be made under, are set out in Appendix 11.

¹⁵ CP12/27 *Quarterly consultation (No 34)* (October 2012).

¹⁶ www.legislation.gov.uk/uksi/2013/1908/contents/made

Background

11.6 EMIR does not require significant implementation in the Handbook as it is an EU Regulation (not a Directive) and the EU legislative text has direct legislative effect in the UK. Related changes to UK legislation were introduced through the EMIR Statutory Instrument (EMIR SI) and, to a lesser extent, the EU Qualifying Provisions Order, which both came into effect on 1 April 2013. These changes included:

- providing the FCA with supervisory and enforcement powers for obligations placed on financial and non-financial counterparties under EMIR; and
- powers for the FCA to specify the form and, where relevant, content of notifications and applications to be made to the FCA.

11.7 Corresponding provisions were made to the Handbook to reflect the EMIR SI and make firms aware of the FCA's powers under this SI. These provisions came into force on 1 April 2013. The domestic legislation and Handbook can both be accessed at the following link:

www.fca.org.uk/firms/markets/international-markets/emir/emir-library.

Summary of proposals

11.8 HM Treasury have now made a second statutory instrument (EMIR SI2) to effect further changes to the domestic legislation (please see the link provided above).

11.9 In brief, the EMIR SI2 changes which are relevant to the FCA include:

- widening the FCA's enforcement powers to enable the FCA to issue a statement of censure to persons for breaches of relevant EMIR requirements;
- adding provisions to allow the FCA to direct the form, or require verification of, information provided to the FCA in respect of unconfirmed trades and outstanding disputes; and
- an amendment to make it clear that the FCA has the power to gather information to determine compliance by 'third country entities' referred to in article 4(1)(a)(v) of EMIR.

11.10 Corresponding amendments are now being proposed to the Handbook to reflect these changes. A number of other proposals are included which provide additional clarification in respect of the changes made in April. The proposed Handbook changes comprise guidance explaining the powers given to the FCA under EMIR SI2 and how the FCA intends to use such powers. We are not proposing any new rules that will give us additional powers over and above those granted under EMIR SI2.

Q11.1: Do you have any comments on our proposed amendments to the Handbook?

Cost benefit analysis

- 11.11** As we are not making any new rules, our statutory cost benefit analysis (CBA) requirements do not apply. However, the FCA has committed to consider conducting and publishing an analysis of the costs and benefits of any guidance that is likely to result in firms or consumers incurring significant costs that were not formally considered during consultation on rules or principles that the guidance relates to.
- 11.12** In this case, the guidance proposed relates to directly applicable requirements under EMIR rather than FCA rules. Given this, we consider that the costs arising from the proposed Handbook changes are consequential in nature or describe processes or requirements in EMIR or primary legislation. This consultation paper does not consider the impact of the obligations and requirements imposed by EMIR and by virtue of HM Treasury's EMIR SI. For this reason, no further cost benefit analysis of this proposal is provided.

Q11.2: Do you have any comments on our approach to cost benefit analysis as set out in this section?

Compatibility statement

- 11.13** We consider the proposals to be compatible with the FCA's strategic objective of ensuring that the relevant markets (set out in section 1F of the Financial Service and Markets Act (FSMA)) function well. This is because the proposed changes support the implementation of EMIR, which seeks to improve transparency and reduce risk in the derivatives markets, as well as making clear to market participants how the FCA intends to use the new powers it has been given under the EMIR SI2.
- 11.14** We consider that the limited changes we have proposed advance the FCA's operational objectives of consumer protection and ensuring market integrity. We are not making any further changes than necessary to support EMIR implementation. As such, we consider that we are not acting inconsistently with the FCA's duty under section 1B(4) of FSMA to, so far as compatible with the consumer protection objective or integrity objective, discharge our functions in a way which promotes effective competition in the interests of consumers.
- 11.15** In preparing the proposed Handbook changes, we have had regard to the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We have also had regard to the regulatory principles set out in section 3B of FSMA and believe that the proposed changes do not undermine any of these principles.

Equality and diversity

- 11.16** We have considered the equality and diversity impact of these proposed changes and do not consider that they give rise to any discrimination or other equality concerns.

Q11.3: Do you agree with our assessment of the equality and diversity impact of these proposals?

12.

Removal of the designated investment exchange (DIE) regime

Introduction

- 12.1** As part of our continuing commitment to maintain a simple and streamlined UK regulatory environment, this consultation seeks views on our proposal to remove the legacy concept of designated investment exchanges (DIEs) from our non-prudential Handbook modules, including:
- Principles for Business (PRIN);
 - the Conduct of Business sourcebook (COBS);
 - the Client Assets sourcebook (CASS); and
 - the Supervision manual (SUP).
- 12.2** This will be the first stage of a wider removal of this legacy concept from the Handbook, which we plan to carry out over the next few years. This timetable is driven by the fact that many of our prudential provisions referring to DIEs relate to European legislation and will be amended soon, as reforms to European legislation on prudential matters take place.
- 12.3** The removal of the term from the prudential sections of the Handbook will be consulted on separately. For example, the FCA is currently consulting through CP13/6¹⁷ on proposed changes to certain prudential provisions as a result of our implementation of the Capital Requirements Directive IV and Capital Requirements Regulations (CRD IV) which comes into force on 1 January 2014.
- 12.4** Our recognised investment exchange (RIE) and recognised overseas investment exchange (ROIE) regimes will remain in place and will be unaffected by the proposed Handbook changes being consulted on in this paper.
- 12.5** These proposals will be of interest to investment firms that rely on an exchange's DIE status for regulatory purposes. This consultation may also be of interest to those third country investment exchanges that are DIEs.
- 12.6** We do not think the changes being made in this CP will have any direct impact on a reasonably informed consumer. However, we do think that they will remove the risk that a less well informed consumer might wrongly assume that DIE status implies FCA assurance regarding any particular investment exchanges.

¹⁷ CP13/6 *CRD IV for investment Firms* (July 2013)

- 12.7** The proposed amendments, and the statutory powers they will be made under, are set out in Appendix 12.

Summary of proposed 2013 Handbook changes in detail

- 12.8** These proposed changes remove all the references to DIES that are not used for prudential purposes and, therefore, are not affected by CRD IV. These references are largely redundant and by deleting or substituting them now, we can simplify the Handbook and narrow the application of the DIE regime pending further changes to prudential Handbook provisions at a later stage. This should simplify the regulatory environment for consumers and clarify the status of DIES in the UK.

High level standards

- 12.9** We propose to change one of our Principles for Businesses (PRIN) rules (PRIN 1 Annex 1R1.1(8)) to no longer state that a firm may categorise DIES as eligible counterparties for the purposes of PRIN. Since the FCA does not monitor or supervise DIES, we do not think it is appropriate for us to continue to make a judgement about their suitability for categorisation as eligible counterparties. However, in practice, removal of the reference to DIES should not affect firms' categorisation of clients currently on the DIE list. Firms will still be able to classify such clients as eligible counterparties under separate PRIN rules if they come within the definition of 'overseas financial institution' (ie, an institution authorised by an overseas regulator to conduct any regulated activity or other financial service) or if they satisfy any other criteria in PRIN 1 Annex 1R, 1.2. These criteria include the client being notified by the firm before business is commenced that the client will be treated as an eligible counterparty for the purposes of PRIN.

Business standards

- 12.10** We will amend the Conduct of Business sourcebook (COBS) by removing a reference to DIES in an evidential provision relating to content that a fund manager should include in fund documents. Currently, COBS 18.5.10E states that fund documents should include information about the firm's 'authority to effect transactions involving contingent liability investments otherwise than under the rules of a recognised investment exchange or designated investment exchange and in a contract traded thereon'. We are removing the reference to DIE as we do not believe we are in a position to make any judgement about the value of DIE rules over those of any other trading venue.

Supervision manual (SUP)

- 12.11** We will amend SUP by removing a reference to DIES in a provision which concerns pre-notifications where a fund manager acquires or disposes of shares in a listed UK domestic firm (ie, listed on the Official List maintained by the FCA or a corresponding list maintained by a competent authority in another EEA state) or of shares of a UK firm admitted to listing on a DIE (or similarly listed shares in the parent company of a UK firm). We plan to replace the 'listing on a DIE' reference with a reference to 'traded or admitting to trading on a MTF or a market operated by a ROIE' but, in practice, the FCA will be able to extend the process described in this provision to shares of UK firms or their ultimate parent undertaking traded on other exchanges or trading venues in the interest of proportionality. This provision is only activated by a firm's request to the FCA and we believe the process in this provision can continue to apply to shares traded on those exchanges or trading venues to which the process currently applies. As such, we do not anticipate our amendment having any practical effect on firms.

Client Assets sourcebook (CASS)

- 12.12** We will also need to amend the Client Assets sourcebook (CASS) by removing the reference to a nominee company controlled by a DIE from the list of those nominee companies whom a firm can use to hold legal title of safe custody assets (CASS 6.2.3R(2)(c)). If there are any firms registering or recording legal title to safe custody assets in the name of a company controlled by a DIE, they will still be able to continue to do so under CASS 6.2.3R(3) if the firm has taken reasonable steps to determine that it is in the client's best interests to register or record title in the name of such third party, or that it is not feasible to do otherwise because of the nature of the applicable laws or market practice to which the assets are subject and has notified the client in writing. Alternatively, the firm will still be able to register or record title to assets in the name of a company controlled by a DIE under CASS 6.2.3R(2)(d) if the firm has complied with CASS 6.3 requirements. These requirements include the firm exercising due skill, care and diligence in the selection and appointment of the third party, taking into account its expertise and market reputation and any legal requirements or market practices that could adversely affect clients' rights.

Glossary

- 12.13** We are proposing to delete references to DIEs from five Glossary definitions:
- **Custodian.** The definition of custodian in the glossary lists various types of entities that can be custodians, and we propose to remove DIEs from sub-paragraph (c). If any firm uses a DIE as custodian for its clients' assets, it will be able to continue to do so if the firm considers it is not feasible to use any other type of specified custodian and there are reasonable grounds to show that the DIE is able to provide services which are appropriate to the client and in the client's best interests. This is already provided for in sub-paragraph (f) of the definition of custodian.

- **Exchange traded fund, intermediate customer, inter-professional business, inter-professional investment, market counterparty.** All these definitions are used only in relation to a COBS transitional provision associated with the implementation of the Markets in Financial Instruments Directive (MiFID) in 2007. All are currently prescriptive long-form repetitions of what the definitions meant under the previous COB regime in force before the implementation of MiFID. We propose to: (i) replace these definitions with simpler and shorter definitions which state that the terms mean what they meant under the old COB regime immediately before the implementation of MiFID, or (ii) simply delete those definitions which are defined only for the purpose of being used within another one of the above definitions.

- 12.14** Firms should note that these changes refer only to the specific, narrow term "exchange traded fund" as defined in our Handbook, and have no effect on the widely used industry term of the same name or where the term is used undefined in our Handbook.

Q12.1 Do you agree with the proposed changes?

Planned future changes

- 12.15** There are several references to DIEs in our Handbook provisions relating to prudential standards, particularly the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU). Most, but not all, of these prudential provisions derive from the FSA's previous implementation of the EU Banking Consolidation Directive and Capital Adequacy Directive (collectively CRD).

- 12.16** CRD will shortly be replaced by the Capital Requirements Directive IV and Capital Requirements Regulation (CRR) – a major legislative package referred to as CRD IV, coming into force from 1 January 2014. BIPRU will, therefore, no longer apply to most investment firms subject to MiFID, but will continue to apply to a small sub-set of firms which are excluded from the application of CRD IV. There are also some prudential provisions referring to DfEs in the Interim Prudential sourcebook for Investment Firms (IPRU(INV)) that apply to firms that were always exempt from the CRD regime and these will not be turned off as part of the CRD IV-driven Handbook changes coming into force on 1 January 2014.

CRR provisions coming into force on 1 Jan 2014

- 12.17** Under CRD, banks and investment firms are required to keep a level of prudential capital, and the calculation of this capital level can involve applying certain risk-weightings to assets. The most significant reference to DfEs in the prudential rules is to enable securities that are traded on a DfE to be risk-weighted in the same way as those traded on an RfE. The CRR, which forms part of CRD IV and repeals the previous CRD requirements, was published in the Official Journal on 27 June 2013. The relevant provisions of the CRR replacing current BIPRU provisions referring to DfEs will be applicable from 1 January 2014.

- 12.18** The FCA is currently separately consulting through CP13/6 on proposed changes to its Handbook as a result of the implementation of CRD IV and CRR. These changes include:

- i. turning off all of existing BIPRU provisions (except for BIPRU 12) for most investment firms subject to MiFID, given that the majority of BIPRU provisions applicable to FCA-regulated firms will be replaced by directly applicable CRR articles; and
- ii. introducing a new Prudential sourcebook for Investment Firms (IFPRU).

- 12.19** In relation to the BIPRU 12 and IFPRU provisions, the FCA has not proposed to use the DfE list in relation to the CRR articles which refer to ‘a stock exchange in a third country provided that the exchange is recognised by the competent authorities of the relevant Member State’ or which potentially encompass third country stock exchanges.¹⁸

Prudential provisions to be amended following European legislative review

- 12.20** From 1 January 2014, some UK investment firms will still be subject to prudential provisions that were made specifically to apply to firms which were exempted from the Capital Adequacy Directive (CAD) regime (exempt CAD firms). These provisions, which will not be turned off as part of the CRR-driven changes coming into force on 1 January 2014, are found in Chapter 3 of IPRU(INV).

- 12.21** There is also a new sub-set of investment firms subject to the current CRD which will not be subject to the full CRD IV Directive, pending the EU Commission’s review by end 2015 of an appropriate prudential regime for firms in the investment services sector. These firms carry out the following MiFID activities: (2) (execution of orders in behalf of clients) and (4) (portfolio management), and are excluded from the CRR definition of ‘investment firm’. These firms will continue to apply BIPRU.¹⁹

¹⁸ See paragraphs 4.43 – 4.45 of CP13/6, *CRD IV for Investment Firms* (July 2013).

¹⁹ See Chapter 6 (Prudential requirements for BIPRU firms) in CP 13-06.

- 12.22** We expect further amendments to IPRU(INV) and/or BIPRU following the Commission's review and, at that stage, the removal of the remaining references to the DIE list in those provisions will be consulted upon. We have not proposed changes to IPRU(INV) and/or BIPRU to remove references to DIEs now in order to spare firms the administrative burden of making two sets of changes.

Timetable

- 12.23** The following table illustrates the timetable under which we envisage, as outlined above, removing all references to DIEs from the FCA's Handbook:

2013	This consultation proposes to remove references to DIEs from non-prudential parts of the Handbook.
2014 (on coming into effect of CRD IV and CRR-driven changes being consulted on under CP13/6)	Subject to consultation, the DIE regime ceases to apply in prudential parts of the Handbook other than IPRU(INV) and those parts of BIPRU which continue to apply.
Following the Commission's review by end 2015	Subject to consultation, DIE list likely to cease to apply to exempt CAD firms and firms carrying out MiFID activities (2) and (4) as they move to a new regime. The FCA will seek to take this opportunity to amend other IPRU(INV) and/or BIPRU provisions in the Handbook in line with these European legislative changes.

Cost benefit analysis

- 12.24** 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. However, 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.
- 12.25** The DIE regime is a legacy of the regulatory environment that existed prior to the creation of a single market in financial services in the EU and as written it no longer serves any useful domestic purpose to indicate DIEs' relative similarity to RIEs to UK consumers. As outlined above, we believe that the non-prudential references in the Handbook are largely redundant. This means that the only cost they are likely to impose is the FCA's minimal one-off administrative costs in making changes to the Handbook.
- 12.26** Since we believe that minimal costs will be imposed by the proposed changes (and in any event the benefits of simplifying the Handbook will exceed them) we have not undertaken a full CBA.

Compatibility statement

- 12.27** Even though they largely remove redundant provisions in the Handbook, we consider that the proposals set out in this consultation will advance the FCA's consumer protection objective as there is a risk that retaining the references to DIEs in our non-prudential provisions may lead to less well informed consumers viewing the DIE regime as constituting an FCA endorsement of certain exchanges even though we do not supervise them on an ongoing basis.

- 12.28** The proposals are also relevant to the FCA's market integrity objective because a simpler regulatory environment and targeted Handbook is easier for firms to comply with and easier for us to supervise against. This is also the reason why we consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well. Furthermore, removal or substitution of references to the DIE regime will allow us to redirect our resources to ensuring compliance with those parts of the Handbook provisions which we actively supervise on an on-going basis.
- 12.29** Having regard to the above, and that the proposed changes will further our objectives through relatively limited changes, we do not believe that the proposed changes undermine any of the regulatory principles set out in section 3B of FSMA.
- 12.30** We do not expect the proposals in this paper to have a different impact on mutual societies.
- Legislative and Regulatory Reform Act 2006 (LRR)**
- 12.31** We have had regard to the principles in the LRR for the parts of the proposals that consist of general policies, principles or guidance and consider that the removal of the potentially confusing DIE regime from our non-prudential provisions demonstrates our commitment to simplify our Handbook and make it as proportionate and targeted as possible.

Equality and diversity

- 12.32** We have assessed the equality and diversity implications of these proposals and do not think they give rise to any discrimination or other equality concerns.

Q12.2 Do you foresee any equality and diversity concerns that we have not raised?

13.

Investing in authorised funds through nominees

Introduction

- 13.1** In CP10/29,²⁰ we proposed rules and guidance requiring nominee companies to provide fund information and voting rights to the underlying beneficial owners of units in authorised funds. The proposals were intended to give the same rights to consumers who invest in funds through nominees as those who invest in funds directly.
- 13.2** Following consultation, a summary of responses and the Handbook text (a new section of the Conduct of Business sourcebook – COBS 14.4) was published in PS11/9.²¹ The rules were scheduled to come into effect on 31 December 2012. After discussions with industry on a number of issues they raised in relation to the new rules, we deferred implementation until 31 December 2013 with the aim of re-consulting on a revised version of the rules. We have now decided to place the implementation of the majority of the COBS 14.4 rules on hold until 2015.
- 13.3** This chapter will be of interest to nominee companies and fund managers. The proposal to defer the implementation of these rules and our proposals on how to proceed will also be of interest to consumers.
- 13.4** The proposed amendments, and the statutory powers they will be made under, are set out in Appendix 13.

Summary of proposals

- 13.5** A number of factors have led to the decision to defer implementation of COBS 14.4 until 2015.
- 13.6** Consumers require appropriate levels of disclosure in order to make informed judgements but we appreciate that the disclosure documents received need to make sense to the consumer and be useful. A concern in this particular case is that consumers investing through nominees may, for the most part, not wish to receive the amount of information that direct investors receive. Indeed, this may be one of the reasons why they invest through a nominee instead of investing directly.

²⁰ CP10/29 Platform: *Delivering the RDR and other issues for platforms and nominee-related service* (November 2012).

²¹ PS11/9 Platform: *Delivering the RDR and other issues for platforms and nominee-related service* (August 2011).

- 13.7** A number of respondents have suggested that an 'opt-in' or 'opt-out' solution may be the best way to proceed, following the example of section 9 of the Companies Act 2006. However, consideration needs to be given to whether this would be appropriate and, if so, how such an option should be worded in order to avoid encouraging investors into a particular choice.
- 13.8** Finally, the securities law legislation, currently under consideration by the European Commission, may have an impact in this area. It is important that any rules we make reflect this potential legislation to avoid changing the rules shortly after they are implemented.
- 13.9** In the intervening period, we propose to conduct further research on the effectiveness of current information provided to investors in funds, covering both those who invest via nominees and those who invest in funds directly. We will also look at the potential appetite among consumers who invest through nominees to receive this information and, if so, how it should be provided. We will discuss how best to approach this research with industry and consumer groups in the near future.
- 13.10** However, we propose to allow the rule and guidance on information requests by authorised fund managers (AFMs) for liquidity management purposes (COBS 14.4.10R, 14.4.11G and 14.4.12G) to come into force on 31 December 2013 as planned. This section will allow AFMs to make reasonable requests for information on the unit holdings of beneficial owners, with a view to assisting in the liquidity management of the fund. The implementation of these rules will not have a bearing on our proposed research into the information needs of beneficial owners.

Q13.1 Do you agree with our proposal to delay implementation of the provision of information and voting rights parts of COBS 14.4 until December 2015?

Cost benefit analysis

- 13.11** Cost benefit analyses on our original proposals were included in both CP10/29 and PS11/9. A delay to the implementation of the existing rules will result in a delay to both the costs and benefits outlined in those documents.
- 13.12** Our intention to carry out research during the period of the delay will result in some costs to the FCA and possibly to firms as we engage with them to determine the best way forward. However, by giving additional time for consideration of the best way to provide information to investors, we are ensuring that the solution we reach will be the best one for consumers and will not result in any unnecessary costs for firms.
- 13.13** As a result of this delay, consumers investing in authorised funds through nominees may not receive specified information about their fund holdings, at least until the results of our research are known. However, it should be noted that many nominee companies do allow investors to request this information, although there may be a charge for this. We believe that overall, the delay will ultimately be beneficial to consumers by ensuring that the information which they are provided with is both relevant to their requirements and is of benefit to them.

- 13.14** The implementation of the rule on the provision of liquidity management information to AFMs will result in some costs to nominees. However, we have sought to minimise these by ensuring that nominees can take into account the number of requests made by an AFM when deciding if a request is reasonable.

Compatibility statement

- 13.15** The proposed delay to the implementation of the rules in COBS 14.4 complies with the FCA's statutory objective to ensure that the relevant markets function well by addressing the concerns expressed through our consultation process and by ensuring that nominees are providing appropriate levels of information to the consumers investing through them. Our intention to bring into force the rules on providing liquidity management information to fund managers also complies with this objective – through the implementation of this rule we allow AFMs to better understand their investor base and therefore manage the liquidity of the fund in an appropriate manner.
- 13.16** These proposals also look to secure an appropriate degree of protection for consumers by ensuring that the information provided to investors by nominees is relevant, and will be read and understood by them.
- 13.17** We do not anticipate any competition implications arising as a result of these proposals.

Equality and diversity

- 13.18** In CP10/29 and PS11/9 we stated that the substantive proposals did not give rise to discrimination and were of low relevance on the equality agenda. We believe this statement also applies to this proposal, to defer the date the rules come into force, and our proposal to undertake further research on the rules.

14.

AIFM Remuneration Code Guidance

Introduction

- 14.1** The Alternative Investment Fund Managers Directive (AIFMD) requires firms within the scope of the Directive to comply with remuneration rules.²² We transposed these rules in the alternative investment fund manager (AIFM) remuneration code which forms chapter 19B of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC). The Directive also requires the European Securities and Markets Authority (ESMA) to develop guidelines on sound remuneration policies under AIFMD (Guidelines), which it published on 3 July 2013.²³
- 14.2** The Guidelines cover a number of substantive areas such as the definitions of remuneration and identified staff, the concept of proportionality, the composition and role of remuneration committees, payment in units, shares or other instruments and disclosure. There are also specific guidelines related to dividends or distributions made to owners of an AIFM and requirements on the AIFM when portfolio or risk management is delegated to a third party. The UK has now confirmed that it will comply with the Guidelines.
- 14.3** These remuneration requirements will introduce new standards for firms, some of whom are not currently subject to any remuneration rules or principles. We are publishing guidance to assist firms in interpreting the Guidelines.
- 14.4** This chapter proposes adding several guidance provisions to SYSC 19B and further non-Handbook guidance on the AIFM remuneration code and the Guidelines.
- 14.5** We propose to split the guidance between Handbook and non-Handbook guidance, in a similar way to the guidance pertaining to the remuneration code (SYSC 19A) and for the proposed BIPRU remuneration code (for investment firms) (SYSC 19C),²⁴ with which many firms may be familiar. This should make the guidance more accessible to firms and advisors.
- 14.6** These changes will be of interest to AIFMs. It is ultimately the AIFM's responsibility to assess the appropriate application of the remuneration principles to its business, and when making that decision, the FCA expects the firm to be able to justify its rationale behind any application of the proportionality principle.
- 14.7** The text of the proposed amendments, and the statutory powers they will be made under, can be found in Appendix 14A. The non-Handbook guidance can be found in Appendix 14B.

²² article 13 of AIFMD.

²³ Guidelines on sound remuneration policies under the AIFMD, ESMA.2013/232.
(www.esma.europa.eu/system/files/2013-232_aifmd_guidelines_on_remuneration_-_en.pdf)

²⁴ See CP13/6 *CRD IV for investment firms* (July 2013).

Summary of proposals

Incorporation of the ESMA guidelines on AIFMD remuneration into SYSC 19B

14.8 We propose to add guidance in SYSC 19B that provides links to the Guidelines and to the non-Handbook guidance, which is in line with how we apply other guidelines published by ESMA.

14.9 This will make firms aware of the location of the Guidelines and non-Handbook guidance for reference. Full-scope UK AIFMs will need to take into account the further detail on appropriate compliance with the AIFMD remuneration principles provided by the Guidelines.

Timing of AIFM remuneration code

14.10 We provide guidance on when firms should be in compliance with the AIFM remuneration code and which performance periods will be affected. This is based on when firms become subject to AIFMD obligations under UK law.

Q14.1 Do you agree with our guidance on when firms should implement the AIFM remuneration code?

Proportionality

14.11 The AIFMD, as further explained by the Guidelines, specifically allows firms to comply with the remuneration requirements in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities.²⁵ We propose guidance to further clarify how a firm should implement the remuneration principles proportionately.

14.12 In the Handbook guidance, we align certain provisions closely with the remuneration code (SYSC 19A) regarding remuneration structures and high variable remuneration to maintain consistency among firms subject to the remuneration codes. This should help to ensure that firms in competition with one another face similar requirements.

14.13 In the non-Handbook guidance, we suggest a size threshold for AIFMs based on the net amount of alternative investment fund (AIF) assets under their management. The size of the AIFM creates a presumption as to whether or not certain remuneration requirements may be disapplied on the grounds of proportionality. We have defined two different categories of AIFMs based primarily on if the AIFs they manage are open-ended or closed-ended. This categorisation is also used in the Directive to distinguish AIFMs. We believe that this will help to facilitate the proportionality analysis for many firms.

14.14 We have suggested a range of potential size thresholds but we intend to specify a single threshold in the final version, based on the most recent data available and your evidence-based responses. However, as stated we plan to review this guidance once we have received more data on the numbers, sizes, organisation and activities of full-scope UK AIFMs. We also note a number of factors that will bear on a proportionality analysis applicable to a firm such as:

- whether the AIFM is listed and traded on a regulated market;
- the nature of a delegation arrangement between the AIFM and its delegate performing portfolio or risk management; or
- the nature of certain fee structures such as carried interest.

²⁵ Para. 23-31 Guidelines.

- 14.15** Additionally, we provide guidance on how the remuneration regime may be applied to AIFM staff who are not involved in managing AIFs and how it may be applied to the establishment of a remuneration committee. Finally, we set out a number of non-exhaustive examples working through our suggested approach to proportionality.

Q14.2 Do you agree that a size threshold based on an AIFM's net assets under management provides a sound working presumption as to whether an AIFM may disapply certain remuneration requirements on the grounds of proportionality? If so, what are the appropriate thresholds for AIF net assets under management for the two categories of AIFMs?

- 14.16** The Guidelines say that delegates of AIFMs performing portfolio or risk management should be subject to regulatory requirements on remuneration that are equally as effective as those under AIFMD.²⁶ We have proposed in the guidance that, in our view, delegates subject to Capital Requirements Directive (CRD) remuneration rules could generally be considered as subject to regulatory requirements on remuneration that are equally as effective as those under AIFMD.

Q14.3 Are there other regulatory requirements that should be considered equally as effective?

Q14.4 Do you agree with the proposed proportionality guidance?

Q14.5 Are there any other significant proportionality criteria on which we should focus?

Treatment of payments to partners or members of an AIFM

- 14.17** The Guidelines explain that payments to owners of a firm, such as dividends or distributions, may be excluded from the scope of the remuneration requirements.²⁷
- 14.18** Many AIFMs in the UK are owner-managed partnerships or limited liability partnerships (LLPs). Currently, payments from the AIFM to partners or members working in the business are classified as a profit share or distribution and no part is classified as a fixed remuneration or a variable remuneration.
- 14.19** In implementing the requirements of the AIFM remuneration code, it may be necessary for the AIFM to determine what portion of the payments to owners should be considered remuneration that is within scope of the code and what portion should be considered a return on equity in the relevant firm.
- 14.20** We propose several approaches to allocate payments to partners of a partnership or members of a LLP either to fixed or variable remuneration, or to profit share that is outside the scope of the AIFM remuneration code. Such treatment should allow owner-managed firms with different legal structures to face similar regulatory requirements. We have also worked closely with Her Majesty's Revenue and Customs to integrate our guidance with their taxation proposals.

²⁶ Para.18 Guidelines.

²⁷ Para.17 Guidelines.

Q14.6 Do you agree with the suggested approaches to allocation of payments?

Q14.7 Do you have any concerns about how the regulatory regime will interact with the taxation of partnerships or LLPs in the UK?

Other remuneration guidance

14.21 We provide remuneration guidance on the following additional aspects of the AIFMD remuneration regime:

- payment in retained units, shares and other instruments (SYSC 19B.1.17R); and
- retention periods (SYSC 19B.1.17R(2)), which guidance has been aligned closely with similar guidance for the remuneration code (SYSC 19A).²⁸

14.22 These aspects have been included to provide clarity and certainty based on our discussions with stakeholders.

Q14.8 Do you agree with our proposals concerning SYSC 19B.1.17R?

Q14.9 Are there any other aspects of the Guidelines or SYSC 19B that we should clarify?

Cost benefit analysis

14.23 In this case, our baseline for making comparisons is the current remuneration rules for AIFMs in SYSC 19B and the further detail provided in the Guidelines. Our view is based on our cost-benefit analysis (CBA) for the AIFMD consultation papers²⁹ which explained how we would transpose the Directive's remuneration provisions into the Handbook; a survey of investment managers that we performed in the context of the Remuneration Code³⁰ and our discussions with stakeholders.

14.24 Our guidance relates principally to two points, namely the circumstances or factors that an AIFM should consider when applying proportionality elements to its remuneration policy, and the treatment of payments to partners or members of an AIFM.

14.25 Given the baseline, our view is that the incremental costs associated with this guidance will be of minimal significance. Our CBA published in CP12/32³¹ estimated that the average implementation cost by an investment manager of the AIFM Remuneration Code was a one-off amount of £7000 with on-going costs of £4000 per year. Given that our guidance is intended to clarify or give greater certainty with respect to some elements of the AIFM Remuneration Code, we think that the costs that could arise from it could be subsumed within the costs of complying with the entire AIFM Remuneration Code.

²⁸ www.fsa.gov.uk/pubs/guidance/fg11_11_retention_periods.pdf

²⁹ CP12/32, *Implementation of the Alternative Investment Fund Managers Directive Part 1* (November 2012) and CP13/9, *Implementation of the Alternative Investment Fund Managers Directive Part 2* (March 2013).

³⁰ See page 7 of Annex 1, CP10/19, *Revising the Remuneration Code* (September 2010).

³¹ CP 12/32, *Implementation of the Alternative Investment Fund Managers Directive* (November 2012).

Proportionality

- 14.26** The part of our guidance that is materially different to the baseline is the range of size thresholds based on AIF net assets under management (AuM threshold in the table below) which sets out a working presumption that it will be appropriate for larger firms, which are likely to be more complex, to apply all of the remuneration principles.

Type of firm	AuM threshold	Working Presumption
AIFMs which manage portfolios of AIFs including assets acquired through use of leverage	Less than [£500 million -£1.5 billion]	May disapply rules subject to proportionality
	Greater than [£500 million -£1.5 billion]	Subject to all AIFM Remuneration Principles
AIFMs which manage portfolios of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF	Less than [£4-6 billion]	May disapply rules subject to proportionality
	Greater than [£4-6 billion]	Subject to all AIFM Remuneration Principles

- 14.27** We believe that by providing this guidance on proportionality, including setting these thresholds, there should be no significant costs incurred by AIFMs. This is because this guidance is likely to provide them with greater certainty as to the application of proportionality, and potentially exclude some AIFMs from applying the full regime.
- 14.28** To the extent we have carried over proportionality guidance relating to the Remuneration Code (such as the guidance on retention periods, the de-minimis remuneration structure and threshold for a 'particularly high amount' of variable remuneration) this is unlikely to create any significant costs for firms because in the absence of this guidance, firms would be likely to rely on the existing guidance relating to the Remuneration Code.

Treatment of payments to partners or members of an AIFM

- 14.29** Our guidance on the treatment of payments to partners or members clarifies the text of the Guidelines, which excludes from its scope dividends and distributions to partners or members and other owners of AIFMs.
- 14.30** We do not believe that there will be significant cost implications for firms. We think that the incremental cost of complying with this portion of the guidance will be subsumed within the overall cost of implementation for the same reasons mentioned above. Additionally, there will be fewer affected firms because this guidance will only apply to larger, complex firms who will be subject to the full remuneration regime and whose legal structure is that of a partnership or limited liability partnership.
- 14.31** This treatment of payments should be beneficial to investors in the AIFs by promoting sound risk management and encouraging risk-taking which is consistent with the relevant risk profiles. Other benefits of our guidance include allowing greater consistency in the treatment of owners across several legal structures.

Q14.10 Do you think this guidance on proportionality will provide enough certainty to affect the number of firms who may consider disapplying certain principles of the AIFM remuneration code on the grounds of proportionality? Will it change the compliance costs of such firms?

Q14.11 Do you have any comments on our CBA?**Compatibility statement**

- 14.32** The proposals draw on AIFMD and the Guidelines and follow from recent engagement with firms. We believe these proposals are an appropriate and proportionate approach to promoting the regulatory objectives contemplated by AIFMD, without imposing an undue burden on firms.
- 14.33** As we explain in the CBA, we do not expect these changes to have significant market impacts. In relation to competition, we do not expect the proposed changes to affect the number of AIFMs or their incentives to compete for investors' business.
- 14.34** We are not aware of any mutual societies within the scope of the proposed guidance. So, we do not believe that the changes described in this paper will have a different impact on mutual societies compared to other authorised persons.

Equality and diversity

- 14.35** The proposed guidance provides firms with more certainty about the AIFM remuneration code. There are no expected positive or negative impacts on a particular group or protected characteristic as a result of these changes. However, any comments from respondents would be welcome.

15.

Consequential changes to the Handbook as a result of AIFMD

Introduction

- 15.1** The implementation of the Alternative Investment Fund Managers Directive (AIFMD) requires a number of consequential changes to various sections of the FCA Handbook to reflect the new regime. While all major policy points in relation to AIFMD are covered in PS13/5³², this consultation addresses those changes needed to other sections of the Handbook to make it consistent with the way we have implemented the Directive.
- 15.2** The text of the proposed amendments, and the statutory powers they will be made under, can be found in Appendix 15.

Summary of proposals

- 15.3** The majority of the proposed changes make adjustments to terminology in certain sections of the Handbook to align it with new terminology as a result of AIFMD. An example of this is the term 'fund' which is used to refer to both collective investment schemes (CIS) and alternative investment funds (AIF) that are not CIS. So, we need to amend all references to 'instrument constituting the scheme' to 'instrument constituting the fund', which reflects the amended glossary definition.
- 15.4** The new Part 4A permissions established under AIFMD (such as 'managing a UCITS' or 'managing an AIF') have been incorporated into relevant sections of the Handbook and the associated guides, such as the Perimeter Guidance manual (PERG), and obsolete permissions have been deleted, such as 'acting as the depositary or sole director of an open-ended investment company'.
- 15.5** Adjustments to the Threshold Conditions sourcebook (COND) are intended to reflect those changes made to the Financial Services and Markets Act 2000 (FSMA) as a result of the implementation of AIFMD. The revisions made to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) include provisions for alternative investment fund managers (AIFMs) that mirror those for managers of undertakings for collective investment in transferable securities (UCITS) schemes.

³² PS13/5 *Implementation of the Alternative Investment Fund Managers Directive* (June 2013).

- 15.6** Other changes, such as those to the General Provisions sourcebook (GEN), are intended to capture the ending of the regime for the 'recognition' of CIS which were authorised in designated countries or territories under section 270 of FSMA. This regime allowed the Treasury (HMT), on the advice of the FCA, to 'designate' certain classes of CIS established in non-EU countries and territories (in practice Jersey, Guernsey and the Isle of Man) as having equivalent authorisation and supervision procedures to the UK and to recognise those schemes as being permitted to market themselves to retail investors in the UK. Schemes which were recognised under section 270 on 22 July 2013 will now become recognised under section 272 of FSMA instead – which applies individual recognition to schemes from outside the UK rather than 'designating' particular countries or territories.
- 15.7** The Collective Investment Schemes sourcebook (COLL) specifies that a UCITS scheme can invest in schemes recognised under section 270 of FSMA. To maintain the ability of UCITS schemes to make such investments, we propose to modify COLL 5.2.13R to refer instead to schemes authorised by the supervisory authorities of Jersey, Guernsey and the Isle of Man, provided the requirements of article 50(1)(e) of the UCITS Directive are met. We are also making adjustments to certain rules in COLL 9.3 and 9.4 concerning the investor facilities that schemes formerly recognised under section 270 must maintain in the UK, and removing an obsolete provision in COLL 9.4.6R that applies to schemes recognised under section 272.
- 15.8** We are taking the opportunity to clarify how the COBS rules relating to use of dealing commissions in COBS 11.6 relate to a full-scope UK AIFM that is an internally managed AIF. Such AIFMs must comply with the rules as to how dealing commission may be used to purchase goods and services but the related disclosure requirements do not apply to them. We also propose to clarify which rules in COBS 18.5 apply to a full-scope UK AIFM managing an AIF that is not also a CIS.
- 15.9** Several changes are proposed to our Supervision manual (SUP). As set out in paragraph 4.20 of PS13/5 we have made consequential amendments to SUP 3 to reflect the changes to auditor rules as a result of AIFMD. We have also made some adjustments to the forms in SUP which will be relevant to firms affected by AIFMD. These changes are intended to clarify the information which should be provided. For example, guidance notes for two capital adequacy returns (FIN066 and FIN067) have been amended to ensure they are consistent with changes made to Handbook guidance as part of PS13/5. Amendments are also made to chapters 13 and 14 of SUP to apply the same treatment to those Gibraltar firms authorised under AIFMD as applied to those Gibraltar firms authorised under the Markets in Financial Instruments Directive (MiFID) or the UCITS Directive. This is to reflect forthcoming changes which, we understand, are to be made to the Financial Services and Markets Act (Gibraltar) Order 2001.
- 15.10** We are also amending the Energy Market Participants Guide (EMPS) and Oil Market Participants Guide (OMPS) to recognise that firms who wish to operate an energy CIS or an oil CIS are now subject to AIFMD. Since we are not aware of any CIS currently operating under these specialised regimes, we do not believe this change will have any material impact on firms.
- 15.11** Subject to the feedback to this consultation, the majority of these changes will be made as soon as possible, with the rest coming into force at the conclusion of the transitional period for AIFMD implementation (22 July 2014).

Q15.1 Do you agree with our consequential changes to the Handbook as a result of the implementation of AIFMD?

Cost benefit analysis

- 15.12** CP12/32³³, CP13/9³⁴ and PS13/5 contained cost-benefit analyses relating to the implementation of AIFMD itself, with feedback on the responses provided in PS13/5. The changes outlined in this consultation are consequential amendments to the FCA Handbook arising from the implementation of the AIFMD. As such, these changes do not add any other costs or benefits other than those previously outlined in those two consultation papers (CPs) and the policy statement.

Compatibility statement

- 15.13** Both previous CPs and the policy statement made reference to the implementation of AIFMD contributing towards the strategic and operational objectives of the FCA. These consequential changes support that contribution by ensuring consistency across the FCA Handbook.

Equality and diversity

- 15.14** We have previously assessed any equality and diversity implications arising out of the wider implementation of AIFMD. In our view, the proposals in this CP do not give rise to discrimination and are of low relevance on the equality agenda.

³³ CP12/32, *Implementation of the Alternative Investment Fund Managers Directive – Part 1* (November 2012).

³⁴ CP13/9, *Implementation of the Alternative Investment Fund Managers Directive – Part 2* (March 2013).

16.

Implementing CRD IV for investment firms – consequential changes to the Handbook

Introduction

- 16.1** The Financial Conduct Authority (FCA) is the competent authority under the Financial Services and Markets Act (FSMA) for the prudential regulation of a large number of investment firms subject to the Capital Requirements Directive (CRD).
- 16.2** This chapter proposes consequential amendments to the Handbook modules listed below, arising as a result of the transposition of CRD IV – a major package of reforms to the CRD, the EU’s prudential requirements regime for credit institutions and investment firms.
- 16.3** In CP13/6³⁵ we consulted on our main proposed changes to the FCA Handbook required to transpose the provisions in Directive 2013/36/EU (the Directive) – where it is the responsibility of the FCA – and to exercise certain discretions in Regulation (EU) 575/2013 (the Capital Requirements Regulation, the CRR or the Regulation). Both legislative instruments constitute the CRD IV legislative package.
- 16.4** The text of the proposed amendments, and the statutory powers they will be made under, can be found in Appendix 16.

Implementation in the UK

- 16.5** This chapter sets out our proposals for implementing consequential changes to the FCA Handbook of rules and guidance brought about by CRD IV which can be done under existing FSMA powers. Her Majesty’s Treasury (HMT) intends to publish a separate consultation document in due course for those aspects of the Directive and the Regulation that require either new, or amendments to existing, legislation in a number of areas to enable the FCA to operate provisions in CRD IV effectively. Where relevant, we will take account of the HMT developing work on implementation of CRD IV in deciding how to finalise our own rules.

³⁵ CP13/6 *CRD IV for Investment Firms* (July 2013).

Summary of proposals

- 16.6** The transposition of CRD IV requires a number of changes to parts of our existing Handbook. The proposed consequential amendments are administrative and they do not reflect any change in policy. Most of them consist of incorporating and/or updating cross-references to the CRR, the Directive, the use of relevant new defined terms on prudential categories etc.
- 16.7** It is important to note that for 'exempt BIPRU commodities firms' we are retaining the transitional provision in BIPRU TP 15 (Commodities firm transitionals: Exemption from capital requirements) to keep a consistent treatment for these firms. (BIPRU TP 15 appeared as deleted in the draft Handbook text in Appendix 1 to CP13/6).
- 16.8** We propose to amend the Handbook modules listed below:
- Glossary of definitions
 - Principles for Businesses (PRIN)
 - Senior Management Arrangements, Systems and Controls sourcebook (SYSC)
 - General Provisions (GEN)
 - Fees manual (FEES)
 - Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)
 - Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)
 - Prudential sourcebook for UCITS Firm (UPRU)
 - Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))
 - Interim Prudential sourcebook for Investment Businesses (IPRU(INV))
 - Client Assets sourcebook (CASS)
 - Market Conduct sourcebook (MAR)
 - Supervision manual (SUP)
 - Compensation sourcebook (COMP)
 - Collective Investment Schemes sourcebook (COLL)
 - Credit Unions New sourcebook (CREDS)
 - Investment Funds sourcebook (FUND)
 - Regulated Covered Bonds (RCB)

- Prospectus Rules (PR)
- Disclosure Rules and Transparency Rules (DTR)
- Energy Market Participants Guide (EMPS)
- Oil Market Participants Guide (OMPS)
- Enforcement Guide (EG)
- The Perimeter Guidance manual (PERG)

Q16.1 Do you have any objections to any of the proposed changes to the Glossary and Handbook modules as set out in this chapter?

Q16.2 Do you agree that these proposed changes cover all the consequential changes necessary to ensure the organised functioning of the Handbook? If not, please provide us with information on the further changes you deem necessary indicating why.

Cost benefit analysis

- 16.9** The changes we are proposing to the relevant modules of the FCA Handbook are as a direct result of the changes imposed by the implementation of CRD IV. In CP13/6, we set out the costs and benefits of implementing CRD IV, assuming the need to make these proposed consequential changes to the FCA Handbook. We do not believe these consequential changes will add any significant costs or benefits to those expected from CRD IV as assessed in CP13/6.

Compatibility statement

Compatibility with the FCA's statutory objectives

- 16.10** We believe that the proposed amendments to the FCA Handbook are compatible with our integrity objective as indicated in our compatibility statement in Appendix 2 to CP13/6.
- 16.11** The proposed changes in this chapter do not impact on mutual societies.
- 16.12** So far as is compatible with our consumer protection or integrity objective, we must discharge our general functions (including rule-making guidance and general policies) in a way that promotes effective competition in the interests of consumers (section 1B(4) of FSMA). The proposals in this chapter merely support the changes set out in CP13/6 where we considered the impact on competition of CRD IV as a whole, including these consequential changes, and its compatibility with our competition duty. That analysis and compatibility remains applicable.

Compatibility with the regulatory principles

- 16.13** We have had regard to the principles set out in section 3B of FSMA. We believe the proposed consequential changes are compatible with all these principles.

Equality and diversity

- 16.14** We have considered the equality and diversity impact of these proposed changes and do not believe they give rise to any discrimination or other equality concerns.

Appendix 1

List of questions

- Chapter 2:**
Q2.1 Do you know of any reason why these qualifications should not be added and/or amended on our appropriate qualifications list?
- Chapter 3:**
Q3.1 Do you agree that the rules on platform charges in COBS 6.1E should be amended to bring it in line with the definition of a platform charge and to make clearer the exceptions to the ban on platforms receiving payments from other firms?
- Q3.2** Do you agree that it should be possible for cash rebates by providers to retail clients to continue in the circumstances listed in the new COBS 6.1B.7ABG in Appendix 3?
- Q3.3** Do you have any comments on the draft rule and guidance in Appendix 3?
- Chapter 4:**
Q4.1 Do you agree with the proposed amendment to SUP 15.10.2R?
- Chapter 5:**
Q5.1 Do you agree with our proposed amendments to the Prospectus Rules?
- Chapter 6:**
Q6.1 Do you agree with our proposed amendments to DEPP and EG?

Chapter 7:

- Q7.1** Do you agree with our proposal to amend SUP 11.9 and SUP 16.5 to require submission of monthly and annual close links notifications by electronic means made available by the FCA?
- Q7.2** Do you agree with our proposal to amend SUP 16.4 to require submission of Controllers notifications by completing the Controllers Report and to require submission of annual Controllers Reports by electronic means made available by the FCA?
- Q7.3** Do you agree with our proposals to delete SUP 16.4.8G and SUP 16.5.7G and to amend SUP 16.5.4R?
- Q7.4** Do you agree with our proposals to add a new data element to FSA056 and amend the guidance relating to data element 10B?
- Q7.5** Do you have any questions in relation to our cost benefit analysis?

Chapter 8:

- Q8.1** Do you agree with our proposal to delete SUP 9.5 to reflect our decision to discontinue LARC?

Chapter 9:

- Q9.1** Do you have any comments on the need for all deterministic projections for in-force personal pensions business to be in real (inflation-adjusted) terms unless a client specifically requests otherwise?
- Q9.2** Do you have any comments on the proposed correction to reinstate the exemption allowing the intermediate growth rate to be omitted for life business?
- Q9.3** Do you have any comments on the removal of the rule relating to projections intended to determine maximum permissible personal pension contributions?
- Q9.4** Do you have any comments on the CBA for the proposals relating to inflation-adjusted projections for personal pensions? contributions?

- Chapter 10:**
Q10.1 Do you agree with our proposed addition of links to the ESMA guidelines on ETFs and other UCITS issues within COLL?
- Chapter 11:**
Q11.1 Do you have any comments on our proposed amendments to the Handbook?
Q11.2 Do you have any comments on our approach to cost benefit analysis as set out in this section?
Q11.3 Do you agree with our assessment of the equality and diversity impact of these proposals?
- Chapter 12:**
Q12.1 Do you agree with the proposed changes?
Q12.2 Do you foresee any equality and diversity concerns that we have not raised?
- Chapter 13:**
Q13.1 Do you agree with our proposal to delay implementation of the provision of information and voting rights parts of COBS 14.4 until December 2015?
- Chapter 14:**
Q14.1 Do you agree with our guidance on when firms should implement the AIFM remuneration code?
Q14.2 Do you agree that a size threshold based on an AIFM's net assets under management provides a sound working presumption as to whether an AIFM may disapply certain remuneration requirements on the grounds of proportionality? If so, what are the appropriate thresholds for AIF net assets under management for the two categories of AIFMs?
Q14.3 Are there other regulatory requirements that should be considered equally as effective?
Q14.4 Do you agree with the proposed proportionality guidance?

- Q14.5** Are there any other significant proportionality criteria on which we should focus?
- Q14.6** Do you agree with the suggested approaches to allocation of payments?
- Q14.7** Do you have any concerns about how the regulatory regime will interact with the taxation of partnerships or LLPs in the UK?
- Q14.8** Do you agree with our proposals concerning SYSC 19B.1.17R?
- Q14.9** Are there any other aspects of the Guidelines or SYSC 19B that we should clarify?
- Q14.10** Do you think this guidance on proportionality will provide enough certainty to affect the number of firms who may consider disapplying certain principles of the AIFM remuneration code on the grounds of proportionality? Will it change the compliance costs of such firms?
- Q14.11** Do you have any comments on our CBA?

Chapter 15:

- Q15.1** Do you agree with our consequential changes to the Handbook as a result of the implementation of AIFMD?

Chapter 16:

- Q16.1** Do you have any objections to any of the proposed changes to the Glossary and Handbook modules as set out in this chapter?
- Q16.2** Do you agree that these proposed changes cover all the consequential changes necessary to ensure the organised functioning of the Handbook? If not, please provide us with information on the further changes you deem necessary indicating why?

Appendix 2: Changes to the Training and Competence sourcebook

**TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS
AMENDMENTS NO 10) INSTRUMENT 2013**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); 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*].

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 10) Instrument 2013.

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

Annex

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text.

Appendix 4.1.1E Appropriate Qualification tables

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Part 2: Appropriate Qualifications Tables

Qualification provider	Qualification	Activity Number(s)	Key
...	...	...	...
Calibrand / Scottish Qualifications Authority	...	...	...
	Diploma in Professional Financial Advice (NMBA - Alternative Assessment method)		
<u>Canadian Securities Institute</u>	<u>Canadian Securities Course (CSC) and Conduct and Practices Handbook Course (CPH) – must include a pass in both modules (provided it is accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation) - both courses must be completed.</u>	<u>2, 12</u>	<u>b</u>
	<u>Canadian Securities Course (CSC), Conduct and Practices Handbook (CPH), the Futures Licensing Course (FLC), the Derivatives Fundamentals Course (DCF) and the Options Licensing Course (OLC) – must include a pass in all modules (provided it is accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation) - all courses must be completed.</u>	<u>3, 13</u>	<u>b</u>
	<u>Canadian Securities Course (CSC), Conduct and Practices Handbook (CPH), the Futures Licensing Course (FLC) and the Derivatives Fundamentals and Options Licensing Course (DFOL) – must include a pass in all modules (provided it is accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation) - all courses must be completed.</u>		
...	...	...	...
Chartered Institute for Securities and Investment (CISI) – (Formerly the Securities and Investment Institute (SII); formerly The Securities Association)	Diploma in Corporate Finance (<u>awarded jointly with The Institute of Chartered Accountants in England and Wales</u>)	8	2
...	...	...	...
Chartered Insurance Institute	Financial Planning Certificate – Paper 1 (no new registrations after 17/12/2004)	<u>20,21,22</u>	<u>3</u>
Chartered Insurance Institute	Certificate in Investment Operations: Individual Savings Account Administration paper (FA5)	<u>15</u> 16, 17	<u>6</u>
<u>Deutsche Boerse AG and SIX Swiss Exchange</u>	Certified Derivatives Trader (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)	2, 12	b
		3, 13	a
...	...	...	...
Institute of Chartered Accountants in England	Fellow or Associate	8	1

Appendix 2

		15,16,17,18,19	4
	Diploma in in Corporate Finance (<u>awarded jointly with The Institute of Chartered Accountants in England and Wales</u>)	<u>8</u>	<u>2</u>
...	...	...	
Sheffield Hallam University	Post Graduate in Financial Services (1995 to 2001)	4 and 6	b
<u>SIX Swiss Exchange</u>	<u>Certified Securities Trader the Swiss Markets Insight course (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)</u>	<u>2, 12</u>	<u>b</u>
...		...	...

Appendix 3: Platforms

**CONDUCT OF BUSINESS SOURCEBOOK (PLATFORMS) (AMENDMENT NO 2)
INSTRUMENT 2013**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following sections of 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); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to 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 Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument

Citation

- E. This instrument may be cited as the Conduct of Business Sourcebook (Platforms) (Amendment No 2) Instrument 2013.

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

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

6.1A Adviser charging and remuneration

...

6.1A.14A R A *firm* must not make a *personal recommendation* to a *retail client* in relation to a *retail investment product* if it knows, or ought to know, that:

(1) ...

(2) the product's charges or other payments are maintained by the *retail investment product* provider at a level such that a cash rebate, other than a cash rebate permitted by COBS 6.1B.7AR or COBS 6.1E.10R(2), is payable to the *retail client*.

...

6.1B Retail investment product provider and platform service provider requirements relating to adviser charging and remuneration

Application – Who? What?

6.1B.1 R (1) This section applies to:

...

in circumstances where a *retail client* receives a *personal recommendation* in relation to a *retail investment product* and where a *retail investment product* transaction is executed by a *platform service provider* and no *personal recommendation* has been made.

...

...

6.1B.7 R A *firm* must:

...

(3) not defer, discount or rebate *retail investment product* charges in a way that offsets or may appear to offset any *adviser charges* or *platform charges* that are payable, including by maintaining *retail investment product* charges at a level such that a cash rebate, other than a cash rebate permitted by COBS 6.1B.7AR or COBS 6.1E.10R(2) is payable to the *retail client*.

6.1B.7A R A retail investment product provider may maintain retail investment product charges at a level such that a cash rebate is payable to the retail client if:

- (1) the retail investment product transaction was executed on or before 5 April 2014; and
- (2) the retail client's right to receive the cash rebate arose on or before 5 April 2014; and
- (3) after 5 April 2014 no change is made to that product; or
- (4) where there is such a change on or after 6 April 2014: only in relation to the unchanged part of that product;

even if a personal recommendation in relation to the retail investment product is made on or after 6 April 2014.

6.1B.7AB G The following examples do not entail changes to the retail investment product:

- (1) no change is made to the retail client's investment in the relevant product or to the level of the retail client's regular contributions into that product;
- (2) the retail client's investment in, or regular contribution to, the relevant product is reduced; the retail investment product provider may continue to pay the cash rebate associated with the reduced investment amount;
- (3) the retail client's investment in the relevant product is transferred from accumulation units to income units or vice versa;
- (4) part of the retail client's investment is switched between funds within a retail investment product such as a SIPP, or a retail investment product wrapper such as an ISA; the retail investment product provider may continue to pay the cash rebate associated with the part of the retail client's investment which has not been switched into another fund;
- (5) the product is re-registered to another platform service provider and is otherwise unchanged;
- (6) the product is converted to a share class which does not pay a commission, remuneration or benefit of any kind to a firm and is otherwise unchanged.

...

6.1E Platform services: platform charges and using a platform service for advising

Platform service providers: platform charges

...

- 6.1E.1 R (1) A *platform service provider* must clearly disclose the total *platform charge* to the ~~customer~~ *retail client* in a *durable medium* in good time before the provision of *designated investment business*.

...

- 6.1E.2 G A *platform service provider* should pay due regard to its obligations under *Principle 6* (Customers' interests), *Principle 7* (Communications with clients) and the *client's best interests rule*, and ensure that it presents *retail investment products* ~~to customers~~ without bias.

...

- 6.1E.7 R A ~~Other than in COBS 6.1E.6R~~, a *platform service provider* or its *associates* may solicit and accept payments from a any firm, including a retail investment product provider, which are only for:

...

- 6.1E.8 R A *platform service provider* must not arrange for a *retail client* to buy a *retail investment product* if:

...

- (3) the product's charges or other payments are maintained by the *retail investment product* provider at a level such that a cash rebate, other than a cash rebate permitted by COBS 6.1B.7AR or COBS 6.1E.10R(2), is payable to the *retail client*.

Appendix 4:

Reporting suspicious transactions

**SUPERVISION MANUAL (SUSPICIOUS TRANSACTION REPORTS)
INSTRUMENT 2014**

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 138D (Actions for damages).
- B. The rule-making power listed above is specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the FCA Handbook

- D. The Supervision manual (SUP) 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 Supervision Manual (Suspicious Transaction Reports) Instrument 2014.

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

Annex

Amendments to the Supervision manual (SUP)

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

15.10 Reporting suspicious transactions (market abuse)

...

Notification of suspicious transactions: general

- 15.10.2 R A *firm* which *arranges* or *executes* a transaction with or for a client ~~in a~~
~~*qualifying investment*~~ ~~admitted to trading on a~~ ~~*prescribed market*~~ and which
has reasonable grounds to suspect that the transaction might constitute
market abuse must notify the *FCA* without delay.

[**Note:** Article 6(9) *Market Abuse Directive*]

...

Appendix 5:

Changes to the Prospectus Rules sourcebook

PROSPECTUS RULES (AMENDMENT NO 1) INSTRUMENT 2013

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); and
 - (2) section 84 (Matters which may be dealt with by prospectus rules).
- B. The rule-making powers referred to 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 Prospectus Rules sourcebook (PR) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Prospectus Rules (Amendment No 1) Instrument 2013.

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

Annex

Amendments to the Prospectus Rules sourcebook (PR)

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

3.2 Filing and publication of prospectus

Filing ~~and publication~~ of prospectus

- 3.2.1 R After a *prospectus* is approved by the *FCA*, it must be filed with the *FCA* ~~and made available to the public at the same time it is made available to the public~~ in line with *PR 3.2.2R* or *PR 3.2.3R* (as applicable) or, if earlier, within 24 hours of receipt of the notification of the approval by the *issuer*, *offeror* or *person* requesting admission.

[Note: articles 14.1 and 16.1 of *PD*]

- 3.2.1A R A *prospectus* shall be filed with the *FCA* by uploading it to the system identified by the *FCA* on its website as the national storage mechanism for regulatory announcements and certain documents published by *issuers*.

~~Timing of filing and publication~~ Publication

- 3.2.2 R Except as provided in *PR 3.2.3R*, the *prospectus* must be ~~filed and~~ made available to the public as soon as practicable, and in any case, at a reasonable time in advance of, and at the latest at the beginning of, the *offer* or the *admission to trading* of the *transferable securities* involved.

[Note: article 14.1 *PD*]

...

Appendix 6:

The Referral Fees etc Regulations 2013

**THE REFERRAL FEES ETC REGULATIONS (ENFORCEMENT GUIDANCE)
INSTRUMENT 2013**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 69 (Statements of policy) as applied by regulation 29(1) of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635);
 - (b) section 210 (Statements of policy) as applied by regulation 29(2) of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635); and
 - (c) section 395 (The FCA’s and PRA’s procedures) as applied by regulation 30(7) of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635);
 - (2) the powers in regulation 5 (Guidance) of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635); and
 - (3) the other guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions module of the FCA’s Handbook.

Commencement

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

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.

Material outside the Handbook

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

Citation

- F. This instrument may be cited as The Referral Fees etc Regulations (Enforcement Guidance) Instrument 2013.

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

Annex A

Amendments to the Glossary of definitions

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

<i>Referral Fees Regulations</i>	The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635).
----------------------------------	---

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

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

Note: Third party rights and access to *FCA* material apply to the powers listed in this Annex where indicated by an asterisk * (see *DEPP* 2.4)

...

Alternative Investment Fund Managers Regulations 2013	Description	Handbook reference	Decision maker
...			

<u>The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 24(1) and 24(6)</u>	<u>when the <i>FCA</i> is proposing or deciding to exercise its powers to require restitution*</u>		<u>RDC</u>
<u>Regulation 25(1) and 26(1)</u>	<u>when the <i>FCA</i> is proposing or deciding to publish a statement (under regulations 14 or 15) or impose a financial penalty (under regulation 16) or impose a restriction on permission (under regulation 17) or suspend or restrict an approval (under</u>		<u>RDC</u>

	<u>regulation 18)*</u>		
--	------------------------	--	--

...

Sch 3 Fees and other required payments

...

Sch
3.2G

The <i>FCA</i> 's power to impose financial penalties is contained in:	
	...
	the <i>AIFMD UK regulation</i>
	<u>the <i>Referral Fees Regulations</i></u>

Sch 4 Powers Exercised

...

Sch
4.2G

The following additional powers and related provisions have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :	
	...
	Regulation 71 (Application of Act to <i>unauthorised AIFs</i>) of the <i>AIFMD UK regulation</i>
	<u>Regulation 29 (Statements of policy) of the <i>Referral Fees Regulations</i></u>
	<u>Regulation 30 (Application of Part 26 of the 2000 Act) of the <i>Referral Fees Regulations</i></u>

Annex C

Amendments to the Enforcement Guide (EG)

All text in this Annex is new and is not underlined.

Please insert the following provisions after EG 19.142.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013

- 19.143 The *Referral Fees Regulations* give the *FCA* investigation and sanctioning powers in relation to the contravention of the rules against referral fees contained in sections 56 to 60 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the LASPO Act), as well as the contravention of requirements imposed by, or under, the *Referral Fees Regulations*.
- 19.144 The *FCA*'s approach to taking enforcement action under the *Referral Fees Regulations* will mirror its general approach to enforcing the *Act*, as set out in EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.
- 19.145 The *Referral Fees Regulations*, for the most part, mirror the *FCA*'s investigative and sanctioning powers under the *Act*. The *FCA* has adopted procedures and policies for the use of those powers that are akin to those it has under the *Act*. Key features of the *FCA*'s approach are described below.

Information gathering and investigation powers

- 19.146 The *Referral Fees Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating contraventions of the relevant provisions of the LASPO Act or the *Referral Fees Regulations*.
- 19.147 The *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *Referral Fees Regulations* and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. In most cases, the *FCA* expects to carry out a scoping visit early on in the enforcement process. The *FCA*'s policy in civil investigations under the *Referral Fees Regulations* is to use powers to compel information, in the same way as it would in the course of an investigation under the *Act*.

Decision making under the Referral Fees Regulations

- 19.148 The *RDC* is the *FCA*'s decision maker for decisions which require warning notices or decision notices to be given under the *Referral Fees Regulations*, as set out in *DEPP* 2 Annex 1G. The *RDC* will make its decisions following the procedure set out in *DEPP* 3.2 or, where appropriate, *DEPP* 3.3.
- 19.149 The *Referral Fees Regulations* do not require the *FCA* to publish procedures to commence criminal prosecutions. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act*, as set out in *EG* 12.
- 19.150 The *Referral Fees Regulations* do not require the *FCA* to publish procedures to apply to the court for an injunction or restitution order. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act*, as set out in *EG* 10 and *EG* 11.
- 19.151 The *Referral Fees Regulations* apply sections 393 and 394 of the *Act* to warning notices and decision notices given under the *Referral Fees Regulations* and so require the *FCA* to give third party rights and to give access to material.
- 19.152 The *Referral Fees Regulations* apply the procedural provisions of Part 9 of the *Act*, as modified by the *Referral Fees Regulations*, in respect of matters that can be referred to the Tribunal. Referral to the Tribunal in respect of decision notices given under regulation 26(1) of the *Referral Fees Regulations* are treated as disciplinary referrals for the purpose of section 133 of the *Act*.

Public censures, imposition of penalties and the impositions of suspensions or restrictions under the Referral Fees Regulations

- 19.153 When determining whether to take action to impose a penalty or to issue a public censure under the *Referral Fees Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. When determining the level of financial penalty, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP* 6.5 to *DEPP* 6.5B, *DEPP* 6.5D and *DEPP* 6.7.
- 19.154 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil breaches of the *Referral Fees Regulations* to assist it to exercise its functions. *DEPP* 5, *DEPP* 6.7 and *EG* 5 set out information on the *FCA*'s settlement process and the settlement discount scheme.
- 19.155 When determining whether to take action to impose a suspension or restriction under the *Referral Fees Regulations*, the *FCA*'s policy includes having regard to the relevant factors in *DEPP* 6A.2 and 6A.4. When determining the length of the period of suspension or restriction, the *FCA*'s policy includes having regard to the relevant principles and factors in *DEPP* 6A.3. However, the *FCA* does not have the power to suspend an *authorised person's permission* under the *Referral Fees Regulations*.
- 19.156 The *FCA* will apply the approach to publicity that is outlined in *EG* 6.

Appendix 7A: Changes to MLAR and FSA056 reporting requirements

**SUPERVISION MANUAL (REPORTING AND AUDIT REQUIREMENTS)
(AMENDMENT) INSTRUMENT 2013**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules); and
 - (2) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers referred to 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 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 and Audit Requirements) (Amendment) Instrument 2013.

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

Annex

Amendments to the Supervision manual (SUP)

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

16 Annex 19BG Notes for completion of the Mortgage Lenders & Administrators Return ('MLAR')

...

5. Accounting conventions

...

However, information in respect of lending (eg balances, advances, interest rates, arrears etc.) to be reported in sections D, E, F, G, H and J of the return should not be fair-valued but should report the contractual position (ie as between lender and borrower).

All amounts should be shown in one of the reporting currencies accepted by the relevant platform provided by the FCA , unless otherwise specified in the *Handbook*.

...

9. Specific Items

...

(ii) Foreign currencies

~~Amounts in foreign currencies, including also any loans denominated in foreign currencies, should be translated into their equivalent sterling value using an appropriate rate of exchange at the reporting date, or where appropriate, at the rates of exchange fixed under the terms of any relevant currency hedging transaction, and that value used in the return. Thus all entries in the form represent sterling amounts. You should report in the currency of your annual audited accounts, where this is Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Where annual audited accounts are reported in a currency outside those specified above, please translate these values into an equivalent within the list using an appropriate rate of exchange at the reporting date, or where appropriate, at the rates of exchange fixed under the terms of any relevant currency hedging transaction, and that value used in the return. Please report in 000's where stated on the return. Firms should apply the same accounting treatment as for their published accounts.~~

Amounts in foreign currencies, including also any loans denominated in foreign currencies, should be translated into their equivalent sterling value using an appropriate rate of exchange at the reporting date, or where appropriate, at the rates of exchange fixed under the terms of any relevant currency hedging transaction, and that value used in the return. Thus all entries in the form represent sterling amounts. You should report in the currency of your annual audited accounts, where this is Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Where annual audited accounts are reported in a currency outside those specified above, please translate these values into an equivalent within the list using an appropriate rate of exchange at the reporting date, or where appropriate, at the rates of exchange fixed under the terms of any relevant currency hedging transaction, and that value used in the return. Please report in 000's where stated on the return. Firms should apply the same accounting treatment as for their published accounts.

...

16 Annex 27AD FSA 056 Authorised Payment Institution Capital Adequacy Return

A

B

...

Method B

10 Total payment volume (in Euro)

67 Total annual income (in Euros)

...

...

16 Annex 27BG Notes on Completing FSA056 (Authorised Payment Institution Capital Adequacy Return – SUP 16 Annex 27AD)

...

Data elements

...

2B ...

Please note that if you have answered 'Yes' to question 1, ~~and have input provided~~ the firm reference number of your parent credit institution in Element 2B and stated your total annual income in question 67B, you can proceed straight to question 61.

...

Method B: These questions should only be answered by firms that have indicated Method B at elements 4B-6B

10B ~~Insert the total value (in Euros) of payment services transactions for the year.~~ Insert the average monthly value (in Euros) of payment services transactions for the year.

67B Firms should insert the firm's total annual income (in Euros). This should equal the amount stated in Element 24B.

...

Appendix 7B:

Changes to controllers and close links reporting

**CONTROLLERS AND CLOSE LINKS REPORTING (AMENDMENT)
INSTRUMENT 2013**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules); and
 - (2) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers referred to 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 Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Controllers and Close Links Reporting (Amendment) Instrument 2013.

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

Annex

Amendments to the Supervision manual (SUP)

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

11 **Controllers and close links**

...

11.9 **Changes in close links**

Requirement to notify changes in close links

- 11.9.1A R (1) A *firm* must notify the *FCA* that it has become or ceased to be *closely linked* with any *person* ~~The notification must be made by completing the Close Links Notification Form (see SUP 11.9.3BG) and must include the information set out in SUP 16.5.4R(4) and ensure the following:~~
- (a) where SUP 11.9.4AR(2) applies, the notification must be made in line with SUP 11.9.3BAR; and
 - (b) in any other case, the notification must be made by completing the Close Links Notification Form (see SUP 11.9.3BG) and must include the information in SUP 11.9.3DG.
- (2) If a *group* includes more than one *firm*, a single close links notification may be made by completing the Close Links Notification Form, the Close Links Monthly Report or the Close Links Annual Report (as applicable) and so satisfy the notification requirement for all *firms* in the *group*. Nevertheless, the requirement to notify, and the responsibility for notifying, remains with each *firm* in the *group*.

...

- 11.9.2A G A *firm* may elect not to include the following *close links* in the notification submitted under ~~SUP 11.9.1R, SUP 11.9.5R~~ SUP 11.9.1AR, SUP 11.9.1BR, SUP 11.9.5AR, SUP 11.9.5BR or SUP 16.5:

...

...

Form of notification and method of submission

- 11.9.3B G The Close Links Notification Form approved by the *FCA* for notifications under *SUP* 11.9.1AR(1)(b), ~~*SUP* 11.9.5AR and *SUP* 16.5.4R(1)~~, may be found at the *FCA* website.
- 11.9.3BA R The notification under *SUP* 11.9.1AR(1)(a) and *SUP* 11.9.5AR must be made electronically by completing the Close Links Monthly Report and submitting it through the relevant platform provided by the *FCA*.
- 11.9.3BB R The Close Links Monthly Report must contain the information specified in *SUP* 16 Annex 35AR
- 11.9.3D G (1) The notification in *SUP* 11.9.1AR(1)(b) and *SUP* 11.9.1BR(1)(b) should contain a list of all *persons* with whom the *firm* is aware that it has *close links*, when the notification is made, and, for each such *person*, state:
- (a) its name;
 - (b) the nature of the *close links*;
 - (c) if the *close links* is with a *body corporate*, its country of incorporation, address and registered number; and
 - (d) if the *close link* is with an individual, their date and place of birth.
- (2) The *firm* must also submit a *group* organisation chart.

Timing of notification requirement

- 11.9.4A R The *firm* must make a notification to the *FCA* under *SUP* 11.9.1AR:
- ...
- (2) where a *firm* has elected to report on a *monthly* basis, within fifteen *business days* of the end of each *month* by completing the Close Links Notification Form, ~~including the information set out in *SUP* 16.5.4R(4)~~ Close Links Monthly Report for that *month* and must submit the *group* organisation chart on a quarterly basis unless there have been no changes since the submission of the previous organisation chart to the *FCA*, in which case the *group* organisation chart is not required.

...

16.4 Annual controllers report

...

Reporting requirement

- 16.4.5 R (1) ~~A firm must submit a report to the appropriate regulator annually, containing the information in (3) or (4) (as applicable). [deleted]~~
- (2) ~~A firm must submit the report in (1) to the appropriate regulator within four months of the firm's accounting reference date. [deleted]~~
- (3) ~~If a firm is not aware:~~
- ~~(a) that it has any controllers; or~~
 - ~~(b) of any changes in the identity of its controllers since the submission of its previous report under (1); or~~
 - ~~(c) of any changes in the percentage of shares or voting power in the firm held by any controllers (alone or acting in concert) since the submission of its previous report; then the report in (1) must confirm this. [deleted]~~
- (4) ~~Unless (3) applies, the report in (1) must contain a list of all the controllers as at the firm's accounting reference date of which it is aware and, for each such controller, state:~~
- ~~(a) its name;~~
 - ~~(b) the percentage of voting power in the firm, or in the firm's parent undertaking, which it is entitled to exercise or control the exercise of, whether alone or acting in concert;~~
 - ~~(c) the percentage of shares in the firm, or in the firm's parent undertaking, which it holds, whether alone or acting in concert;~~
 - ~~(d) if the controller is a body corporate, its country of incorporation, address and registered number; and~~
 - ~~(e) if the controller is an individual, his date and place of birth. [deleted]~~

- (4A) ~~A firm that is a regulated entity must include in its report to the appropriate regulator under (1) whether any consolidation group of which it is a member is a third-country banking and investment group. [deleted]~~
- (4B) ~~A firm does not have to give notice to the appropriate regulator under (4A) if it, or another member of the third-country banking and investment group, has already given notice to the appropriate regulator of the relevant fact. [deleted]~~
- ...
- A firm must submit annually by electronic means to the appropriate regulator the Controllers Report which contains the information specified in the form in SUP 16 Annex 37AR.
- 16.4.6 G ~~The information required by SUP 16.4.5 R(4) may be provided in the form of a group organisation chart. [deleted]~~
- ...
- 16.4.8 G ~~A firm may submit a single report satisfying the requirements of its annual controllers report (SUP 16.4.5R) and its annual close links report (SUP 16.5.4R). Such a report should contain the information required on both controllers and close links. [deleted]~~
- ...
- 16.5 Annual Close Links Reports**
- ...
- Report
- 16.5.4 R (1) ~~A firm must submit a report to the appropriate regulator annually by completing the Close Links Notification Form (see SUP 11.9.3BG for the FCA and SUP 11.9.3CG for the PRA) and must include the information in (3) or (4) (as applicable) and (5). [deleted]~~
- (2) ~~A firm must submit the report in (1) to the appropriate regulator within four months of the firm's accounting reference date. [deleted]~~
- (3) If a firm is not aware:
- (a) ~~that it has any close links; or~~

- (b) of any material changes to the details in (4) (a) to (c) in respect of its *close links* since the submission of its previous report under (1);

then the report in (1) must confirm this: [deleted]

- (4) Unless (3) applies, the report in (1) must contain a list of all *persons* with whom the *firm* has *close links* as at the *firm's accounting reference date* of which it is aware, and for each such *person* state:

- (a) its name;
- (b) the nature of the *close links*;
- (c) if the *close link* is with a *body corporate*, its country of incorporation, address and registered number; and
- (d) if the *close link* is with an individual, his date and place of birth: [deleted]

- (5) The *firm* must also submit a *group* organisation chart. [deleted]

A *firm* must submit a report to the *appropriate regulator* annually by completing the Close Links Annual Report in SUP 16 Annex 36AR which must be sent electronically to the *appropriate regulator*.

...

- 16.5.7 G A *firm* may submit a single report satisfying the requirements of its annual controllers report (SUP 16.4.5R) and its annual close links report (SUP 16.5.4R). Such a report should contain the information required on both *controllers* and *close links*: [deleted]

...

16 Annex 35A **R** **Close Links Monthly Report**

This annex consists only of one or more forms. Forms are to be found through the following address:

Close Links Report – SUP 16 Annex 35AR

16 Annex 35B **G** **Guidance notes for data items in SUP 16 Annex 35AR**

This annex consists only of one or more forms. Forms are to be

found through the following address:

Guidance notes for data items in SUP 16 Annex 35AR – SUP 16 Annex 35BG

16 Annex 36A **R**

Close Links Annual Report

This annex consists only of one or more forms. Forms are to be found through the following address:

Close Links Report – SUP 16 Annex 36AR

16 Annex 36B **G**

Guidance notes for data items in SUP 16 Annex 36AR

This annex consists only of one or more forms. Forms are to be found through the following address:

Guidance notes for data items in SUP 16 Annex 36AR – SUP 16 Annex 36BG

16 Annex 37A **R**

Controllers Report

This annex consists only of one or more forms. Forms are to be found through the following address:

Controllers Report – SUP 16 Annex 37AR

16 Annex 37B **G**

Guidance notes for data items in SUP 16 Annex 37AR

This annex consists only of one or more forms. Forms are to be found through the following address:

Guidance notes for data items in SUP 16 Annex 37AR – SUP 16 Annex 37BG

16 Annex 35BG Guidance notes for completion of the close links monthly report in SUP 16 Annex 35AR

The close links provisions contained in Schedule 6 of FSMA stem from the Directive 95/26/EC (Post BCCI Directive). This Directive, implemented in July 1996, in the wake of the collapse of the Bank and Credit and Commerce International (BCCI) in 1991, was designed to strengthen competent authorities' powers to properly supervise financial institutions.

The Directive states that the firm must provide information on its close links on a 'continuous basis' to ensure effective supervision is not disrupted, ie the appropriate regulator is able to identify potential risks to a firm from its close links.

This report is referred to in SUP 11.9.1AR and SUP 11.9.1BR and is used by a firm and/or group to submit the periodic notifications required by the chapter. The information provided in this report is in accordance with the rules set out in SUP 11.9.

Data elements

These are referred to by row first, then by column, so data element 2A will be row 2 and column A.

Main details

1A Does this report cover close links relating to more than one authorised firm?

This question must be answered by all firms.

The FCA/PRA allows firms to submit a report for more than one firm (ie a group of firms). However, the responsibility for the accuracy of the close links information provided by the group remains with each individual firm listed in Question 2A.

The submitting firm can only submit on behalf of firms' whose accounting reference date (ARD) matches that of its own. Therefore, covering the same reporting period (with the exception of firms submitting on a monthly basis).

Any additional firms whose ARD does not match that of the submitting firm must submit their own report for the relevant period.

2A If Yes, list the firm reference numbers (FRNs) of all additional firms included in the report.

This question must be answered if the answer to Question 1A is 'Yes'.

Please list the FRN's of all the additional firms included in the report.

This firms listed in this question must have an equivalent accounting reference date (ARD). Therefore, the same reporting requirement (ie the

same start and end of reporting period, due date and copy number).

3A Does the firm/group have any close links?

This question must be answered by all firms.

A firm must notify the appropriate regulator whether the firm is aware that it has any close links.

4A If Yes, have there been any material changes to the close links for the firm/group since the submission of the last report?

This question must be answered if the answer to Question 3A is 'Yes'.

The firm/group should indicate here whether there have been any changes to the close links since the submission of the previous notification to the appropriate regulator.

5A Are you submitting a group organisation chart?

This question must be answered if the answer to Question 4A is 'Yes'.

The organisation chart must be provided in PDF format. However, we do not define the structure of the organisation chart and the firm or group may use whatever structure it already holds for its own purpose. However, this chart must show all the firm's and/or group's close links.

An organisation chart is required on a quarterly basis unless no changes have occurred since the submission of the last organisation chart.

An organisation chart can be attached to the report via GABRIEL using the facility at the bottom of the form.

Details of existing, new and ceased close links (body corporates and/or individuals)

Questions 6 and 7 must be answered if the answer to Question 3A is 'Yes'. Questions 8 and 9 must be answered if the firm has ceased any close links since the submission of the previous notification to the appropriate regulator.

The firm and/or group making the submission must provide all the information in relation to its close links.

6A-9A Name of close link (body corporates and/or individuals)

Please provide the full name of the body corporate and/or individual (up to a maximum of 100 characters)

6B - 9B Nature of close link (body corporates and/or individuals)

Please select from one of the following:

- parent undertaking of the firm;
- subsidiary undertaking of the firm;
- parent undertaking of a subsidiary undertaking of the firm;
- subsidiary undertaking of a parent undertaking of the firm;
- CL owns or controls 20% or more of the voting rights or capital of the firm; or
- firm owns or controls 20% or more of the voting rights or capital of CL

6C / 8C Country of incorporation (body corporates only)

Please provide the country of incorporation using the relevant ISO country code if the controller is a body corporate.

A full list of the countries names and their relevant code elements can be found at:

http://www.iso.org/iso/country_codes/iso_3166_code_lists/country_names_and_code_elements.htm

6D / 8D Address (body corporates only)

Please provide the full postal address for the body corporate (up to a maximum of 100 characters).

6E / 8E Registered number (body corporates only)

Please provide the body corporate's registered number (up to a maximum of 20 characters). This is the unique company registration number for body corporates incorporated in the UK or equivalent number for overseas firms.

7C / 9C Date of birth (individuals only)

Please provide the individual's date of birth in dd/mm/yyyy format and between 18 and 115 years of age.

7D / 9D Place of birth (individuals only)

Please provide the individual's place of birth by providing the town and country of birth. For example, London, England (up to a maximum of 100 characters).

16 Annex 36BG Guidance notes for completion of close links annual report in SUP 16 Annex 36AR

The close links provisions contained in Schedule 6 of FSMA stem from the Directive 95/26/EC (Post BCCI Directive). This Directive, implemented in July 1996 in the wake of the collapse of the Bank and Credit and Commerce International (BCCI) in 1991, was designed to strengthen competent authorities' powers to properly supervise financial institutions.

The Directive states that the firm must provide information on its close links on a 'continuous basis' to ensure effective supervision is not disrupted, ie the appropriate regulator is able to identify potential risks to a firm from its close links.

This report is referred to in SUP 16.5.4R and is used by a firm and/or group to submit the annual report required by the rules in SUP 16.5. The information provided in this report is in accordance with SUP 16.5.4R.

Data elements

These are referred to by row first, then by column, so data element 2A will be row 2 and column A.

Main details

1A Does this report cover close links relating to more than one authorised firm?

This question must be answered by all firms.

The FCA/PRA allows firms to submit a report for more than one firm (ie a group of firms). However, the responsibility for the accuracy of the close links information provided by the group remains with each individual firm listed in Question 2A.

The submitting firm can only submit on behalf of firms' whose accounting reference date (ARD) matches that of its own. Therefore, covering the same reporting period (with the exception of firms submitting on a monthly basis).

Any additional firms whose ARD does not match that of the submitting firm must submit their own report for the relevant period.

2A If Yes, list the firm reference numbers (FRNs) of all additional firms included in the report.

This question must be answered if the answer to Question 1A is 'Yes'.

Please list the FRN's of all the additional firms included in the report.

This firms listed in this question must have an equivalent Accounting

Reference Date (ARD). Therefore, the same reporting requirement (ie the same start and end of reporting period, due date and copy number).

3A Does the firm/group have any close links?

This question must be answered by all firms.

A firm must notify the appropriate regulator of whether the firm is aware that it has any close links.

4A If Yes, have there been any material changes to the close links for the firm/group since the submission of the last report?

This question must be answered if the answer to Question 3A is 'Yes'.

The firm/group should indicate whether there have been any changes to the close links since the submission of the previous report/notification to the appropriate regulator, including any event-driven notifications made.

5A Are you submitting a group organisation chart?

This question must be answered if the answer to Question 3A is 'Yes'.

The organisation chart must be provided in PDF format. However, we do not define the structure of the organisation chart and the firm or group may use whatever structure it already holds for its own purpose. However, this chart must show all the firm's and/or group's close links.

A group organisation chart is required for every annual report submission made so long as the firm is aware that it has close links.

An organisation chart can be attached to the report via GABRIEL using the facility at the bottom of the page.

Details of close links (body corporates and/or individuals)

These questions must be answered if the answer to Question 3A is 'Yes'.

The firm and/or group making the submission must provide all the information in relation to its close links if any exist.

6A Name of close link (body corporates and/or individuals)

Please provide the full name of the body corporate and/or individual (up to a maximum of 100 characters)

6B Nature of close link (body corporates and/or individuals)

Please select from one of the following:

- parent undertaking of the firm;

- subsidiary undertaking of the firm;
- parent undertaking of a subsidiary undertaking of the firm;
- subsidiary undertaking of a parent undertaking of the firm;
- CL owns or controls 20% or more of the voting rights or capital of the firm; or
- firm owns or controls 20% or more of the voting rights or capital of CL

6C Country of incorporation (body corporates only)

Please provide the country of incorporation using the relevant ISO country code if the controller is a body corporate.

A full list of the countries names and their relevant code elements can be found at:

http://www.iso.org/iso/country_codes/iso_3166_code_lists/country_names_and_code_elements.htm

6D Address (body corporates only)

Please provide the full postal address for the body corporate (up to a maximum of 100 characters).

6E Registered number (body corporates only)

Please provide the body corporate's registered number (up to a maximum of 20 characters). This is the unique company registration number for body corporates incorporated in the UK or equivalent number for overseas firms.

7C Date of birth (individuals only)

Please provide the individual's date of birth in dd/mm/yyyy format and between 18 and 115 years of age.

7D Place of birth (individuals only)

Please provide the individual's place of birth by providing the town and country of birth. For example, 'London, England' (up to a maximum of 100 characters).

16 Annex BG **Guidance notes for completion of controllers report in SUP 16 Annex 37AR**

A firm and its controllers are required to notify certain changes in control in accordance with SUP 11. The purpose of this report required under SUP 16.4.5R is to ensure that, in addition to such notification, the appropriate regulator receives regular and comprehensive information about the identities of all the controllers of a firm.

Data elements

These are referred to by row first, then by column, so data element 2A will be row 2 and column A.

Main details

1A Does this report cover controllers relating to more than one authorised firm?

This question must be answered by all firms.

The FCA/PRA allows firms to submit a report for more than one firm (ie a group of firms). However, the responsibility for the accuracy of the controllers information provided by the group remains with each individual firm listed in Question 2A.

The submitting firm can only submit on behalf of firms whose accounting reference date (ARD) matches that of its own. Therefore, covering the same reporting period.

Any additional firms whose ARD does not match that of the submitting firm, must submit their own report for the relevant period.

2A If Yes, list the firm reference numbers (FRNs) of all additional firms included in the report.

This question must be answered if the answer to Question 1A is 'Yes'.

Please list the FRNs of all the additional firms included in the report.

The firms listed in this question must have an equivalent accounting reference date (ARD). Therefore, the same reporting requirement (ie the same start and end of reporting period, due date and copy number).

Firm/controller details

The firm and/or group making the submission must provide all the information in relation to its controllers (see SUP 16.4.5R).

If the report is being submitted on behalf of more than one authorised firm, this section must be completed and contain at least the mandatory information for each

firm. For firms reporting on behalf of a group, although the submission of the report is made by one firm, the requirement to provide the report and the information contained within remains the responsibility of each authorised firm listed in Question 2A.

3A Firm reference number (FRN)

This question must be answered by the submitting firm and all firms listed in Question 2A.

Please provide the FRN of the firm for whose controller details are being provided.

3B Does the firm have any controllers?

This question must be answered by the submitting firm and all firms listed in Question 2A.

Answer 'Yes' or 'No' accordingly. If 'No', no further information needs to be provided for this firm.

3C Are you aware of any changes in the identity of the controllers since the last submission?

Answer 'Yes' or 'No' accordingly. This question must be answered if the answer to Question 3B is 'Yes'

3D Are you aware of any changes in the percentage of shares or voting power held by any controllers (alone or acting in concert) since the last submission?

Answer 'Yes' or 'No' accordingly. This question must be answered if the answer to Question 3B is 'Yes'

3E Was appropriate regulatory approval sought and granted prior to the change(s) being effected?

Answer 'Yes' or 'No' accordingly. This question must be answered if the answer to Question 3C or 3D is 'Yes'.

If a controller is increasing their shares or voting power but does not move up a controller band (see question 5 in the [Change in control FAQs](#) page) then this question can be answered N/A.

If a controller is increasing their shares or voting power and does cross a controller band, then regulatory approval must be sought (see Change in Control page) for details on how to notify the FCA. If such approval has not been sought or granted, then the report should still be completed and submitted. The firm should also complete the relevant controller notification form.

3F If the firm is a member of a consolidation group, is this group a third-country banking and investment group?

If the firm is a member of a consolidation group which is a third-country banking and investment group, then this question should be answered 'Yes'.

If the firm is a member of a consolidation group but that group is not a third-country banking and investment group, then this question should be answered 'No'.

If the firm is not a member of a consolidation group, or the firm is not a regulated entity, or the firm that is a regulated entity and is a member of a consolidation group and has already notified the FCA of this fact (SUP 16.4.5R(4B)), then this question should be answered 'NA'.

3G Is the information being provided in a group organisation chart?

Answer 'Yes' or 'No' accordingly. This question must be answered if the answer to Question 3B is 'Yes'.

If all the required information in this report is being provided in the form of an organisational chart, Questions 3H to 3P do not need to be completed.

The organisation chart must be provided in PDF format. However, we do not define the structure of the organisation chart and the firm/group may use whatever structure it already holds for its own purpose. This chart must show all the information required in Questions 3H to 3P and make it clear for what period the organisation chart is relevant.

An organisation chart can be attached to the report via GABRIEL once the report is in a 'Ready to Submit' status.

However, if the answer to this question is 'No', then the information in Questions 3H to 3P must be provided.

3H Name of controller

The name of the [controller \(up to a maximum of 100 characters\)](#)

3I % Voting power

The percentage of voting power in the firm or in the firm's parent undertaking, which it is entitled to exercise or control the exercise of, whether alone or acting in concert (to the nearest percentage).

3J % Shareholding

The percentage of shares in the firm, or in the firm's parent undertaking,

which it holds, whether alone or acting in concert (to the nearest percentage)

3K Is the controller a body corporate or individual?

Please state whether the [controller](#) is a body corporate or an individual

3L If controller is a body corporate; country of incorporation

Please provide the country of incorporation using the relevant ISO country code if the controller is a body corporate.

A full list of the countries names and their relevant code elements can be found at:

http://www.iso.org/iso/country_codes/iso_3166_code_lists/country_names_and_code_elements.htm

3M If controller is a body corporate; address

Please provide the body corporate's address. If the body corporate is a foreign incorporated firm, then please provide the UK head office address (up to a maximum of 100 characters).

3N If controller is a body corporate; registered number

Please provide the body corporate's registered number. This is the unique company registration number for body corporates incorporated in the UK or equivalent number for overseas firms (up to a maximum of 20 characters).

3O If controller is an individual; date of birth

Please provide the individual's date of birth in dd/mm/yyyy format and between 18 and 115 years of age.

3P If controller is an individual; place of birth

Please provide the individual's place of birth by providing the town and country of birth. For example, London, England (up to a maximum of 100 characters).

SUP 16 Annex 35AR - REP001a Close Links Notification

Currency

N/A

Currency Units

N/A

Main Details

This section should be completed by all firms

1

Does this report cover close links relating to more than one authorised firm?

A

2

If Yes, list the firm reference numbers (FRNs) of all additional firms included in this report.

FRN

3

Does the firm/group have any close links?

4

If Yes, have there been any material changes, to the close links, for the firm/group since the last submission of the report?

5

Are you submitting a group organisation chart?

New and Existing Body Corporates

	A	B	C	D	E
6	Name of close link	Nature of close link	Country of incorporation	Address	Registered Number

New and Existing Individuals

	A	B	C	D
7	Name of close link	Nature of close link	Date of Birth	Place of Birth

Ceased Body Corporates

	A	B	C	D	E
8	Name of close link	Nature of close link	Country of incorporation	Address	Registered Number

Ceased Individuals

	A	B	C	D
9	Name of close link	Nature of close link	Date of Birth	Place of Birth

SUP 16 Annex 36AR - REP001 Close Links Report

Currency

N/A

Currency Units

N/A

Main Details

This section should be completed by all firms

1

Does this report cover close links relating to more than one authorised firm?

A

2

If Yes, list the firm reference numbers (FRNs) of all additional firms included in this report.

FRN

3

Does the firm/group have any close links?

4

If Yes, have there been any material changes, to the close links, for the firm/group since the last submission of the report?

5

Firms must provide an organisation chart unless no close links exist.

Are you submitting a group organisation chart?

Body Corporates

	A	B	C	D	E
6	Name of close link	Nature of close link	Country of incorporation	Address	Registered Number

Individuals

	A	B	C	D
7	Name of close link	Nature of close link	Date of Birth	Place of Birth

Currency N/A

Currency Units N/A

Main Details

This section should be completed by all firms

- 1
- Does this report cover controllers relating to more than one authorised firm?

A

2

If Yes, list the firm reference numbers (FRNs) of all additional firms included in this report.

FRN

Firm/Controller Details

- 3
- Firm Details

This section should be completed for the reporting firm and every firm listed in 2A.

A		B	C	D	E	F	G
Firm reference number (FRN)		Does the firm have any Controllers?	Are you aware of any changes in the identity of the controllers since the last submission?	Are you aware of any changes in the percentage of shares or voting power held by any controllers (alone or acting in concert) since the last submission?	Was appropriate regulatory approval sought and granted prior to the change(s) being effected?	If the firm is a member of a consolidation group, is this group a third-country banking and investment group?	Is the information being provided in a group organisation chart?
1							

Controller Details

If the answer to question 3G is No, please complete this section.

				If controller is a body corporate			If controller is an individual			
H		I	J	K	L		M	N	O	P
Name of Controller		% Voting power	% Shareholding	Is the controller a Body corporate or Individual?	Country of incorporation	Address		Registered Number	Date of Birth	Place of Birth
1										
2										
n										

Number of Controllers to Add

1

Add

2							
n							

Number of Firms to Add

1

Add

Appendix 8: Discontinue LARC

**SUPERVISION MANUAL (LISTING AUTHORITY REVIEW COMMITTEE)
INSTRUMENT 2013**

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

Citation

- E. This instrument may be cited as the Supervision Manual (Listing Authority Review Committee) Instrument 2013.

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

Annex

Amendments to the Supervision manual (SUP)

SUP 9.5 is deleted in its entirety. The deleted text is not shown.

Appendix 9:

Inflation-adjusted pension projections

**CONDUCT OF BUSINESS SOURCEBOOK (KEY FEATURES
ILLUSTRATIONS FOR PERSONAL PENSIONS) (AMENDMENT NO 2)
INSTRUMENT 2013**

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 rules);
 - (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*].

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Conduct of Business Sourcebook (Key Features Illustrations for Personal Pensions) (Amendment No 2) Instrument 2013.

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

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

13

Annex Projections

2

...

R	
1.2	Calculating projections: additional requirements for a <u>personal pension scheme</u> and <u>stakeholder pension scheme</u>
(1)	A standardised deterministic projection within a key features illustration for a personal pension scheme or stakeholder pension scheme must be in real terms and be accompanied by information explaining why price inflation has been taken into account and that price inflation reduces the worth of all savings and investments.
(2)	A <u>standardised deterministic projection</u> in real terms must be calculated using:
	...
(3)	A The standardised deterministic projection for a personal pension scheme or stakeholder pension scheme must show only the numeric value of the three real rates of return after the appropriate price inflation assumption has been taken into account, that is, the real rate of projected growth which has been applied to the real value of the contributions.

...

R	
Exceptions	
1.7	A projection:
(1)	for a product that will mature in six months or less; or

(2)	prepared in order to determine the maximum level of contributions permitted to be made to a <i>personal pension scheme</i> ;
	may be prepared and presented on any reasonable basis but only if, in the case of (2), the assumptions used to calculate the <i>projection</i> and contributions are disclosed with the relevant <i>projection</i>.
	<u>A <i>projection</i> for an in-force product that will mature in six <i>months</i> or less may be prepared and presented on any reasonable basis.</u>

...

R	
1.9	The <i>rules</i> in this Annex do not apply to a <i>projection</i> which is consistent with the <i>statutory money purchase illustration requirements</i> .

R	
1.10	A <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> taken out before 6 April 2014 may omit the <u>standardised deterministic projection</u> at the <i>intermediate rate of return</i> may be omitted except for <i>personal pension scheme</i> and <i>stakeholder pension scheme</i> contracts taken out after 5 April 2014.
<u>R</u>	<u>Exception for an in-force <i>personal pension scheme</i> or <i>stakeholder pension scheme</i></u>
<u>1.11</u>	<u>If a <i>retail client</i> requests a <i>projection</i> in nominal terms then a <i>standardised deterministic projection</i> in nominal terms may be provided by dis-applying the rules in COBS 13 Annex 2 2.1R with the exception of 1.2(2)(c) as long as a warning is included about the effect of inflation on the worth of all savings and investments.</u>
...	

Appendix 10: Amendments to the Collective Investment Schemes sourcebook

COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (EXCHANGE TRADED FUNDS) INSTRUMENT 2014

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance);
 - (e) section 247 (Trust scheme rules);
 - (f) section 248 (Scheme particulars rules);
 - (g) section 261I (Contractual scheme rules); and
 - (h) section 261J (Contractual scheme particulars rules);
 - (2) regulation 6(1) (FCA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- 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 Collective Investment Schemes sourcebook (COLL) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Collective Investment Schemes Sourcebook (Exchange Traded Funds) Instrument 2014.

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

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

4.2 Pre-sale notifications

...

Guidance on contents of the prospectus

4.2.6 G ...

(6) The authorised fund manager should consider the appropriateness of including additional matters in the prospectus as a result of the European Securities and Markets Authority's (ESMA) Guidelines on ETFs and other UCITS issues, which can be found at http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

...

4.5 Reports and accounts

...

4.5.7 R ...

Additional information that may need to be included in the annual and half-yearly long report

4.5.8-A G The annual and half-yearly long reports may be required to contain additional matters not referred to in COLL 4.5.7R and COLL 4.5.8R, such as those required by the European Securities and Markets Authority's (ESMA) Guidelines on ETFs and other UCITS issues, which can be found at http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf.

...

4.7 Key investor information and marketing communications

...

Synthetic risk and reward indicators and ongoing charges disclosures in the KII

...

- 4.7.9 G *Authorised fund managers* are further advised that CESR, and its successor body, the European Securities and Markets Authority (ESMA), has issued guidelines in relation to several other matters concerning *key investor information*. These are:

...

CESR's guidelines on a common definition of European money market funds, which refer to matters that should be included in the key investor information for money market funds and short-term money market funds (CESR/10-049)

<http://www.esma.europa.eu/content/Guidelines-Common-definition-European-money-market-funds>

ESMA's guidelines on ETFs and other UCITS issues, which refer to matters that should be included in the key investor information for certain types of UCITS (ESMA 2012/832)

http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

...

5.2 General investment powers and limits for UCITS schemes

...

- 5.2.20B G ...

- (4) ~~When assessing whether a hedge fund index satisfies the requirements for a financial index set out in this section, firms should consider The Committee of European Securities Regulators' guidelines on the classification of hedge fund indices as financial indices (CESR/07-434). Those guidelines are available at www.fca.org.uk/your-fca.~~ [deleted]

...

ESMA guidelines

- 5.2.36 G *Authorised fund managers* are advised that both CESR and its successor body, the European Securities and Markets Authority (ESMA), have issued guidelines which, in accordance with the *UCITS implementing Directive*, *authorised fund managers* should comply with in applying the rules in this section:

Guidelines concerning eligible assets for investment by UCITS

http://www.esma.europa.eu/system/files/07_434.pdf

Guidelines to competent authorities and UCITS management companies on

ETFs and other UCITS issues (ESMA/2012/832)
http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

...

5.3 Derivative exposure

...

ESMA guidelines

- 5.3.11 G *Authorised fund managers* are advised that both CESR and its successor body, the European Securities and Markets Authority (ESMA) have issued guidelines which, in accordance with the *UCITS implementing Directive*, *authorised fund managers* should comply with in applying the *rules* in this section:

...

Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS (ESMA/2012/197)

<http://www.esma.europa.eu/system/files/2012-197.pdf>

Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA/2012/832)

http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

5.4 Stock lending

...

- 5.4.10 G *Authorised fund managers* are advised that the European Securities and Markets Authority (ESMA) has issued guidelines which, in accordance with the *UCITS implementing Directive*, *authorised fund managers* should comply with in applying the *rules* in this section:

Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA/2012/832)

http://www.esma.europa.eu/system/files/2012-832en_guidelines_on_etfs_and_other_ucits_issues.pdf

...

6.9 Independence, names and UCITS business restrictions

...

Use of the term 'UCITS ETF'

- 6.9.8B G (1) The European Securities and Markets Authority (ESMA) has issued guidelines on the use of the term 'UCITS ETF'. A 'UCITS ETF' is a UCITS with at least one unit or share class which is traded throughout the day, on at least one regulated market or multilateral trading facility, with at least one market maker that takes action to ensure that the stock exchange value of its units or shares does not significantly vary from its net asset value and, where applicable, its indicative net asset value.
- (2) A 'UCITS ETF' should use the identifier 'UCITS ETF' which identifies it as an exchange traded fund. This identifier should be used in its name, fund rules, instrument of incorporation, prospectus, key investor information document or marketing communications. The identifier 'UCITS ETF' should be used in all EU languages.
- (3) A UCITS which is not a 'UCITS ETF' should not use the 'UCITS ETF' identifier, 'ETF' or 'exchange traded fund' in its name or in any of the documents or communications referred to in (2).

[Note: ESMA's Guidelines to competent authorities and UCITS management companies on ETFs and other UCITS issues (ESMA/2012/832)]

...

Appendix 11: Implementing EMIR

**OVER-THE-COUNTER DERIVATIVES, CENTRAL COUNTERPARTIES AND
TRADE REPOSITORIES INSTRUMENT (NO 2) 2013**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137T (General supplementary powers);
 - (2) section 139A (Power of the FCA to give guidance);
 - (3) section 205 (Public censure);
 - (4) section 206 (Financial penalties);
 - (5) section 387 (Warning notices);
 - (6) section 388 (Decision notices);
 - (7) section 210 (Statements of policy); and
 - (8) section 391 (Publication).
- 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 shall come into force on [*date*].

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in Accordance with Annex B to this instrument.

Material outside the Handbook

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

Notes

- G. 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

- H. This instrument may be cited as the Over-the-Counter Derivatives, Central Counterparties and Trade Repositories Instrument (No2) 2013.

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

Annex A

Amendments to the Glossary of definitions

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

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

<i>EMIR technical standards on OTC derivatives</i>	means “Commission Delegated Regulation (EU) 149/2013 of 19 December 2012 supplementing <i>EMIR</i> with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a central counterparty”.
--	---

Amend the following definition as shown.

<i>non-authorised counterparty</i>	<u>in <i>EG</i></u>, in relation to <i>EMIR</i>, either: (a) a financial counterparty which is not an <i>authorised person</i>; or (b) a non-financial counterparty; <u>or</u> (c) <u>a third country entity referred to in article 4(1)(a)(v) of <i>EMIR</i>.</u>
------------------------------------	---

Annex B

Amendments to the Supervision manual (SUP)

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

15A.1 Application and notifications under EMIR

...

- 15A.1.3 G Where a *person* intends to rely on article 11(6), (7), (8), (9) or (10) for an exemption from the obligation to implement risk management procedures set out in article 11(3) of *EMIR*, the *person* should make their application or notification to the *FCA* in accordance with *EMIR requirements, including (where relevant) those set out in the EMIR technical standards on OTC derivatives*.
- 15A.1.3A G Where a *person* is required to make a notification to the *FCA* in accordance with article 12(4) or article 15(2) of the *EMIR technical standards on OTC derivatives*, the *person* should make such notifications to the *FCA* in accordance with *EMIR requirements* set out in such *EMIR technical standards on OTC derivatives*.
- 15A.1.4 G The *FCA* may require any information referred to in *SUP* 15A.1.1G to ~~*SUP* 15A.1.3G~~ *SUP* 15A.1.13AG above to be provided in such form, or to be verified in such as a way, as the *FCA* may reasonably direct.

...

Annex C

Amendments to the Enforcement Guide (EG)

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

OTC Derivatives, Central Counterparties and Trade Repositories Regulations 2013

- 19.121 The FCA has information gathering and sanctioning powers under the Act which are applicable to breaches of EMIR requirements by authorised persons or recognised bodies. The *OTC derivatives, CCPs and trade repositories regulation* adds to the powers available to the FCA for dealing with breaches of EMIR requirements and sets out information gathering and sanctioning powers enabling the FCA to investigate and take action for breaches of the *EMIR requirements by non-authorised counterparties* and for certain breaches of the OTC derivatives, CCPs and trade repositories regulation by authorised persons. Such powers under the *OTC derivatives, CCPs and trade repositories regulation* or the *Act* do not extend to breaches of article 11(3) and (4) of *EMIR* by *PRA-authorised financial counterparties*.

...

Sanctioning powers

- 19.123 (1) ~~Except for contravention of articles 11(3) and (4) of EMIR by PRA-authorised financial counterparties, the~~ The FCA has the power to publish a statement or impose a financial penalty of such amount as it considers appropriate on a financial counterparty, a non-financial counterparty or other person who has contravened an EMIR requirement or regulation 7 or 8 of the OTC derivatives, CCPs and trade repositories regulation.
- (a) a financial counterparty who is not an authorised person, a non-financial counterparty or any other person who has breached an EMIR requirement or regulation 7 or 8 of the OTC derivatives, CCPs and trade repositories regulation;
- (b) a financial counterparty who is an authorised person who has breached regulation 8 of the OTC derivatives, CCPs and trade repositories regulation.
- (2) ~~Where the FCA has imposed such~~ exercises its power to impose a financial penalty under the OTC derivatives, CCPs and trade repositories regulation or the Act for breaches in relation to EMIR, it must publish a statement to that effect unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.

[Note: article 12(2) of EMIR and regulation 9(3) of the *OTC derivatives, CCPs and trade repositories regulation*]

- 19.124 As the power to impose penalties for contravention of an ~~EMIR requirement~~ *EMIR requirement* or regulations 7 or 8 of the *OTC derivatives, CCPs and trade repositories regulation* mirrors similar powers to that the *FCA* has under the *Act*, the *FCA* will adopt procedures and policies in relation to the use of those powers akin to those it has adopted under the *Act*, subject to EG 19.123G(2), above.
- 19.125 The ~~FCA~~ *FCA* will use the sanctioning powers where it is appropriate to do so and with regard to the relevant factors listed in *DEPP* 6.2.1G and DEPP 6.4. In determining the appropriate level of financial penalty, the *FCA* will have regard to the principles set out in *DEPP* 6.5, *DEPP* 6.5A, *DEPP* 6.5B, *DEPP* 6.5D and *DEPP* 6.7.
- 19.126 Where the ~~FCA~~ *FCA* proposes or decides to take action to publish a statement or impose a financial penalty referred to in ~~EG 19.122G~~ 19.123G, it will give the *person* concerned a *warning notice* or a *decision notice* respectively. ~~These notices must~~ In the case of a public statement, the *warning notice* or *decision notice* will also set out the terms of the statement. In the case of a financial penalty, the *warning notice* or *decision notice* will also state the amount of the penalty. On receiving a *warning notice*, the *person* concerned has a right to make representations regarding the *FCA*'s proposed decision. A *person* that receives a *decision notice* may refer the matter to the *Tribunal*.
- 19.127 If it is proposing to publish a statement or impose a penalty under the *OTC derivatives, CCPs and trade repositories regulation*, the *FCA*'s decision maker will be the *RDC*. The *RDC* will make its decisions following the procedure set out in *DEPP* 3.2 or where appropriate, *DEPP* 3.3.
- ...
- 19.129 ~~The~~ In relation to the notices in this section, the *FCA* will, subject to EG 19.123G(2) above, apply the approach to publicity that is outlined in *EG* 6.
- ...

Appendix 12:

Removal of DIE regime

DESIGNATED INVESTMENT EXCHANGES INSTRUMENT 2013

Powers exercised by the Financial Conduct Authority

- 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);
 - (c) section 137P (Control of information rules);
 - (d) section 137R (Financial promotion rules);
 - (e) section 138C (Evidential provisions);
 - (f) section 139A (Power of the FCA to give guidance);
 - (g) section 178 (Obligation to notify the appropriate regulator: acquisitions of control);
 - (h) section 191D (Obligation to notify the appropriate regulator: dispositions of control);
 - (i) section 238 (Restrictions on promotion); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions module of the FCA’s Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument shall come 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
Principles for Businesses (PRIN)	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Client Assets sourcebook (CASS)	Annex D
Supervision manual (SUP)	Annex E

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 Designated Investment Exchanges Instrument 2013.

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

Annex A

Amendments to the Glossary of definitions

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

<i>custodian</i>	(A)	<u>(in the <i>PRA Handbook</i>)</u>
	(a)	...
	...	
	(B)	<u>(in the <i>FCA Handbook</i>)</u>
	(a)	<u>an approved bank;</u>
	(b)	<u>an approved depositary;</u>
	(c)	<u>a member of a recognised investment exchange;</u>
	(d)	<u>a firm whose permitted activities include safeguarding and administering investments;</u>
	(e)	<u>a regulated clearing firm;</u>
	(f)	<u>where it is feasible to use a <i>custodian</i> in (a) to (e), and there are reasonable grounds to show that a <i>person</i> outside the United Kingdom, whose business includes the provision of custodial services, is able to provide such services which are appropriate to the <i>client</i> and in the <i>client's</i> best interest to use, that <i>person</i>.</u>
<i>exchange traded fund</i>	a fund:	
	(a)	which is an open-ended investment company; and
	(b)	the units of which are traded on a regulated market or a designated investment exchange. [deleted]
<i>intermediate customer</i>		(for the purposes only of <i>COBS</i> TP 1 (Transitional Provisions in relation to Client Categorisation)); <u>any <i>person</i> classified as an 'intermediate customer' under <i>COB</i> on 31 October 2007, in accordance with the applicable conditions in force at the time.</u>
	(1)	(except in <i>COB</i> 3) a <i>client</i> who is not a market counterparty and who is:
	(a)	a local authority or public authority;

- (b) ~~a body corporate whose shares have been listed or admitted to trading on any EEA exchange;~~
- (c) ~~a body corporate whose shares have been listed or admitted to trading on the primary board of any IOSCO member country official exchange;~~
- (d) ~~a body corporate (including a limited liability partnership) which has (or any of whose holding companies or subsidiaries has) (or has had at any time during the previous two years) called up share capital or net assets of at least £5 million (or its equivalent in any other currency at the relevant time);~~
- (e) ~~a special purpose vehicle;~~
- (f) ~~a partnership or unincorporated association which has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited partnership without deducting loans owing to any of the partners;~~
- (g) ~~a trustee of a trust (other than an occupational pension scheme, SSAS, personal pension scheme or stakeholder pension scheme) which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the cash and designated investments forming part of the trust's assets, but before deducting its liabilities;~~
- (h) ~~a trustee of an occupational pension scheme or SSAS, or a trustee or operator of a personal pension scheme or stakeholder pension scheme where the scheme has (or has had at any time during the previous two years):~~
 - (i) ~~at least 50 members; and~~
 - (ii) ~~assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);~~
- (i) ~~another firm, or an overseas financial services institution, when, in relation to designated investment business, or related ancillary activities, conducted with or for that firm or institution, that firm or institution is an intermediate customer in accordance with COB 4.1.7R (Classification of another firm or an overseas financial services institution);~~

- (j) ~~collective investment scheme;~~
- (k) ~~a client when he is classified as an intermediate customer in accordance with COB 4.1.9R (Expert private customer classified as intermediate customer);~~
- (l) ~~a recognised investment exchange, designated investment exchange, regulated market or clearing house, except when it is classified as a market counterparty in accordance with COB 4.1.8AR (Classification of an exchange or clearing house);~~

~~but excluding:~~

- (i) ~~[deleted]~~
- (ii) ~~a client who would otherwise be an intermediate customer, when he is classified in accordance with:~~
 - (A) ~~COB 4.1.12R (Large intermediate customer classified as market counterparty); or~~
 - (B) ~~(except for the purposes of DISP) COB 4.1.14R (Client classified as private customer). [deleted]~~

- (2) ~~(in COB 3) a person in (1) or a person who would be such a person if he were a client. [deleted]~~

*inter-professional
business*

the business of a firm: (for the purposes only of COBS TP 1 (Transitional Provisions in relation to Client Categorisation)) business which comes within the meaning of 'inter-professional business' as defined in COB on 31 October 2007.

- (a) ~~when it carries on:~~
 - (i) ~~regulated activities; or~~
 - (ii) ~~related ancillary activities;~~

~~to the extent that the regulated activity that the firm is carrying on is:~~

 - (A) ~~dealing in investments as principal; or~~
 - (B) ~~dealing in investments as agent; or~~
 - (C) ~~acting as an arranger; or~~
 - (D) ~~giving transaction specific advice or agreeing to do so;~~

~~but only if that activity is:~~

- (i) ~~in or in respect of an *inter-professional investment*;~~
- (ii) ~~undertaken with or for a *eligible counterparty*; and~~
- (iii) ~~carried on from an establishment maintained by the *firm in the United Kingdom*;~~
- (b) ~~but excluding the carrying on of the following activities:~~
 - (i) ~~the *approval* by a *firm* of a *financial promotion*;~~
 - (ii) ~~activities carried on between *operators*, or between *operators and depositaries*, of the same *collective investment scheme* (when acting in that capacity);~~
 - (iii) ~~*corporate finance business*;~~
 - (iv) ~~*safeguarding and administering investments and agreeing to carry on that regulated activity*;~~
 - (v) ~~concluding a *distance contract* with a *consumer*;~~
 - (vi) ~~activities relating to *life policies*;~~

~~in this definition, the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc) is to be disregarded in determining whether dealing in investments as *principal* or agreeing to do so) is a *regulated activity*. [deleted]~~

inter-professional investment

~~any of the following *investments* specified in Part III of the *Regulated Activities Order* (Specified Investments) or, in the case of *units* in an *exchange traded fund*, defined in the *Glossary*:~~

- (a) ~~*share* (article 76);~~
- (b) ~~*debenture* (article 77);~~
- (ba) ~~*alternative debenture* (article 77A);~~
- (c) ~~*government and public security* (article 78);~~
- (d) ~~*warrant* (article 79);~~
- (e) ~~*certificate representing certain securities* (article 80);~~
- (f) ~~*option* (article 83); for the purposes of the *permission* regime, this is sub-divided into:~~
 - (i) ~~*option* (excluding a *commodity option* and an *option on a commodity future*);~~
 - (ii) ~~(*commodity option* and *option on a commodity future*;~~

- (g) ~~future (article 84); for the purposes of the *permission* regime, this is sub-divided into:~~
 - (i) ~~future (excluding a *commodity future* and a *rolling spot forex contract*);~~
 - (ii) ~~*commodity future*;~~
 - (iii) ~~*rolling spot forex contract*;~~
- (h) ~~contract for differences (article 85); for the purposes of the *permission* regime, this is sub-divided into:~~
 - (i) ~~contract for differences (excluding a *spread bet* and a *rolling spot forex contract*);~~
 - (ii) ~~*spread bet*;~~
 - (iii) ~~*rolling spot forex contract*;~~
- (i) ~~rights to or interests in investments in (a) to (h) (article 89)~~
- (j) ~~units in an exchange traded fund. [deleted]~~

*market
counterparty*

(for the purposes only of COBS TP 1 (Transitional Provisions in relation to Client Categorisation)); any person classified as a 'market counterparty' under COB on 31 October 2007, in accordance with the applicable conditions in force at the time.

- (1) ~~(except in COB 3) a *client* who is:~~
 - (a) ~~a properly constituted government (including a quasi-governmental body or a government agency) of any country or territory;~~
 - (b) ~~a central bank or other national monetary authority of any country or territory;~~
 - (c) ~~a supranational whose members are either countries or central banks or national monetary authorities;~~
 - (d) ~~a State investment body, or a body charged with, or intervening in, the management of the public debt;~~
 - (e) ~~another firm, or an overseas financial services institution, except in relation to *designated investment business*, and related *ancillary activities*, conducted with or for that firm or institution, when that firm or institution is an *intermediate customer* in accordance with COB 4.1.7 R (Classification of another firm or an overseas financial services institution);~~

- (f) ~~any associate of a firm (except an OPS firm), or of an overseas financial services institution, if the firm or institution consents;~~
- (g) ~~a client when he is classified as a market counterparty in accordance with COB 4.1.12R (Large intermediate customer classified as a market counterparty);~~
- (h) ~~a recognised investment exchange, designated investment exchange, regulated market or clearing house when it is classified as a market counterparty in accordance with COB 4.1.8AR (Classification of an exchange or clearing house);~~

~~but excluding:~~

- (A) ~~a regulated collective investment scheme; and~~
- (B) ~~(except for the purposes of DISP) a client, who would otherwise be a market counterparty, when he is classified as a private customer in accordance with COB 4.1.14R (Client classified as private customer).
[deleted]~~

- (2) ~~(in COB 3) a person in (1) or a person who would be such a person if he were a client. [deleted]~~

Annex B
Amendments to the Principles for Businesses (PRIN)

In this Annex, striking through indicates deleted text.

1 Annex 1R Non-designated investment business – clients that a firm may treat as an eligible counterparty for the purposes of PRIN

1.1	...	
	...	
	(8)	<i>a recognised investment exchange, designated investment exchange, regulated market or clearing house.</i>
...		

Annex C
Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, striking though indicates deleted text.

18.5 Residual CIS operators, UCITS management companies and AIFMs

...

Adequate information

18.5.10 E ...

(3) ...

Table: Content of fund documents

Content of fund documents

The <i>fund</i> documents should include provision about:		
...		
(19)	Transactions involving contingent liability investments	
	...	
	(c)	if applicable, that the <i>firm</i> has the authority to effect transactions involving <i>contingent liability investments</i> otherwise than under the rules of a <i>recognised investment exchange</i> or designated investment exchange and in a contract traded thereon;
...		

Annex D

Amendments to the Client Assets sourcebook (CASS)

In this Annex, striking through indicates deleted text.

6.2 **Holding of client assets**

...

Registration and recording of legal title

6.2.3 R ...

(2) a *nominee company* which is controlled by:

...

(c) a *recognised investment exchange* ~~or a designated investment exchange~~; or

...

...

Annex E

Amendments to the Supervision manual (SUP)

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

11.3 Requirements on controllers or proposed controllers under the Act

...

Pre-notification and approval for fund managers

...

11.3.5B D The *appropriate regulator* may treat as notice given in accordance with sections 178 and 191D of the *Act* a written notification from a *firm* which contains the following statements:

- (1) that the *firm* proposes to acquire and/or dispose of *control*, on one or more occasions, of any *UK domestic firm* whose *shares* or those of its ultimate *parent undertaking* are, at the time of the acquisition or disposal of *control*, *listed*, or which are traded or admitted to listingtrading on a ~~designated investment exchange~~ *MTF* or a market operated by a ROIE;

...

...

Appendix 13:

Investing in authorised funds through nominees

**RETAIL DISTRIBUTION REVIEW (PLATFORMS) (AMENDMENT NO 2)
INSTRUMENT 2013**

Purpose

- A. The purpose of this instrument is to postpone the date on which certain amendments to the Handbook made by the Retail Distributions Review (Platforms) Instrument 2011 (FSA 2011/47) and the Retail Distributions Review (Platforms) (Amendment) Instrument 2012 (FSA 2012/43) come into force.

Powers exercised

- B. 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 FCA to give guidance).
- C. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

- E. (1) Subject to (2), the amendment to the Conduct of Business sourcebook (COBS) made by the Retail Distributions Review (Platforms) Instrument 2011 (FSA 2011/47) inserting COBS 14.4, as amended by the Retail Distributions Review (Platforms) (Amendment) Instrument 2012 (FSA 2012/43), is postponed and comes into force on 31 December 2015 instead of 31 December 2013.
- (2) The amendment in (1), insofar as it has the effect of inserting the new rules and guidance in COBS 14.4.10R, 14.4.11G & 14.4.12G, continues to come into force on 31 December 2013.

Citation

- F. This instrument may be cited as the Retail Distributions Review (Platforms) (Amendment No 2) Instrument 2013.

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

Appendix 14A:

AIFM remuneration code – changes to SYSC

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(AIFMD REMUNERATION CODE AND GUIDELINES) INSTRUMENT 2013**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (“the Act”); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- 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]* 2013.

Amendments to the Handbook

- D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (AIFMD Remuneration Code and Guidance) Instrument 2013.

By order of the Board of the Financial Conduct Authority
[date] 2013

Annex

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

In this Annex, underlining indicates new text.

AIFM Remuneration Code

19B.1 Application

19B.1.1 R ...

19B.1.1A G (1) Full-scope UK AIFMs are advised that ESMA published Guidelines on sound remuneration policies under the AIFMD on 3 July 2013 which full-scope UK AIFMs should comply with in applying the rules in this section. The Guidelines can be found at: http://www.esma.europa.eu/system/files/2013-232_aifmd_guidelines_on_remuneration_-_en.pdf

(2) The FCA has provided additional guidance on the application of principles of proportionality to remuneration policies of an AIFM. The guidance also addresses several other aspects of the AIFM Remuneration Code and the Guidelines. The guidance can be found at: <http://www.fca.org.uk/firms/markets/international-markets/aifmd/remuneration>

...

19B.1.13A G (1) Taking into account the remuneration principles proportionality rule in SYSC 19B.1.4R, the FCA does not generally consider it necessary for a firm to apply the rules in (2) where, in relation to an individual ("X"), both of the following conditions are satisfied:

(a) Condition 1 is that X's variable remuneration is no more than 33% of total remuneration; and

(b) Condition 2 is that X's total remuneration is no more than £500,000.

(2) The rules referred to in (1) are those relating to:

(a) guaranteed variable remuneration (SYSC 19B.1.14R);

(b) retained units, shares or other instruments (SYSC 19B.1.17R);

(c) deferral (SYSC 19B.1.18R); and

(d) performance adjustment (SYSC 19B.1.19R).

...

- 19B.1.18A G (1) £500,000 is a particularly high amount for the purpose of SYSC 19B.1.18R(4).
- (2) Paragraph (1) is without prejudice to the possibility of lower sums being considered a particularly high amount.
- (3) While any variable *remuneration* component of £500,000 or more paid to *AIFM Remuneration Code staff* should be subject to 60% deferral, *firms* should also consider whether lesser amounts should be considered to be 'particularly high', taking into account, for example, whether there are significant differences within *AIFM Remuneration Code staff* in the levels of variable *remuneration* paid.

...

Appendix 14B:

AIFM remuneration code guidance

General guidance on the *AIFM Remuneration Code* (SYSC 19B)

Part A – Introduction and interpretation

1. Status of guidance statement

This statement is general *guidance* given under section 139A(1) of the Financial Services and Markets Act (FSMA). It relates to the *AIFM Remuneration Code* (SYSC 19B) of the *Handbook* and the *Guidelines* (defined in table 1 below)

Section 3 below provides for the interpretation of this *guidance* statement.

This *guidance* represents our *guidance* in a field where new remuneration requirements for asset managers are being implemented within the EEA. We intend to keep the *guidance* set out here under review, and may revise it once we have received more data on the number, size, organisation, and activities of *full-scope UK AIFMs*.

2. Arrangement of guidance statement

This *guidance* statement is divided into six parts and an appendix:

- i. This part, Part A: Introduction and interpretation.
- ii. Part B: Guidance to *firms* as to when the *AIFM Remuneration Code* takes effect, to which remuneration payments the *AIFM Remuneration Code* will first apply, and the scope of the *AIFM Remuneration Code* in relation to *small authorised UK AIFMs* and *small registered UK AIFMs*.
- iii. Part C: Guidance to *firms* about applying proportionality to *AIFMs*, delegates of the *AIFM*, *AIFM Remuneration Code* staff performing permitted business not involving the management of *AIFs*, and remuneration committees.
- iv. Part D: Guidance on how to treat payments to partners or members of an *AIFM*. Part E: Guidance on remuneration in the form of units, shares or other instruments.
- v. Part F: Guidance on minimum retention periods.
- vi. Appendix – supplemental guidance on applying proportionality (examples).

3. Interpretation

This *guidance* statement is to be interpreted as if it were an Annex to SYSC 19B.1. Consequently *GEN 2* (interpreting the Handbook) applies to the interpretation of this *guidance* statement.

In particular, an expression in italics which is defined in the *Glossary* has the meaning given there (*GEN 2.2.7R*). Where an expression in italics is not defined in the *Glossary*, it has the meaning given by the following table:

Table 1: Glossary of terms defined in this *guidance* statement

Defined Expression	Definition
AIFM remuneration proportionality rule	The <i>rule</i> in SYSC 19B.1.4R(1)
AuM	Net assets under management in <i>AIFs</i> managed by the relevant <i>AIFM</i>
Guidelines	ESMA guidelines on sound remuneration policies under the AIFMD (ESMA/2013/232) (available at http://www.esma.europa.eu/system/files/2013-232_AIFMD_guidelines_on_remuneration_-_en.pdf)
Partner	A partner of a partnership or a member of a limited liability partnership (LLP)
Pay-out Process Rules	The following <i>rules</i> : i. Retained units, shares or other instruments (SYSC 19B.1.17R), ii. Deferral (SYSC 19B.1.18R), and iii. Performance adjustment (SYSC 19B.1.19R & SYSC 19B.1.20R).

4. Individual guidance

We may give individual *guidance* to a *firm*, either on our own initiative or on the application of the *firm*. Our policy on individual *guidance* is set out in SUP 9, and we may give individual *guidance* to a firm in relation to the *AIFM remuneration proportionality rule*. Such *guidance* may relate to the application of the *rule* by the *firm* generally or in specific areas.

Part B – When the *AIFM Remuneration Code* takes effect, to which remuneration payments the *AIFM Remuneration Code* will first apply, and the scope of the *AIFM Remuneration Code* in relation to small authorised UK *AIFMs* and small registered UK *AIFMs*.

1. This *guidance* statement has effect from [date to be confirmed] for those *firms* authorised as *full-scope UK AIFMs*.
2. Once a *firm* becomes *authorised* as a *full-scope UK AIFM*, it becomes subject to the *AIFM Remuneration Code* and the *Guidelines*. We expect *firms* to implement the *AIFMD* remuneration regime for new awards of variable remuneration to relevant staff for performance periods following that in which the *firm* becomes *authorised*. So the *AIFMD* remuneration regime will apply only to full performance periods and

will first apply to the first full performance period after the *firm* becomes *authorised*. The *AIFM Remuneration Code* will not apply to any remuneration payments earned, allocated or otherwise awarded in performance periods prior to the *firm's* *authorisation*, including any remuneration previously awarded in the form of instruments that have not yet vested at the time of the *firm's* *authorisation* or which vest in subsequent performance periods.

3. The *Guidelines* contain some references to smaller *AIFMs*, and state that the Commission Recommendation 2009/384/EC of 30 April 2009 (on remuneration policies in the financial services sector)¹ should be considered by smaller *AIFMs*. However, the *AIFMD UK regulation*² does not apply the *AIFM Remuneration Code* to *small authorised UK AIFMs*, *small registered UK AIFMs*, *non-EEA AIFMs* or *small non-EEA AIFMs*. Although one of these *firms* may nevertheless elect to implement some or all of these remuneration *rules*, it is not required to comply with the *AIFM Remuneration Code* nor the *Guidelines*.

Part C – Applying proportionality to *AIFMs*, delegates of the *AIFM*, *AIFM Remuneration Code* staff at an *AIFM* performing permitted business not involving the management of *AIFs*, and remuneration committees

The *AIFM Remuneration Code* requires, among other things, a *firm* to apply requirements in SYSC 19B.1 to *AIFM Remuneration Code* staff. The *AIFM remuneration proportionality rule* requires a *firm*, when establishing and applying the total remuneration policies for *AIFM Remuneration Code* staff, to comply with SYSC19B.1 in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities. Further *guidance* on proportionality is provided in paragraphs 23-31 of the *Guidelines*.

This guidance statement provides the FCA's view on when it may be appropriate for firms to be able to apply the *AIFM remuneration proportionality rule*. This process by which firms determine whether the *AIFM remuneration proportionality rule* applies is provided in section 1 below. This process is also used as the basis for the separate proportionality test which applies in relation to remuneration committees (see section 4 below).

We also consider proportionality applicable to the payment of remuneration in shares, units or other instruments in Part E, section 4 below.

Although this *guidance* gives the FCA's view of how certain provisions in the *AIFM Remuneration Code* could be applied in light of the principle of proportionality, as

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:120:0022:0027:EN:PDF>

² See Part 3, The Alternative Investment Fund Managers Regulations 2013 (available at <http://www.legislation.gov.uk/ukdsi/2013/9780111540206/contents>)

paragraph 28 of the *Guidelines* explains, it is the primary responsibility of the *AIFM* to assess its own characteristics and to develop and implement remuneration policies and practices which appropriately align the risks faced and provide adequate and effective incentives to its staff. Following paragraph 25 of the *Guidelines*, *AIFMs* should, if requested, be able to explain to the *FCA* the rationale for how they apply the *AIFM remuneration proportionality rule*, particularly where they have concluded that it is appropriate for certain *rules* to be disapplied.

1. Proportionality with respect to the different characteristics of *AIFMs* - Process

a. Overview

This section provides guidance as to how proportionality should be taken into account by a *full-scope UK AIFM* in determining the *firm's* remuneration policy. Considerations of proportionality may result in the disapplication of the following *rules*:

- i. Retained units, shares or other instruments (*SYSC 19B.1.17R*);
- ii. Deferral (*SYSC 19B.1.18R*); and
- iii. Performance adjustment (*SYSC 19B.1.19R & SYSC 19B.1.20R*).

For convenience, these *rules* are together referred to in this *guidance* as the *Pay-out Process Rules*. Disapplication of the *Pay-out Process Rules* is never automatic; *AIFMs* should perform an assessment for each of the *rules* that may be disapplied, based on the application of the principle of proportionality. The *Guidelines* provide some detail on the proportionality elements that must be considered: size, internal organisation and the nature, scope and complexity of the *firm's* activities. We provide further *guidance* on each of these elements and suggest additional elements where appropriate.

b. Size – *AuM* thresholds

Size includes factors such as capitalisation and assets under management. As a first step, we would expect an *AIFM* to calculate the value of its *AuM* in the *AIFs* that it manages. The *AIFM* should calculate its *AuM* by reference to the value of the portfolios of *AIFs* (i.e. net asset value of *AIFs*) that it manages on the most recent valuation date for the *AIFs*. However, portfolios of *AIFs* that the *AIFM* is managing under delegation should be excluded from the calculation.

The value of *AuM* provides a useful working presumption (to be confirmed or disconfirmed by considering other factors) as to how considerations of proportionality are likely to be reflected in the *AIFM's* remuneration policy. For these purposes we think it is reasonable to use the *AuM* thresholds specified in the table below. If an *AIFM's AuM* is above the relevant *AuM* threshold, we would expect it to review the other criteria to determine whether there are other characteristics of the *firm* or its *AIFs* that, notwithstanding its size, merit disapplication of all or some of the *Pay-out Process Rules* on the grounds of

proportionality. Similarly, if an *AIFM's AuM* is below the relevant *AuM* threshold, we would presume that it may disapply the *Pay-out Process Rules* on the grounds of proportionality. However, we would still expect it to review the other criteria to determine whether there are other characteristics of the *firm* or its *AIFs* that merit full application of all or some of the *Pay-out Process Rules*.

The following table shows the *AuM* thresholds for the two types of *full-scope UK AIFMs*. We would expect a *firm* corresponding to the description given in the first and second columns to commence its analysis of its remuneration policy by using the working presumption listed in the third column.

Table 2: Proportionality – *AuM* thresholds

Type of firm	<i>AuM</i> threshold	Presumption
<i>AIFMs</i> which manage portfolios of <i>AIFs</i> including assets acquired through use of leverage	Less than [£500 million -£1.5 billion]	it is appropriate to disapply <i>Pay-out Process Rules</i>
	Greater than [£500 million -£1.5 billion]	it is not appropriate to disapply <i>Pay-out Process Rules</i>
<i>AIFMs</i> which manage portfolios of <i>AIFs</i> that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each <i>AIF</i>	Less than [£4-6 billion]	it is appropriate to disapply <i>Pay-out Process Rules</i>
	Greater than [£4-6 billion]	it is not appropriate to disapply <i>Pay-out Process Rules</i>

c. Other proportionality elements

Based on the presumption derived from the *AuM* threshold, we would expect *firms* then to consider other proportionality elements against the characteristics of the *firm* and its business. To this end, we would encourage comparisons to a *firm's* peers and competitors in the *UK* or *EEA* market where relevant. We note in the table below additional non-exhaustive factors that *firms* should take into account when confirming or disconfirming the presumption created by the *AuM* threshold. We have illustrated this process in a number of examples in the Appendix.

Table 3 – Proportionality – other elements

Proportionality element	Specific factor	Comments
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Size	Number of the <i>AIFM</i> 's <i>partners</i> , members, employees and consultants performing services for the <i>AIFM</i>	This factor may be taken into account in comparison to peers or in considering the type of staff performing services, ie. the number of <i>AIFM Remuneration Code staff</i> .
Internal Organisation	Whether the <i>AIFM</i> is listed and traded on a <i>regulated market</i>	This factor favours application of the <i>Pay-out Process Rules</i> because compliance is likely to align the interests of the <i>AIFM</i> with the external investors in the <i>AIFM</i> 's equity.
	Ownership structure - whether a significant portion of the <i>firm</i> 's equity or such other appropriate legal and/or economic interests is held by investors not working in the business	To the extent that the senior management of the <i>firm</i> own a majority stake in the <i>firm</i> , this could be an indicator favouring the disapplication of some or all of the <i>Pay-out Process Rules</i> on the grounds of proportionality in respect of the senior management, such as the requirement on ex-post incorporation of risk.
Nature, scope and complexity of activities	Number of investment strategies / styles and number of <i>AIFs</i>	To the extent a <i>firm</i> manages a large number of <i>AIFs</i> which implement a wide range of strategies, this is likely to indicate increasing complexity.
	Risk management and monitoring	Where the discretion of the <i>AIFM</i> or its delegated portfolio manager (and thus its risk-taking) is strictly controlled within certain pre-defined narrow parameters and/or investment decisions are rules-based (such as where there is a mandate to track an index), this may justify disapplications of the deferral and retention requirements.
	Level of risk	We categorise <i>firms</i> internally using our conduct and prudential supervision categories (C1-C4, P1-P4 respectively) and if a <i>firm</i> is aware of its category, this can be used to measure its risk profile. Alternatively, <i>firms</i> should use their own indicators of risk, such as a VaR measure (where applicable) or other appropriate methods, to determine the level of risk linked to their <i>AIFs</i> ' activities. A low level of risk taken by the <i>AIFM</i> is likely to be reconcilable with the disapplication of the <i>Pay-out Process Rules</i> .

	The nature of any delegation arrangement between the <i>AIFM</i> and its delegate	This factor should be taken into account when an <i>AIFM</i> delegates portfolio or risk management to a third-party delegate. See Section 2 below and examples 5 and 6 in the Appendix.
	The nature of certain fee structures such as performance fees or <i>carried interest</i>	This factor may be considered where fee structures satisfy the objectives of alignment of interest with investors and avoid incentives for inappropriate risk-taking, but perhaps do not meet the requirements of the <i>Guidelines</i> . ³ See example 7 in the Appendix.

2. Proportionality – delegation of portfolio or risk management

Where an *AIFM* is delegating portfolio or risk management, the *Guidelines*⁴ say that either:

- i. the delegate is subject to regulatory requirements on remuneration that are equally as effective as those applicable under the *Guidelines*; or
 - ii. appropriate contractual arrangements are put in place with the delegate in order to ensure that there is no circumvention of the remuneration rules set out in the *Guidelines*.
- a. Interpretation of remuneration requirements that are ‘equally as effective’

Our assessment of which remuneration regulatory requirements are equally as effective as the requirements of the *AIFMD* should include a comparison of the objectives of those regulatory requirements, and should not require equivalence between regimes. As a result, we would generally consider the *CRD* and *MiFID* remuneration regimes to be equally as effective as the requirements of the *AIFMD* where a delegate⁵ is subject to such requirements, because the *AIFMD* objectives are likely to be achieved. Where member states have not applied the full *CRD* remuneration regime to a type of investment firm, a delegate falling within this type should also be considered as subject to regulatory requirements on remuneration that are equally as effective because we would normally expect it to be appropriate for the *firm* to receive similar treatment under the *AIFMD*.

b. Other proportionality considerations

The requirements on *AIFMs* when delegating portfolio or risk management may be subject to proportionality. We have illustrated some cases in examples 5 and 6

³ See paragraph 159 of the *Guidelines* which specifies certain remuneration structures that comply with the requirements on risk alignment of variable remuneration, award and pay-out process.

⁴ See paragraph 18, *Guidelines*.

⁵ In the UK, a qualifying delegate would be subject to SYSC 19A or SYSC 19C (when implemented).

in the Appendix, where a delegate is subject to a group remuneration policy equivalent to *CRD* or where the delegate performing portfolio management has limited investment discretion.

c. Appropriate contractual arrangements with delegate

Where it would be appropriate for the *AIFM* to put in place contractual arrangements with the delegate, we expect the *AIFM* to tailor these arrangements so that it applies the *AIFM Remuneration Code* to the remuneration of the delegate's relevant staff resulting from the delegation. For example, the *AIFM* need only put arrangements in place with respect to those staff of the delegate who have a material impact on the risk profiles of the relevant *AIFs*, and in respect of remuneration that is connected with the delegated activities.

3. Proportionality – Staff at an *AIFM* performing permitted business not involving the management of *AIFs*

The *AIFM Remuneration Code* applies to all staff whose professional activities have a material impact on the risk profiles of the *AIFM* or of the *AIFs* the *AIFM* manages (*AIFM Remuneration Code staff*).⁶ *AIFMs* are permitted to manage other *funds*, such as *UCITS*, and are permitted to carry out certain *MiFID* investment activities as listed in *FUND* 1.4.3R. To the extent that *AIFM Remuneration Code staff* are not involved in the management of *AIFs*, this can be considered in any proportionality analysis of such staff, and may justify disapplication of the *Pay-out Process Rules* in respect of those staff. We would also expect that some staff performing non-*AIFMD* business (e.g. under *UCITS Directive* or *MiFID* business) would not be considered *AIFM Remuneration Code staff* because of their limited impact on the risk profiles of the *AIFM* or of the *AIFs* it manages.

For a member of staff whose work is a mixture of *AIFMD* and non-*AIFMD* business, a *firm* could apportion his or her remuneration according to the type of business performed, and treat such portions under the relevant remuneration regime after taking into consideration the need to align risks in terms of risk management and exposure to risk. A *firm* may apportion an individual's remuneration based on time, funds under management or another benchmark taking into account any risks created in each case.

Because of additional regulatory changes, remuneration received by an individual in respect of non-*AIFMD* activities may fall in the near future within the scope of other Directives such as the *CRD* and subject to their respective proportionality frameworks, if applicable.

⁶ See SYSC 19B.1.3R

4. Remuneration committees

a. General

SYSC 19B.1.9R(1) provides that a *firm* that is significant in terms of its size, internal organisation and the nature, the scope and the complexity of its activities must establish a remuneration committee. Although at least some of the same factors are considered as for general proportionality, the *Guidelines* explain that only significant *AIFMs* should be required to establish a remuneration committee. That means an analysis of each of the proportionality elements should show that the relevant firm is significant. Paragraphs 52-57 in the *Guidelines* provide further information regarding which *firms* should establish a remuneration committee.

b. Proportionality elements

The guidance provided in tables 2 and 3 above should also be used when analysing the proportionality elements. Without prejudice to the criteria outlined in paragraph 55 of the *Guidelines*, we would also have regard to the *AuM* thresholds specified above and, if a *firm* is above the relevant *AuM* threshold, that would provide a working presumption of significance in terms of size. Similarly, if a *firm* is listed and its equity is traded on a regulated market, that *firm* is likely to be significant in terms of internal organisation. As for the rest of the proportionality analysis for these purposes, comparisons with its peer group may be done to assist in determining whether a *firm* is significant.

Part D – How to treat payments to partners or members of an *AIFM*

This part of the *guidance* statement explains how *firms* should treat remuneration (as defined in the *Guidelines*) that is paid to partners or members (for ease, we use ‘*partners*’ only below) of a *full-scope UK AIFM* set up as a partnership or limited liability partnership (LLP). The *Guidelines* define ‘remuneration’ broadly, and this includes ‘all forms of payments or benefits paid by the *AIFM* ... in exchange for professional services rendered by the *AIFM* identified staff.’⁷ On the other hand, the *Guidelines* limit the scope of what should be considered remuneration by excluding ‘[d]ividends or similar distributions that *partners* receive as owners of an *AIFM*.’⁸ We use the terms ‘profit share’ or ‘profit distribution’ indistinguishably below.

We provide *guidance* on how remuneration for the purposes of the *AIFM Remuneration Code* should be calculated for *partners* of a *full-scope UK AIFM*, and where applicable, how deferral of the variable remuneration component can be operated.

⁷ See paragraph 10 of the *Guidelines*. The corresponding section in the Handbook is SYSC 19B.1.4R(3).

⁸ See paragraph 17 of the *Guidelines*.

1. Determination of a *partner's* remuneration – process

The *Guidelines* allow payments to *partners* as owners of an *AIFM*, such as dividends or distributions, to be excluded from the scope of the remuneration requirements.⁹

Many *AIFMs* in the *UK* are currently structured as owner-managed partnerships or owner-managed limited liability partnerships. Currently, payments from the *AIFM* to *partners* working in the business are classified as a profit share or distribution primarily for tax purposes, and no part is classified as a fixed remuneration or a variable remuneration. The requirements of the *AIFM Remuneration Code* primarily fall on the portion of a staff member's remuneration that is considered variable remuneration. So it is likely to be necessary to determine the portion of the payments to *partners* that is considered remuneration within *AIFMD* scope and the portion that is a return on equity in the relevant firm. We suggest the following analysis of a *partner's* remuneration for *AIFMD* regulatory purposes.

- a. Allocating between profit share, fixed remuneration and variable remuneration under the *AIFMD*

Firstly, a *full-scope UK AIFM* must determine whether a *partner* should be considered as part of the *firm's AIFM Remuneration Code staff*.¹⁰ If the *partner* is part of the *firm's AIFM Remuneration Code staff*, his or her remuneration must comply with the *AIFM Remuneration Code*. Because these *rules* apply to the fixed and variable remuneration components of the *partner's* remuneration, it is then necessary to calculate these components from the payments or other benefits paid by the *AIFM* in exchange for professional services rendered by the *partner*.

This process of determining the fixed and variable remuneration for the purposes of *AIFMD* for a *partner* should depend on the circumstances of the *partner* and his or her relationship with the *AIFM*. We provide some approaches below.

- i. Approach based on existing payments to *partners*

For existing *firms*, a factor to consider is how the *partner* currently receives his or her profit share, and how the partnership or LLP pays its *partners*. An amount of additional profit share for senior or founding *partners* is likely to be considered as a profit distribution that is outside of the scope of the *AIFM Remuneration Code*. An amount of discretionary profit share distributed to all *partners* may be considered a variable remuneration. Finally, any drawings taken in advance may be considered a fixed remuneration.

- ii. Approach based on benchmarking

⁹ Paragraph 17 *Guidelines*.

¹⁰ See SYSC 19B.1.3R (defining *AIFM Remuneration Code staff*) and paragraphs 19-22 of the *Guidelines* (guidelines on how to identify the categories of staff covered by these guidelines).

Another approach that may be possible is to use benchmarks such as

- the remuneration structures of others performing similar tasks or working in similar businesses as the *partner* in question; and/or
- where the *partner* has invested capital in the relevant *AIFM*, the return on equity or return on capital expected in a similar investment context to that of the *partner*.

iii. General considerations

To the extent a *partner* works less than full-time in an executive position for the *AIFM*, a larger percentage of the *partner's* profit share should be considered as a profit distribution and not remuneration under the *AIFMD*. Conversely, where a *partner* devotes his or her full time and attention to the *AIFM*, we will expect a reasonable portion of the *partner's* profit share to be considered as remuneration under the *AIFMD*.

When allocating a *partner's* income to these regulatory categories under any approach, *firms* should take into account SYSC 19B.1.5R. The *AIFM* must set appropriate ratios between fixed and variable remuneration, so that the fixed and variable components are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components.

Finally, we draw the attention of affected *AIFMs* to SYSC 19B.1.24R (Avoidance of the remuneration code).¹¹ For example, we would caution *AIFMs* not to allocate all payments to a certain *partner* as profit share without sound justification.

2. *Partner's* deferred portion of variable remuneration – impact on retained units, shares or other instruments

SYSC 19B.1.17R requires at least 50% of any variable remuneration to consist of units, shares or other instruments of the *AIF* concerned (referred to as “*units*” for convenience), whether such a component is deferred or not. The deferral of any remuneration in cash or in units, shares or other instruments that are retained would give rise to a tax charge in the base year in accordance with partnership tax rules. This means that *partners* are taxed on all their profit shares when they arise in the base year even when these profits are not yet distributed or received by the *partners*, i.e. prior to that remuneration vesting with those individuals. Effectively this tax charge would not be funded in the base year as individual *partners* do not have immediate access to the deferred remuneration.

We are discussing with HMRC and industry representatives proposals to put in place a statutory tax mechanism as part of the proposals of the partnerships tax review

¹¹ See paragraph 15, *Guidelines*.

consultation¹² to address this issue of unfunded tax charge. Subject to further tax guidance to be published in the autumn alongside the draft tax legislation for introduction under Finance Bill 2014, references in SYSC 19B.1.17R to the portions of deferred variable remuneration referred to above should be read as being on a ‘net-of-tax’ basis and should be calculated on a ‘net-of-tax’ basis where the partnership is liable for tax on deferred sums as a result of the use of the proposed mechanism.

Where the mechanism is not used, then deferral of remuneration should be on a gross of tax basis. This is because it would not be considered to be compliant with the *AIFMD* remuneration regime for firms to allow their members to have immediate access to part of the deferred remuneration on the assumption that this would be used to fund payment of tax.

The ‘net-of-tax’ basis may take into account both income tax and national insurance that arise on the deferred remuneration under the partnership tax rules.

Part E – Remuneration in the form of units, shares or other instruments

1. The *AIFM Remuneration Code* requires that 50% of any variable remuneration consists of units or shares of the *AIF* concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments.¹³ However, this *rule* is subject to:
 - a. the legal structure of the *AIF*
 - b. the instrument constituting the *fund*
 - c. whether the management of *AIFs* accounts for less than 50% of the total portfolio managed by the *AIFM*
2. Legal structure of the *AIF* and the instrument constituting the *AIF*

We interpret this condition to be where the legal structure or instrument of the *AIF* makes the *rule*’s application impracticable considering the objectives of the *AIFM Remuneration Code*. Some non-exhaustive considerations for judging impracticability in this context would be where:

- a. an *AIF* is closed-ended and there are no *units* available to acquire;
- b. the *AIF*’s constituting instrument or rules prohibit investments by *AIFM Remuneration Code* staff or prescribe a large minimum investment amount that will not be met by staff investments;

¹² HMRC’s consultation document was published on 20 May 2013 and the consultation closed on 9 August 2013: <https://www.gov.uk/government/consultations/a-review-of-two-aspects-of-the-tax-rules-on-partnerships>.

¹³ SYSC 19B.1.17R(1)

- c. the *AIF* may not be marketed to some or all *AIFM Remuneration Code staff* due to laws or regulations preventing distribution to investors for whom *units* in the *AIF* are not suitable, or
- d. legislation or regulation limits or prohibits the *AIFM* or an individual from holding *units* in an *AIF* or *AIFs*, or
- e. an investment by *AIFM Remuneration Code staff* in an *AIF* could result in adverse tax consequences for any third party investors in the *AIF*, or
- f. because of the *AIF*'s structure, the creation of equivalent ownership interests, share-linked instruments or equivalent non-cash instruments is unduly costly when weighed against any benefits gained from aligning interests between relevant staff and investors.

Where the *firm* decides to disapply this *rule*, there is no requirement in the *AIFM Remuneration Code* for payment in *units* linked to other entities. Nevertheless, in order to align the incentives of relevant staff with those of the relevant *AIFs*, the investors of such *AIFs* and the *AIFM* itself, we would recommend that *firms* elect to pay staff in shares, interests, or instruments linked to the *AIFM* or its parent company, or in shares or instruments linked to the performance of a weighted average of the *AIFs* managed by the *AIFM*.

3. Proportionality considerations for payment in shares, units or other instruments

We recognise that for some *AIFMs* the effect of SYSC 19B.1.17R(1) may be disproportionate, due to the number of *AIFs* that it manages or for certain types of *AIFM Remuneration Code staff* such as senior management or compliance and audit functions. In such cases, *firms* may alternatively pay staff in:

- a. shares, interests, or instruments linked to the *AIFM*, or its parent company; or
- b. shares or instruments linked to the performance of a weighted average of the *AIFs* managed by the *AIFM*.

Any such alternative should be justified by showing that it aligns the risks taken by staff with those of the relevant *AIFs*, the investors in such *AIFs* and the *AIFM* itself, or, when staff (such as those in compliance and audit functions) are not risk-takers, that it does not represent a conflict of interest with their duty to perform their functions independently.

Part F – Minimum retention periods

This *guidance* relates to the appropriate retention policy under SYSC 19B.1.17R(2) (relating to Remuneration Principle 12(e): Remuneration structures: retained units, shares or other instruments). We would normally consider a retention period of 6 months to be sufficient, provided that other risk management techniques within the *firm* are operating to secure sound and effective risk management (including, in

particular, those on performance adjustment and measurement of performance set out in SYSC 19B.1.19R to SYSC 19B.1.21G). The retention period should apply to all *units* forming part of a variable remuneration award, beginning from the date at which the *units* vest. Longer retention periods may also be appropriate in certain cases.¹⁴

Similarly to how the Remuneration Code (19A) operates, the *rule* on retention may be applied on a ‘net of tax’ basis where all the tax owed is deducted at source (as is the case under the UK’s PAYE system) or paid on a self-assessment basis using the proposed statutory tax mechanism for partnerships.¹⁵ Where a tax liability arises under the PAYE system on the vesting of a deferred portion of *units*, the tax owed may be deducted at source to facilitate the payment of tax owed, and the remainder of *units* forming part of the variable remuneration award should be subject to the retention period.

We note that it is common for *firms* subject to SYSC 19A to fund the PAYE liability that arises from paying a bonus in shares, by selling shares to a third party and using the proceeds to pay that liability to facilitate the payment of tax owed. *Firms* subject to SYSC 19B may also consider adopting such an approach. There may be cases in certain jurisdictions where the tax rate on the shares is lower than the tax rate on cash. We will not consider it acceptable for *firms* to sell shares that are subject to retention to meet tax liabilities on the cash amount.

¹⁴ See generally paragraphs 137 -144, *Guidelines*.

¹⁵ This guidance is closely aligned with our finalised guidance on retention periods in SYSC 19A, which is available here: http://www.fsa.gov.uk/pubs/guidance/fg11_11_retention_periods.pdf

Appendix – supplemental guidance on applying proportionality (examples)

The following non-exhaustive examples illustrate the operation of this *guidance*. It should be borne in mind that individual *guidance* could vary the outcome provided by the operation of this general *guidance*.

A. Example 1 (Proportionality does not apply):

Firm A is a *full-scope UK AIFM* that manages many *AIFs* which implement a number of investment strategies, including equity, fixed income and alternatives. The *AIFs* that it manages are both open-ended and closed-ended, and several are leveraged. Its *AuM* is approximately £10 billion. Taking into account this *guidance*, Firm A presumes that it must comply with the full *AIFM Remuneration Code*. It considers its size on other benchmarks, such as its number of staff or subsidiaries being greater than most of its competitors in the UK market. It counts six offices worldwide, with a number of subsidiaries abroad. In terms of internal organisation, the *firm* itself is listed on a regulated market, as are several of its *AIFs*. With respect to its activities, the *firm* holds additional permissions in the UK to carry on the activities listed in *FUND 1.4.3R*. The *firm* manages various investment strategies which invest in several regions and industry sectors.

We would expect Firm A to conclude that it is appropriate for it to comply in full with the *AIFM Remuneration Code* because on assessment of the proportionality elements, there is little evidence to demonstrate that Firm A should be considered less complex or small-scale.

B. Example 2 (Proportionality does apply):

Firm B is a *full-scope UK AIFM* that manages three *AIFs* investing in commercial and residential property in the UK. The *AIFs* are closed-ended and unleveraged, and the firm's *AuM* is approximately £750 million. Taking into account this *guidance*, Firm B presumes that it may disapply certain *Pay-out Process Rules*. Considering its size, it ascertains that it has fewer staff than most of its competitors, and it has no subsidiaries. Regarding its internal organisation, its internal governance structure is non-complex as it has not established a supervisory function. Neither it nor its *AIFs* are listed. It is owned by three of its *partners*, each of whom works full-time in the business. With respect to its activities, it does not carry out any of the additional services listed in *FUND 1.4.3R*. Its investment strategies are not considered complex.

Firm B could reasonably conclude that it is appropriate for it to disapply the *Pay-out Process Rules*, assessed on a case-by-case basis, because on assessment of the proportionality elements, there is sufficient evidence to demonstrate that Firm B should be considered less complex or small-scale.

C. Example 3 (Small size presumption displaced by consideration of other proportionality factors):

Firm C is a *full-scope UK AIFM* that manages three *AIFs* investing in global macro strategies. The *AIFs* are open-ended and leveraged, and the firm's *AuM* is approximately £800 million. Taking this *guidance* into account, Firm C presumes that it may disapply certain *Pay-out Process Rules*. Upon further considering its size, it ascertains that it has fewer staff than some of its competitors, and it has no subsidiaries. Its internal organisation involves external shareholders as it is part of a medium-sized asset management group, which is listed. With respect to its activities, it carries out the additional service of individual portfolio management under *FUND 1.4.3R*. Its global macro strategies are complex and use significant human capital, such as experienced economists and computer programmers. It uses considerable leverage at most times in its management of its *AIFs*, which occasionally reaches ten times their net asset value calculated on a commitment method basis¹⁶. The returns of the *AIFs* are extremely volatile, and are intended for investors with a high risk appetite. The *AIFs* are passported widely in the *EEA*, and Firm C has passported its services to a number of countries on a branch basis.

We would expect Firm C to apply the *Pay-out Process Rules* despite the size presumption, because Firm C carries out complex activities, namely managing highly-leveraged, volatile *AIFs* on a cross-border basis and it is part of a listed asset management group which makes its internal organisation more complex.

D. Example 4 (Large size presumption rebutted, proportionality does apply):

Firm D is a *full-scope UK AIFM* that manages several *AIFs* investing in equities, including investment trusts as well as open-ended structures. Its *AuM* is £2 billion. Taking this *guidance* into account, Firm D presumes that it must apply the *Pay-out Process Rules* because it manages some open-ended *AIFs*. Upon further considering its size, it determines that it has fewer staff than some of its competitors. Its internal organisation is straightforward as most of the owners work in the business, with only a few external shareholders who together comprise a minority. Firm D is not listed. In terms of its activities, it uses limited leverage for bridging purposes in its *AIFs*, not more than 1.5 times their net asset values. The portfolios are characterised by strict investment restrictions requiring considerable diversification, and the *firm* strives to limit the volatility of its portfolios. Its *AIFs* do not pay performance fees to the *firm*. However, the *AIFs* are marketed under the *Prospectus Directive* or passported under *AIFMD* in a number of markets in Europe. Firm D also manages several *UCITS* with aggregate net assets of approximately £250 million that implement conservative equity strategies.

¹⁶ See Commission Delegated Regulation (EU) No 231.2013, Article 8.

Firm D could reasonably conclude that it is appropriate to disapply some or all of the *Pay-out Process Rules*, despite the size presumption, because Firm D carries out non-complex activities, namely conservative, low volatility strategies; it is not listed; and it does not have significant external ownership with respect to internal organisation.

E. Example 5 (Proportionality applies to delegate when it contracts to apply *CRD* remuneration requirements):

Firm E is a *full-scope UK AIFM* that delegates part of its portfolio management activity to Firm Y, a non-*EEA* firm which is part of the same group as Firm E. Firm E puts in place contractual arrangements which require Firm Y to implement *CRD* remuneration requirements, for the making of remuneration payments to the staff of Firm Y who have an impact on the risk profiles of the relevant *AIFs*. The remuneration of Firm Y's identified staff is already subject to oversight in accordance with a remuneration policy set at group level that implements *CRD* remuneration requirements, and this policy achieves the Guidelines' objectives in relation to the particular *AIFs* and the *AIFM* in question.

We would consider these arrangements appropriate because the full implementation of the *AIFMD* remuneration regime would bring negligible additional benefit in terms of appropriate risk alignment relative to the additional costs that would be incurred for the *AIFM Remuneration Code* to be implemented in full.

F. Example 6 (Proportionality applies to delegate when it has limited investment discretion):

Firm F is a *full-scope UK AIFM* managing an *EEA AIF*. It has delegated portfolio management to a US manager, Firm Z, under a contract with strict investment guidelines leaving limited investment discretion to Firm Z. In addition, Firm Z is required by the contract to implement the *Guidelines*, except the *Pay-out Process Rules*. Due to the limited discretion given to Firm Z, there is little scope for it to take excessive risks.

We would consider this factor to indicate to Firm F that it would be proportionate to disapply the *Pay-out Process Rules* in relation to Firm Z.

G. Example 7 (Proportionality applies to certain fee structures that meet objectives of regime)

Firm G is a *full-scope UK AIFM* that manages a number of *AIFs* implementing various private equity strategies. The fee structure of each *AIF* is intensively negotiated with prospective investors. Each *AIF* pays Firm G an annual management fee. Additionally, the firm's senior management are awarded *carried interest* in each *AIF* subject to a number of conditions, which – if the *AIF* performs well – will result towards the end of the lifecycle of the *AIF* (or earlier if the target returns agreed with investors have been achieved and there are appropriate clawback or make-up arrangements in place) in a portion of the gain being paid

to the senior management. The senior management also co-invests with third party investors in the *AIFs*.

Firm G may reasonably conclude that it may disapply the *Pay-out Process Rules* for the payment of such *carried interest* to senior management on the grounds of proportionality. This carried interest structure appears to satisfy the objectives of alignment of interest with investors, because it has been negotiated with prospective investors and avoids incentives for inappropriate risk-taking, such as by being paid towards the end of the lifecycle of the *AIF* (or earlier if the target returns agreed with investors have been achieved and there are appropriate clawback or make-up arrangements in place).

Awards of variable remuneration to the staff of Firm G may also be made annually from management fees received. How the *Pay-out Process Rules* apply to this portion of variable remuneration should depend on the proportionality analysis applicable to Firm G and the role of the staff receiving the award. Finally, any gain received by Firm G's senior management as a return on any co-investment is not subject to the *AIFM Remuneration Code*.

Appendix 15:

AIMFD consequential changes

**ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE
(CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2013**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 73A (Part 6 Rules);
 - (b) section 137A (The FCA’s general rules);
 - (c) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance);
 - (e) section 213 (The compensation scheme);
 - (f) section 214 (General);
 - (g) section 247 (Trust scheme rules);
 - (h) section 248 (Scheme particulars rules);
 - (i) section 261I (Contractual scheme rules);
 - (j) section 261J (Contractual scheme particulars rules);
 - (k) section 274 (Application for recognition of individual schemes);
 - (l) section 278 (Rules as to scheme particulars);
 - (m) section 283 (Facilities and information in UK);
 - (n) paragraph 19 (Establishment) of schedule 3 (EEA Passport Rights); and
 - (o) paragraph 23 (Fees) of schedule 1ZA (The Financial Conduct Authority);
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions module of the FCA’s Handbook; and
 - (3) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- 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]*, except for Part II of Annex B, Annex F and Part II of Annex J which come into force on 22 July 2014.

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).

(1)	(2)
Changes to several modules	Annex A
Glossary of definitions	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Threshold Conditions (COND)	Annex D
General Provisions (GEN)	Annex E
Fees manual (FEES)	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Supervision manual (SUP)	Annex H
Decision Procedure and Penalties manual (DEPP)	Annex I
Compensation (COMP)	Annex J
Collective Investment Schemes sourcebook (COLL)	Annex K
Listing Rules (LR)	Annex L
Energy Market Participants Guide (EMPS)	Annex M
Oil Market Participants Guide (OMPS)	Annex N
Service Companies (SERV)	Annex O

Material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex P to this instrument.
- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex Q to this instrument.

Notes

- G. In Annex A 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

- H. This instrument may be cited as the Alternative Investment Fund Managers Directive (Consequential Amendments) Instrument 2013

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

Annex A

Amendments to several modules of the Handbook

In this Annex:

(a) in Table 1 (Deletions and replacements table), the word or phrase in column (1) is replaced by the word or phrase in column (2) where indicated in columns (3) and (4). Column (5) identifies further explanation to the amendment where this is needed; and

(b) in Table 2 (Additions table), the word or phrase in column (1) is added where indicated in column (2), (3) and (4). Column (5) identifies further explanation to the amendment where this is needed.

Table 1: ‘Deletions and replacements table’

(1)	(2)	(3)	(4)	(5) Note:
<i>instrument constituting the scheme</i>	<i>instrument constituting the fund</i>	Glossary	bearer certificate	
			execution criteria	See (e)
			income equalisation	
			qualified investor scheme	Both occurrences
			trust deed	See (2)
			UCITS scheme	See (d)
			umbrella	
		COBS	4.13.1R(2)(b)	
			11.2.6R(5)	
		COLL	3.1.2G(1)	Both occurrences
			3.2.2R(1) and (2)	
			3.2.4R	Both occurrences
			3.2.5G(1) and (2)	
			3.2.6R	Both occurrences
			3.3.2G(1)	
			3.3.5R(1) and (2)	
			3.3.8R(1)	
			4.2.5R	All occurrences
			4.3.2G(2)	
			4.4.2R(2)(c)	

		4.4.8R(2)(a)	
		4.4.10R(2)	
		4.5.11R(2)(b)(i)	
		4.5.12R(1)	
		5.2.4R	
		5.2.12R(4)	
		5.2.20R(4)	
		5.5.4R(2)	
		5.5.8R(1)	
		5.6.4R(4)	
		5.6.13R(3)	
		5.7.4R(4)	
		5.8.4R(2)	
		5.8.6R	
		6.1.3G(1)	
		6.2.7R(2)(a)	
		6.2.15R(2)	
		6.2.16R(2) and (3)	
		6.2.19R(1)	
		6.2.21R(1) and (1A)	
		6.3.3R(1)	
		6.3.5R(1)(b)	
		6.4.7R(3)	
		6.6.3R(1)(a)	
		6.6.4R(1)(e)	
		6.6.5R(1) and (2)	
		6.6.5AR	
		6.6.10R(3)	
		6.6.14R(1)	
		6.7.15R(2)(a)	
		6.8.2BR	
		6.8.3AG	
		6.10.2R(1)	
		6.12.12R	

		6 Annex 1R at (1)(b)	
		7.2.2G(2)	
		7.7.7R(2)(h)	
		7.7.9R	
		7.7.18R	
		8.2.2R	
		8.2.5R	
		8.2.6R	All occurrences
		8.2.7R	
		8.3.4R	All occurrences
		8.3.5DR(2)(b)(i)	
		8.3.8R(1)	
		8.4.3R(2)	
		8.4.13R(2)(f)	
		8.5.2R(1)(a)	
		8.5.3AR	
		8.5.4R(2)(i)	
		8.5.7R(2)	
		8.5.8R(1)	
		8.5.9R(4)	
		8.5.11R(1), (2) and (3)	
		8 Annex 1R Table, under "Category 4 person"	
		9.3.1D(4)(i)	
		9.4.2R(1)(a) and (b)	
		11.2.2R(1)(a)	
		11.3.12R	
		11.4.2R(1)(e)	
		11.4.3R(2)(d) and(e)	
		11.6.3R(1)(b) and (2)(a)	
		11.6.5R(1)(b), (2)(b) and (3)(a)	
		11.6.9R(4)(b)	
		11 Annex 1R	All occurrences

			11 Annex 2 Table at (3)(g)	
			12.3.7G(1)	
			12.4.4R(1)(a)	
			12.4.5R(2)(b)	
Instrument constituting the scheme	Instrument constituting the fund	COLL	3.2 title and sub-headings	All occurrences
			3.3.2G(2)	
			6.2.5R(1)	
			All sub-titles in Chapter 8.2	
			8.5.10BR(2)	

Annex B

Amendments to the Glossary of definitions

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

Part I: comes into force on [date]

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

<i>acting as trustee or depositary of an authorised AIF</i>	<i>acting as trustee or depositary of an AIF where the AIF is an authorised AIF.</i>
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<i>acting as trustee or depositary of an unauthorised AIF</i>	<i>acting as trustee or depositary of an AIF where the AIF is an unauthorised AIF.</i>
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<i>managing an authorised AIF</i>	<i>managing an AIF where the AIF is an authorised AIF.</i>
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<i>managing an unauthorised AIF</i>	<i>managing an AIF where the AIF is an unauthorised AIF.</i>
-------------------------------------	--

Amend the following definitions as shown.

<i>agreeing to carry on a regulated activity</i>	the <i>regulated activity</i> , specified in article 64 of the <i>Regulated Activities Order</i> (Agreeing to carry on specified kinds of activity), of agreeing to carry on an activity specified in Part II of that Order other than:
--	---

...

(c) *carrying out contracts of insurance;*

(ca) *managing a UCITS;*

(cb) *acting as trustee or depositary of a UCITS;*

(cc) *managing an AIF;*

(cd) *acting as trustee or depositary of an AIF;*

...

<i>AIFMD UK regulation</i>	the Alternative Investment Fund Managers Regulations (SI 2013/ <u>1773</u>)
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<i>CIS administrator</i>	(in relation to firm type in SUP 16.10 (Confirmation of standing data)) a person responsible for the administrative functions of a collective investment scheme. [deleted]
<i>CIS trustee</i>	(in relation to firm type in SUP 16.10 (Confirmation of standing data)) a person holding the property of a collective investment scheme on trust for the participants in the collective investment scheme. [deleted]
<i>counterparty</i>	(1) (in <i>UPRU</i> and <i>IPRU(INV)</i> 11) any person with or for whom a firm carries on <i>designated investment business</i> or an <i>ancillary activity</i> .
	...
<i>energy market activity</i>	(a) any <i>regulated activity</i> other than <i>bidding in emissions auctions</i> in relation to an <i>energy investment</i> or to <i>energy</i> , or in relation to <i>biomass investment</i> or <i>biomass</i> that is ancillary to activities related to <i>energy investments</i> or <i>energy</i> , which:
	...
	(ii) if it is not the <i>executing of transactions</i> on such exchanges, is performed in connection with or for persons who are not <i>retail clients</i> ; ₂
	(b) <i>establishing, operating or winding up a collective investment scheme which is an energy collective investment scheme in which retail clients do not participate. [deleted]</i>
<i>Enterprise Zone Property Unit Trust</i>	an <i>unregulated collective investment scheme</i> of which the underlying assets are industrial and commercial buildings in an Enterprise Zone in accordance with section 749(2) of the Finance Act 1980. [deleted]
<i>EZPUT</i>	<i>Enterprise Zone Property Unit Trust. [deleted]</i>
<i>oil market activity</i>	(a) any <i>regulated activity</i> in relation to an <i>oil investment</i> or to <i>oil</i> , or in relation to a <i>biofuel investment</i> , <i>biofuel</i> , a <i>biomass investment</i> or <i>biomass</i> that is ancillary to activities related to <i>oil investments</i> or <i>oil</i> , which:
	...
	(ii) if it is not the <i>executing of transactions</i> on such exchanges, is performed in connection with or for persons who are not <i>retail clients</i> ; ₂ and ₂
	(b) <i>establishing, operating or winding up a collective</i>

~~investment scheme which is an oil collective investment scheme in which individuals do not participate. [deleted]~~

overseas person

(in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)) a *person* who:

(a) carries on any of the following *regulated activities*:

...

(x) *causing dematerialised instructions to be sent*;

(xa) *managing a UCITS*;

(xb) *acting as trustee of depositary of a UCITS*;

(xc) *managing an AIF*;

(xd) *acting as trustee of depositary of an AIF*;

...

recognised scheme

a *scheme* recognised under:

...

(b) ~~section 270 of the Act (Schemes authorised in designated countries or territories); or [deleted]~~

...

relevant transitional complaint

(in accordance with the *Mortgage and General Insurance Complaints Transitional Order*) a complaint referred to the *Financial Ombudsman Service* after the *relevant commencement date* which relates to an act or omission occurring before that date if:

...

(d) the complainant is eligible and wishes to have the complaint dealt with under the new ~~*scheme*~~ *scheme*.

respondent

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

...

<i>scheme holding</i>	a holding of: (a) units in a collective investment scheme; or (b) shares in an investment trust savings scheme. [deleted]
<i>scheme particulars</i>	a document containing information about a regulated collective investment scheme. [deleted]
<i>UCITS firm</i>	a firm which: (a) is a management company, including where in addition the firm is also an AIFM (whether or not it is also the <u>manager of AIFs or the operator of other collective investment schemes</u>); and ...
<i>UCITS investment firm</i>	a firm which: (a) is a management company (whether or not it is also the <u>manager of AIFs or the operator of other collective investment schemes</u>); and ...
<i>venture capital business</i>	the business of carrying on any of: ... (b) <i>advising on investments or managing investments in relation to portfolios, or establishing, operating or winding up collective investment schemes or managing AIFs, where the portfolios or collective investment schemes funds (apart from funds awaiting investment) invest only in venture capital investments;</i> ...
<i>wholesale depositor</i>	a person who is: (a) a credit institution; or (b) a large company; or (c) a large mutual association which is: (i) a firm; or (ii) an overseas financial services institution; or (iii) a collective investment scheme or an operator

or trustee of a ~~collective investment scheme~~; or

- (iv) a pension or retirement fund, or a trustee of such a fund (except a trustee of a small self-administered scheme or an occupational scheme of an employer which is not a ~~large company or a large partnership~~); or

- (d) a supranational institution, government or central administrative authority; or

- (e) a provincial, regional, local or municipal authority; or

- (f) a ~~body corporate~~ in the same group as the person with whom the ~~deposit~~ is made. [deleted]

wholesale only bank

(in relation to firm type in SUP 16.10 (Confirmation of standing data)) a ~~bank with permission to accept deposits from wholesale depositors only~~. [deleted]

Part II: comes into force on 22 July 2014

acting as the depositary of an authorised contractual scheme

~~the regulated activity, specified in article 51(1)(bb) of the Regulated Activities Order (Establishing etc. a collective investment scheme), of acting as the depositary of an authorised contractual scheme~~. [deleted]

acting as the depositary or sole director of an open-ended investment company

~~the regulated activity, specified in article 51(1)(c) of the Regulated Activities Order (Establishing etc. a collective investment scheme), of acting as the depositary or sole director of an open-ended investment company~~. [deleted]

acting as trustee of an authorised unit trust scheme

~~the regulated activity, specified in article 51(1)(b) of the Regulated Activities Order (Establishing etc. a collective investment scheme), of acting as a trustee of an authorised unit trust scheme~~. [deleted]

agreeing to carry on a regulated activity

the regulated activity, specified in article 64 of the Regulated Activities Order (Agreeing to carry on specified kinds of activity), of agreeing to carry on an activity specified in Part II of that Order other than:

...

- (e) ~~acting as trustee of an authorised unit trust scheme~~; [deleted]

- (f) ~~acting as the depositary or sole director of an open-ended investment company~~; [deleted]

	(ff) acting as the depositary of an authorised contractual scheme; [deleted]
<i>Annual Accounts</i>	...
	(2) (in UPRU) accounts prepared to comply with:
	(a) the Companies Acts 1985 to 1989, and their equivalent in Northern Ireland, where these provisions are applicable; or
	(b) the Companies Act 2006; or
	(c) other statutory obligations. [deleted]
<i>annual audited fixed expenditure</i>	(in UPRU) has the meaning given in UPRU 2.1.3R (Annual audited fixed expenditure). [deleted]
<i>client money</i>	...
	(4) (in UPRU) client money for the purposes of the client money rules. [deleted]
<i>client money rules</i>	...
	(3) (in CASS 3, CASS 6, CASS 7, CASS 7A, UPRU and COBS) CASS 7.1 to 7.8.
<i>counterparty</i>	(1) (in UPRU and IPRU(INV) 11) any person with or for whom a firm carries on designated investment business or an ancillary activity.
	...
<i>establishing, operating or winding up a regulated collective investment scheme</i>	establishing, operating or winding up a collective investment scheme if the scheme is a regulated collective investment scheme. [deleted]
<i>establishing, operating or winding up an unregulated collective investment scheme</i>	establishing, operating or winding up a collective investment scheme if the scheme is an unregulated collective investment scheme. [deleted]
<i>financial resources</i>	(in UPRU) the financial resources calculated in accordance with UPRU 2.2.1R (Financial resources) that a UCITS firm needs to meet its financial resources requirement. [deleted]
<i>financial resources requirement</i>	(in UPRU) has the meaning given in UPRU 2.1.2R. [deleted]
<i>financial return</i>	(in UPRU) means annual financial return, quarterly financial return or monthly financial return as the case may be.

	<u>[deleted]</u>
<i>funds under management</i>	(1) (in UPRU) (a) collective investment schemes other than OEICs managed by the firm including schemes where it has delegated the management function but excluding schemes that it is managing as delegate; and (b) OEICs for which the firm is the designated management company. [deleted]
<i>initial capital</i>	... (3) (in UPRU) capital calculated in accordance with UPRU Table 2.2.1R (Method of calculating initial capital and own funds) composed of the specified items set out in that Table. [deleted] ...
<i>investment management firm</i>	... (c) ... (ii) ... (C) acting as the manager or trustee of an AUT; [deleted] ... (D) acting as the ACD or depositary of an ICVC; [deleted] (Da) acting as the authorised contractual scheme manager or depositary of an ACS; [deleted] (E) establishing, operating or winding up a collective investment scheme (other than an AUT, ICVC or ACS); ...
<i>monthly financial return</i>	(in UPRU) means the return referred to in SUP. [deleted]
<i>overseas person</i>	(in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)) a person who:

	(a) carries on any of the following <i>regulated activities</i> :
	...
	(xii) acting as trustee of an authorised unit trust scheme; <u>[deleted]</u>
	(xiii) acting as the depositary or sole director of an open-ended investment company; <u>[deleted]</u>
	(xiiia) acting as the depositary of an authorised contractual scheme; <u>[deleted]</u>
	...
<i>own funds</i>	...
	(4) (in UPRU) funds calculated in accordance with UPRU Table 2.2.1R (Method of calculation of financial resources) composed of the specified items set out in that Table. <u>[deleted]</u>
<i>participation</i>	(for the purposes of UPRU and GENPRU and for the purposes of BIPRU and INSPRU as they apply on a consolidated basis):
	...
<i>permitted business</i>	(in UPRU) means permitted activity. <u>[deleted]</u>
<i>qualifying capital instrument</i>	(in UPRU and IPRU(INV)) means that part of a firm's capital which is a security of indeterminate duration, or other instrument, that fulfils the following conditions:
	...
<i>qualifying capital item</i>	(in UPRU and IPRU(INV)) means that part of a firm's capital which has the following characteristics:
	...
<i>qualifying subordinated loan</i>	(1) (in UPRU) has the meaning given in IPRU(INV) 5.2.5(1) to (7) (Qualifying subordinated loans). <u>[deleted]</u>
	...
<i>qualifying undertaking</i>	(in UPRU) has the meaning given in IPRU(INV) 5.2.6(3) (Qualifying undertakings). <u>[deleted]</u>
<i>quarterly financial return</i>	(in UPRU) means the return referred to in SUP. <u>[deleted]</u>
<i>readily realisable investment</i>	(1) (except in UPRU and IPRU(INV))

...

- (2) (in ~~UPRU and~~ IPRU(INV)) means a *unit* in a *regulated collective investment scheme*, a *life policy* or any *marketable investment* other than one which is traded on or under the rules of a *recognised* or *designated investment exchange* so irregularly or infrequently:

...

regulated activity

- (A) in the *PRA Handbook*;

...

- (B) in the *FCA Handbook*:

as in (A) with the addition of:

- (a) accepting deposits (article 5);
- (aa) issuing electronic money (article 9B);
- (b) effecting contracts of insurance (article 10(1));
- (c) carrying out contracts of insurance (article 10(2));
- (d) dealing in investments as principal (article 14);
- (e) dealing in investments as agent (article 21);
- (ea) bidding in emissions auctions (article 24A);
- (f) arranging (bringing about) deals in investments (article 25(1));
- (g) making arrangements with a view to transactions in investments (article 25(2));
- (ga) arranging (bringing about) regulated mortgage contracts (article 25A(1));
- (gb) making arrangements with a view to regulated mortgage contracts (article 25A(2));
- (gc) arranging (bringing about) a home reversion plan (article 25B(1));
- (gd) making arrangements with a view to a home

- reversion plan (article 25B(2));
- (ge) arranging (bringing about) a home purchase plan (article 25C(1));
- (gf) making arrangements with a view to a home purchase plan (article 25C(2));
- (gg) operating a multilateral trading facility (article 25D);
- (gh) arranging (bringing about) a regulated sale and rent back agreement (article 25E(1));
- (gi) making arrangements with a view to a regulated sale and rent back agreement (article 25E(2));
- (h) managing investments (article 37);
- (ha) assisting in the administration and performance of a contract of insurance (article 39A);
- (i) safeguarding and administering investments (article 40); for the purposes of the permission regime, this is sub-divided into:
- (i) safeguarding and administration of assets (without arranging);
- (ii) arranging safeguarding and administration of assets;
- (j) sending dematerialised instructions (article 45(1));
- (k) causing dematerialised instructions to be sent (article 45(2));
- (na) managing a UCITS (article 51ZA);
- (nb) acting as trustee or depositary of a UCITS (article 51ZB);
- (nc) managing an AIF (article 51ZC);
- (nd) acting as trustee or depositary of an AIF (article 51ZD);
- (ne) establishing, operating or winding up a collective investment scheme (article 51ZE);

- (o) establishing, operating or winding up a stakeholder pension scheme (article 52(a))
- (oa) providing basic advice on stakeholder products (article 52B);
- (ob) establishing, operating or winding up a personal pension scheme (article 52(b));
- (p) advising on investments (article 53); for the purposes of the permission regime, this is sub-divided into:
 - (i) advising on investments (except pension transfers and pension opt-outs);
 - (ii) advising on pension transfers and pension opt-outs;
- (pa) advising on regulated mortgage contracts (article 53A);
- (pb) advising on a home reversion plan (article 53B);
- (pc) advising on a home purchase plan (article 53C);
- (pd) advising on a regulated sale and rent back agreement (article 53D);
- (q) advising on syndicate participation at Lloyd's (article 56);
- (r) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's (article 57);
- (s) arranging deals in contracts of insurance written at Lloyd's (article 58);
- (sa) entering into a regulated mortgage contract (article 61(1));
- (sb) administering a regulated mortgage contract (article 61(2));
- (sc) entering into a home reversion plan (article 63B(1));

- (sd) administering a home reversion plan (article 63B(2));
- (se) entering into a home purchase plan (article 63F(1));
- (sf) administering a home purchase plan (article 63F(2));
- (sg) entering into a regulated sale and rent back agreement (article 63J(1));
- (sh) administering a regulated sale and rent back agreement (article 63J(2));
- (si) meeting of repayment claims (article 63N(1)(a));
- (sj) managing dormant account funds (including the investment of such funds) (article 63N(1)(b));
- (t) entering as provider into a funeral plan contract (article 59);
- (ta) providing information in relation to a specified benchmark (article 63O(1)(a));
- (tb) administering a specified benchmark (article 63O(1)(b));

which is carried on by way of business and, except for (ta) and (tb), relates to a *specified investment* applicable to that activity or, in the case of ~~(l), (m), (n)~~ (na), (nb), (nc), (nd), (ne) and (o), is carried on in relation to property of any kind.

- (u) agreeing to carry on a regulated activity (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of ~~(l), (m), (n)~~ (na), (nb), (nc), (nd), (ne) and (o), is carried on in relation to property of any kind.

trading book

- (~~l~~) ~~(in UPRU) in relation to a firm's business or exposures means:~~
- (a) ~~its proprietary positions in financial instruments:~~
 - (i) ~~which are held for resale and/or are taken~~

~~on by the *firm* with the intention of benefiting in the short term from actual and/or trading book expected differences between their buying and selling prices or from other price or interest rate variations;~~

~~(ii) arising from matched principal broking;~~

~~(iii) taken in order to hedge other elements of the trading book;~~

(b) ~~*exposures* due to unsettled securities transactions, free deliveries, *OTC derivative* instruments, repurchase agreements and securities lending transactions based on securities included in (a)(i) to (iii) above, reverse repurchase agreements and securities borrowing transactions based on securities included in (a)(i) to (iii) above; and~~

(e) ~~fees, commission, interest and dividends, and margin on exchange-traded derivatives which are directly related to the items included in (a) and (b) above. [deleted]~~

...

UPRU

~~the Prudential sourcebook for UCITS Firms. [deleted]~~

Annex C

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

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

1 Annex Detailed application of SYSC

1

Part 2	Application of the common platform requirements (SYSC 4 to 10)			
	Who?			
...				
2.4	...			
<u>2.4A</u>	<u>R</u>	<u>For an AIFM qualifier:</u>		
		(1)	<u>the rule on responsibility of senior personnel (SYSC 4.3) does not apply; and</u>	
		(2)	<u>the common platform requirements apply in relation to the communication and approval of financial promotions only as set out in SYSC 1 Annex 1, 2.12R.</u>	
...				

Annex D

Amendments to the Threshold Conditions sourcebook (COND)

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

2.2 Location of offices

...

- 2.2.1A UK (1) Unless sub-paragraph (3), ~~or (4)(a)~~ or (7) applies, if A is a body incorporated in the United Kingdom-

...

...

- (7) If A is seeking to carry on, or is carrying on, the regulated activity of managing an AIF and is or upon being granted Part 4A permission to carry on that regulated activity would be a full-scope UK AIFM, A's head office and registered office must be in the UK.

...

- 2.2.2 G ~~Paragraphs~~ Paragraph 2B(1) of Schedule 6 to the Act implements article 7(1)(d) of the UCITS Directive, paragraphs 2B(1) and 2B(2) of Schedule 6 to the Act, implement the requirements of article 6 of the Post-BCCI Directive and article 5(4) of MiFID, and the threshold condition set out in paragraph 2B(4) of Schedule 6 to the Act implements article 2.9 of the Insurance Mediation Directive and paragraph 2B(7) of Schedule 6 to the Act implements article 8(1)(e) of AIFMD, although the Act extends the threshold condition set out in paragraph 2B of Schedule 6 of the Act to firms which authorised persons that are not PRA-authorised persons who are outside the scope of the these Single Market Directives and the UCITS Directive.

- 2.2.3 G Neither the ~~Post-BCCI Directive~~ UCITS Directive, MiFID, the Insurance Mediation Directive, AIFMD nor the *Act* define what is meant by a firm's 'head office'...

...

2.3 Effective supervision

...

- 2.3.2 G Paragraphs 2C and 3B of Schedule 6 to the *Act* implements requirements of the ~~*Post-BCCI Directive*~~ *Single Market Directives*, but the *Act* extends this condition to *firms* from outside the *EEA* and other *firms* which are outside the scope of the *Single Market Directives* ~~and the *UCITS Directive*~~.

...

Annex E

Amendments to the General Provisions sourcebook (GEN)

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

Sch 4 Powers exercised

...

Powers to direct, require or specify

Sch 4.7	G The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FCA</i> in <i>GEN</i> to direct, require or specify:
	...
	Section 270(6)(b) (Schemes authorised in designated countries or territories)
	...
	Regulations 7(3) and (4) (Modification or waiver of FSA <u>FCA</u> rules) and 12 (Application for authorisation) of the <i>OEIC Regulations</i> .

Sch 4.8	G The following additional powers and related provisions have been exercised by the <i>FCA</i> in <i>GEN</i> to direct, require or specify:
	Regulation 49 (Reporting requirements) of the <i>Electronic Money Regulations</i>
	<u>Regulations 21 (Disclosure obligations of small registered UK AIFMs), 54 (FCA approval for marketing), 58 (Marketing of AIFs managed by small third country AIFMs) and 60 (Manner and content of notifications) of the AIFMD UK regulation.</u>

...

Annex F

Amendments to the Fees manual (FEES)

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

1.1 Application and Purpose

...

Application

1.1.2 R ...

(2) *FEES* 1, 2 and 4 apply to:

...

- (d) every *person* who, under the constitution or founding arrangements of a ~~recognised scheme~~ recognised scheme, is responsible for the management of the property held for or within the *scheme*;

...

...

...

3 Application, Notification and Vetting Fees

3.1 Introduction

...

Purpose

...

- 3.1.5A G The fees for ~~collective investment schemes~~ funds reflect the estimated costs to the *FCA* of assessing applications and notifications. The level of fees payable in respect of an application or a notification will vary depending upon the provision of the *Act* under which it is made. This fee is adjusted when the ~~scheme~~ fund concerned is an *umbrella*.

...

4 Periodic fees

4.1 Introduction

...

- 4.1.4 G (1) The periodic fees for ~~collective investment schemes~~ funds reflect the estimated costs to the *FCA* of considering proposals to change ~~regulated collective investment schemes~~ funds, maintaining up to date records about them, and related policy work.

...

...

4.2 Obligation to pay periodic fees

...

- 4.2.2 G (1) A relevant fee payer will be required to pay a periodic fee for every year during which they have the status in column 1 of the table in *FEES* 4.2.11R and/or *FEES* 4.2.11AR (or in relation to ~~collective investment schemes~~ funds, for every year during which it is a ~~regulated collective investment scheme~~ fund) subject to any reductions or exemptions applicable under this chapter. If a *person* is the relevant fee payer for more than one status listed in column 1 of the table in *FEES* 4.2.11R and/or *FEES* 4.2.11AR (or in relation to ~~collective investment schemes~~ funds, the relevant fee payer for more than one ~~regulated collective investment scheme~~ fund) he will be required to pay a fee in relation to each.

...

...

4 Annex FCA Activity groups, tariff bases and valuation dates 1AR

Part 1

This table shows how the *FCA* links the *regulated activities* for which a *firm* has *permission* to activity groups (fee-blocks). A *firm* can use the table to identify which fee-blocks it falls into based on its *permission*.

Activity group	Fee payer falls in the activity group if
...	...
A.9 Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes	(1) its <i>permission</i>: (a) includes one or more of the following: ... establishing, operating or winding up a regulated collective investment scheme; establishing, operating or winding up an unregulated collective investment scheme; acting as trustee of an authorised unit trust scheme; acting as the depositary of an authorised contractual scheme; acting as the depositary or sole director of an open-ended investment company; <u>establishing, operating or winding up a collective investment scheme;</u> ...
A.10 Firms dealing as principal	its <i>permission</i> includes: (a) <i>dealing in investments as principal</i>; and/or (b) <i>bidding in emissions auctions</i>; BUT NOT if one of the following apply: ... the above activity is limited either to acting as an operator of a collective investment scheme; <u>establishing, operating or winding up a collective investment scheme;</u> <u>establishing, operating or winding up a personal pension scheme</u> or a <i>stakeholder pension scheme</i>, or to carrying out trustee <u>depositary</u> activities; ...
A.12 Advisors, arrangers, dealers or brokers (holding or controlling client money or assets, or both)	... (d) PROVIDED the fee-payer is NOT any of the following: ... a <i>firm</i> whose <u>for whom all the applicable activities above</u> are limited to carrying out <i>venture capital business</i>; a <i>firm</i> whose <u>for whom all the applicable activities above</u> are limited to acting as an operator of a regulated

	collective investment scheme a residual CIS operator; a firm whose for whom all the applicable activities above are limited to carrying out trustee activities acting as trustee or depositary of an AIF and/or acting as trustee or depositary of a UCITS; ...
A.13 Advisors, arrangers, dealers or brokers (not holding or controlling client money or assets, or both)	... (d) PROVIDED the fee-payer is NOT any of the following: ... a firm whose for whom all the applicable activities above are limited to carrying out <i>venture capital business</i> ; a firm whose for whom all the applicable activities above are limited to acting as an operator of a regulated collective investment scheme a residual CIS operator; a firm whose for whom all the applicable activities above are limited to carrying out trustee activities acting as trustee or depositary of an AIF and/or acting as trustee or depositary of a UCITS; ...
...	

...

6 Financial Services Compensation Scheme Funding

...

6 Annex 3AR Financial Services Compensation Scheme – classes

This table belongs to FEES 6.4.7AR and FEES 6.5.6AR

...

	Investment
Class D1	Investment provision
Firms with <i>permission</i> for:	Any of the following:
	...
	establishing, operating or winding up a regulated collective

	investment scheme;
	establishing, operating or winding up an unregulated collective investment scheme;
	acting as trustee of an authorised unit trust scheme;
	acting as the depositary of an authorised contractual scheme;
	acting as the depositary or sole director of an open-ended investment company;
	establishing, operating or winding up a collective investment scheme;
	...

...

Annex G

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Annex 1 Application (see COBS 1.1.2R)

...

Part 3: Guidance

...		
9.		UCITS Directive: effect on territorial scope
...		
9.1D	G	<i>EEA UCITS management companies</i> should be aware that there is a special narrower application of <i>COBS</i> for <i>scheme management activity</i> provided for by <i>COBS</i> 18.5 (Operators of collective investment schemes <u>Residual CIS operators, UCITS management companies and AIFMs</u>).
...		
10.		AIFMD: effect on territorial scope
...		
<u>10.4</u>	<u>G</u>	<u><i>Incoming EEA AIFM branches</i> should be aware that there is a special narrower application of <i>COBS</i> for <i>AIFM investment management functions</i> provided for by <i>COBS</i> 18.5 (Residual CIS operators, UCITS management companies and AIFMs).</u>
...		

...

5 Distance communications

5.1 The distance marketing disclosure rules

...

5.1.10 G In this section:

...

- (3) adding new elements to an initial service agreement, such as the ability to use an electronic payment instrument together with one's existing bank account, does not constitute an 'operation' but an additional contract to which the *rules* in this section apply. The subscription to new *units* of the same ~~*collective investment scheme*~~ *fund* is considered to be one of 'successive operations of the same nature'.

...

11 Dealing and managing

...

11.6 Use of dealing commission

...

Application

...

11.6.2A G COBS 11.6.3R applies to a full-scope UK AIFM that is an internally managed AIF in accordance with the modification in COBS 18.5.4CR.

...

11.8 Recording telephone conversations and electronic communications

Application – Who?

...

11.8.2 R This section does not apply to the carrying on of the following activities:

- (1) activities carried on between ~~operators~~ managers, or between ~~operators~~ managers and ~~depositories~~ depositories, of the same ~~*collective investment scheme*~~ *fund* (when acting in that capacity);

...

...

16 Reporting information to clients

...

16 Trade confirmation and periodic information

Annex 1R

This annex forms part of *COBS* 16.2.1R

	The information below must be provided, where relevant for the purposes of reporting to a <i>retail client</i> , in accordance with <i>SUP</i> 17 Annex 1	(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
...			
13.	a total sum of the commissions and expenses charged (for a <i>€IS collective investment scheme operator</i> , initial charges may be disclosed in cash or percentage terms) and, where the <i>retail client</i> so requests, an itemised breakdown, including, where relevant, the amount of any <i>mark-up or mark-down</i> imposed by the <i>firm</i> or its <i>associate</i> where the <i>firm</i> or <i>associate</i> acted as <i>principal</i> in <i>executing</i> the transaction, and the <i>firm</i> owes a duty of best execution to the <i>client</i> ;	...	...
...			

...

18 Specialist Regimes

...

18.5 Residual CIS operators, UCITS management companies and AIFMs

Application

...

- 18.5.1B** **R** Only COBS 18.5.1R to COBS 18.5.4AR and COBS 18.5.10AR apply to a full-scope UK AIFM, with the exception that COBS 18.5.10AR does not apply to a full-scope UK AIFM of an unauthorised AIF which is not a collective investment scheme.

Application or modification of general COBS rules

...

- 18.5.2-A** **G** For activities carried on by *firms* which are not *scheme management activities* or, for an *AIFM*, *AIFM investment management functions*, the *COBS rules* apply under the *general application rule*, as modified in *COBS 1 Annex 1*.

Table: Application of conduct of business rules

This table belongs to COBS 18.5.2R

Chapter, section, rule	<i>Full-scope UK AIFM</i>	<i>Small authorised UK AIFM and a residual CIS operator</i>	<i>Incoming EEA AIFM branch</i>	<i>UCITS management company</i>
...				
11.6	<u>Applies, but as modified by COBS 18.5.4CR for internally managed AIFs.</u>	...	...	...
...				

...

Modification of dealing commission rules for internally managed AIFs

- 18.5.4C** **R** Only COBS 11.6.1G to COBS 11.6.11G of COBS 11.6 apply to a full-scope UK AIFM that is an internally managed AIF and references to an investment manager in COBS 11.6 are to be read as including an internally managed AIF which manages designated investments on its own account and references to a customer order as a decision by an internally managed AIF to execute a transaction for these purposes.

18.5.4D G To be an *investment manager*, a *person* needs to manage *designated investments* on a discretionary or non-discretionary basis under the terms of a management agreement. The purpose of COBS 18.5.4C is to modify COBS 11.6.1GR to COBS 11.6.11G so that these provisions apply to a *full-scope UK AIFM* that is an *internally managed AIF* because such *firms* manage *designated investments* on their own account rather than under the terms of a management agreement.

...

...

Sch 1 Record keeping requirements

...

Sch 1.3	G	Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		...	...	...	...	...
		COBS 18.5.14R	Collective investment scheme operators <u>Residual CIS operators and small authorised UK AIFMs of an unauthorised AIF</u>	<i>Periodic statement to be provided to participants</i>	When provided	3 years
		...	...	...	...	...

...

Annex H

Amendments to the Supervision manual (SUP)

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

Part I: Comes into force on [date]

2 Information gathering by the FSA appropriate regulator on its own initiative

2.1 Application and purpose

...

- 2.1.3 G Achieving the *regulatory objectives* involves the *FCA* informing itself of developments in *firms* and in markets. The *Act* requires the *FCA* to ~~monitor a firm's compliance with requirements imposed by or under the Act, or by any directly applicable Community regulation or decision made under MiFID or the UCITS Directive or the auction regulation (paragraph 6(1) of Schedule 1)~~ maintain arrangements for supervising authorised persons (section 1L(1)). The *Act* also requires the *FCA* to take certain steps to cooperate with other relevant bodies and regulators (section 354A)...

...

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
...			
(7)	<i>Investment management firm, (other than an exempt CAD firm), personal investment firm (other than a small personal investment firm or exempt CAD firm), or securities and futures firm</i>	...	...

	(other than an <i>exempt CAD firm</i> or an <i>exempt BIPRU commodities firm</i>) or <u>collective portfolio management firm</u> that is an <u>external AIFM</u> which, in each case, has an auditor appointed under or as a result of a statutory provision other than in the <i>Act</i> (Notes 3 and 6)		
(7A)	<i>Investment management firm</i> , (other than an <i>exempt CAD firm</i>), <i>personal investment firm</i> (other than a <i>small personal investment firm</i> or <i>exempt CAD firm</i>), or <i>securities and futures firm</i> (other than an <i>exempt CAD firm</i> or an <i>exempt BIPRU commodities firm</i>) or <u>collective portfolio management firm</u> that is an <u>external AIFM</u> not within (7) to which the <u>custody chapter</u> or <u>client money chapter</u> applies	...	...
...			
(7B)	<u>Collective portfolio management firm</u> that is a <u>UCITS firm</u> or an <u>internally managed AIF</u> (Note 6)	...	...
...			
Note 6 = Where <i>SUP</i> 3.11 applies to a <i>firm</i>, and <i>SUP</i> 3.10 applies to the auditor of that <i>firm</i>, those sections apply whether or not that <i>firm's</i> <i>permission</i> prevents it from holding <i>client money</i> or <i>custody assets</i> and whether or not it holds <i>client money</i> or <i>custody assets</i>. <u>A collective portfolio management firm that is an internally managed AIF is required to appoint an auditor under FUND 3.3.6R(2) (Annual report of an AIF) because the AIFM is also an AIF.</u>			

...

Material elsewhere in the Handbook

- 3.1.9 G A *firm* which is a ~~friendly society~~ or other ~~insurer~~, ~~investment management firm~~, ~~personal investment firm~~ or a ~~securities and futures firm~~ mentioned in

SUP 3.1.10G should see the Prudential Standards part of the *Handbook* for further provisions on auditors as set out in *SUP 3.1.10G*. ~~For the categorisations employed in *SUP 3.1.2R* and *SUP 3.1.10G* see *SUP App 1*.~~

3.1.10 G Other relevant sections of the Handbook (see *SUP 3.1.9G*)

...	
<i>Investment management firm, personal investment firm, securities and futures firm and collective portfolio management firm</i> (other than <i>BIPRU investment firms</i>)	<i>IPRU(INV)</i>
...	

...

6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

...

6 Annex 4 Additional guidance for a firm winding down (running off) its business

...

6 Annex 4.5G

...
Holding funds on trust 7. In some circumstances, it may be appropriate for the <i>firm</i> to make an irrevocable transfer of funds, at least equal to the total of its <i>deposits</i>, to an independent trustee <u>trustee</u> to be held on trust <u>trust</u> for the benefit of the depositors...
8. ... (2) The trustee <u>trustee</u> should be an independent and appropriately qualified third party, nominated by the institution and acceptable to the <i>appropriate regulator</i>. (a) The trustee <u>trustee</u> should usually be a major <i>UK bank</i>...
...

...

8 Waiver and modification of rules

8.1 Application and purpose

...

8.1.1-A R This chapter applies to every:

...

- (2) *person*, as respects a particular *AUT*, *ACS* or *ICVC*, who wishes to apply for, consent to, or has been given a modification of or waiver of the *rules* in *COLL*.

...

13 Exercise of passport rights by UK firms

...

13 Annex 1R Passporting: Notification of intention to establish a branch in another EEA state



*Notification of intention to establish a branch in another EEA state (excluding the
Payment Services Directive and Electronic Money Directive)*

FIRM NAME:

FRN:

...

10.2 Please give details of the firm's programme of operations.

**Note to
Question 10.2**

Provide a programme of operations stating in particular the services which the *AIFM* intends to perform and the organisational structure of the *branch*.

Please also identify the *AIFs* that the *AIFM* intends to manage and the domiciles of these *AIFs*. If any of these *AIFs* will be established in a different EEA State to the branch, please provide the address in the Home State of the *AIF* from documents may be obtained.

For a suggested template firms may adhere to the template provided in section 3.3 when preparing a programme of operations.

...

13A Qualifying for authorisation under the Act

13A.1 Application and purpose

...

13A.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

...

(d) authorised in Gibraltar under the *MiFID*; or

(e) authorised in Gibraltar under the *UCITS Directive*; or

(f) authorised in Gibraltar under *AIFMD*.

...

(2) Gibraltar insurance companies, *credit institutions*, *insurance intermediaries* ~~and investment firms~~, *management companies* and *AIFMs* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures...

...

13A.3 Qualifications for authorisation under the Act

...

13A.3.13 G A *UCITS qualifier* has *permission* under paragraph 2 of Schedule 5 to the *Act*, to carry on, as far as is appropriate to the capacity in which it acts in relation to the scheme:

...

(2) any activity in connection with, or for the purposes of, the scheme (including the *regulated activity* of *managing a UCITS*).

...

13A Application of the Handbook to Incoming EEA firms

Annex

1G

...

...		
(1) Module	(2) Potential application to an	(3) Potential application to an

of Handbook	incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	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
...		
<i>SUP</i>	... SUP 16 (Reporting requirements) Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is: ... (b) a depositary of an ICVC; or ... (d) a trustee of an AUT; or (da) a depositary of an ACS; or ...	SUP 16 (Reporting requirements) Parts of this chapter may apply if the <i>firm</i> has a <i>top-up permission</i> or if the <i>firm</i> is: ... (b) a depositary of an ICVC; or ... (d) a trustee of an AUT; or (da) a depositary of an ACS; or ...
...		
Note 2. The following modules or chapters are relevant in the <i>FCA Handbook</i> only: <i>COND</i>, <i>INSPRU</i>, <i>COBS</i>, <i>ICOBS</i>, <i>MCOB</i>, <i>CASS</i>, <i>MAR</i>, <i>TC</i>, <i>SUP 1A</i>, 7, 9, 10A, 12 & 17, <i>DEPP</i>, <i>DISP</i>, <i>COLL</i>, <i>FUND</i>, <i>PROF</i>, <i>LR</i>, <i>PR</i>, <i>DTR</i> and <i>EG</i>		

...

14 Incoming EEA firms changing details, and cancelling qualification for authorisation

14.1 Application and purpose

Application

...

- 14.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

...

(aA) authorised in Gibraltar under the *Reinsurance Directive*; or

(b) authorised in Gibraltar under the *Banking Consolidation Directive*; or

...

(d) authorised in Gibraltar under ~~the *Investment Services Directive*~~ *MiFID*, or

(e) authorised in Gibraltar under the *UCITS Directive*; or

(f) authorised in Gibraltar under *AIFMD*.

...

- (2) Gibraltar insurance companies, *credit institutions*, *insurance intermediaries*, ~~and investment firms~~, *management companies* and *AIFMs* are allowed to passport their services into the *United Kingdom* if they comply with the relevant notification procedures. So, any references in *SUP 14* to *EEA State* or *EEA right* include references to Gibraltar and the entitlement under the *Gibraltar Order* where appropriate.

...

15 Notifications to the FCA or PRA

...

15.3 General notification requirements

...

UK AIFMs

...

15.3.27 R When a *full-scope UK AIFM* notifies the *FCA* that it has been appointed to manage another *AIF*, it must supply all the information in relation to that *AIF* that it would have been required to supply if it had applied to manage that *AIF* as part of its application for *permission to manage an AIF* and, where applicable, it must supply this information using the schedule of *AIFs* for *full-scope UK AIFMs*.

A

...

16 Reporting requirements

...

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:

...

(2) a *UCITS* qualifier; or

(2A) an *AIFM* qualifier; or

...

...

16.11 Product Sales Data Reporting

Application

16.11.1 R This section applies to a ~~firm~~ *firm* which is a *home finance provider*; or in respect of sales to a *retail client* or a *consumer* is:

...

(1A) the *manager* of an *authorised AIF* or a *UCITS*; or

(2) the *operator* of a ~~regulated collective investment scheme~~; an *investment trust savings scheme*, or a *personal pension scheme*; or

....

...

16.11.8 G Where the ~~operator~~ *manager* of a ~~collective investment scheme~~ an
A *authorised AIF* or a *UCITS* receives business from a *firm* which operates a nominee account, the data report in respect of those transactions submitted by the ~~operator~~ *manager* should treat those transactions as transactions undertaken by the ~~operator~~ *manager* with the *firm*.

...

16 Reports from ~~trustees of AUTs and~~ depositaries of ICVCs, AUTs and ACSs
Annex
12G

...

16
Annex
25G

Guidance notes for data items in SUP 16 Annex 24R

...

FIN066 – Capital Adequacy (for *collective portfolio management firms*)

...

Regulatory capital test		
<i>Own funds test for collective portfolio management firms</i>		
...		
Professional negligence capital requirement	23B	... If a firm makes an entry in 23B it should not make an entry in 24B. <u>This entry is only relevant for <i>full-scope UK AIFMs</i> and should be left blank if the <i>firm</i> is not a <i>full-scope UK AIFM</i>.</u>
Professional negligence capital requirement	24B	... If a firm makes an entry in 24B it should not make an entry in 23B. <u>This entry is only relevant for <i>full-scope UK AIFMs</i> and should be left blank if the <i>firm</i> is not a <i>full-scope UK AIFM</i>.</u>
...		

...

FIN067 – Capital adequacy - supplemental (for *collective portfolio management investment firms*)

...

...		
Professional negligence capital requirement	4A	... If a <i>firm</i> makes an entry in 4A it should not make an entry in 5A. <u>This entry is only relevant for <i>full-scope UK AIFMs</i> and should be left blank if the <i>firm</i> is not a <i>full-scope UK AIFM</i>.</u>

Professional negligence capital requirement	24B	... If a firm makes an entry in 5A it should not make an entry in 4A. <u>This entry is only relevant for <i>full-scope UK AIFMs</i> and should be left blank if the <i>firm</i> is not a <i>full-scope UK AIFM</i>.</u>
...		

...

App 3 Guidance on passporting issues

...

App 3.3 Background

...

App G ...
3.3.6

- (2) The European Commission has not produced an interpretative communication on ~~either~~ the *Insurance Mediation Directive*, *AIFMD* or ~~on~~ the *UCITS Directive*.

...

App G The *Single Market Directives* require *credit institutions, insurance undertakings* (other than *reinsurance undertakings*), *MiFID investment firms*, *AIFMs*, *UCITS management companies* and *insurance intermediaries* to make a notification to the *Home State* before establishing a *branch* or providing *cross border services*...

...

App 3.9 Mapping of MiFID, Banking Consolidation Directive, *AIFMD*, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order

App G The following Tables 1, 2, *2ZA*, 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passport activities* under the *Banking Consolidation Directive*, *MiFID*, *AIFMD* the *UCITS Directive* and the *Insurance Mediation Directive*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to

EEA firms that may offer those services in the *United Kingdom*.

- App 3.9.2 G The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in the *Banking Consolidation Directive*, *MiFID*, the *UCITS Directive* or the *Insurance Mediation Directive*...

...

- App 3.9.5A G **Activities set out in article 6(2) to (4) of AIFMD**

<u>Table 2ZA: AIFMD activities</u>		<u>Part II RAO Activities</u>	<u>Part III RAO Investments</u>
1.	<u>AIFM management functions.</u>	Article 51ZC	N/A (activity relates to <u>property of any kind</u>)
2.	<u>Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement in accordance with article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary client-by-client basis (Note 3).</u>	Articles 14, 21, 25, 37, 53, 64	Articles 76 to 81, 83 to 85, 89
3.	<u>Investment advice (Note 3).</u>	Articles 14, 21, 25, 37, 53, 64	Articles 76 to 81, 83 to 85, 89
4.	<u>Safe-keeping and administration in relation to <i>shares</i> or <i>units</i> of collective investment undertakings.</u>	Articles 40, 45, 64	Articles 76 to 81, 83 to 85, 89
5.	<u>Reception and transmission or orders in relation to <i>financial instruments</i>.</u>	Articles 24A and 25(1)	Articles 76 to 81, 83 to 85, 89
<u>Note 1. An internally managed AIF which is a full-scope UK AIFM must not engage in any activities other than AIFM management activities in respect of that AIF.</u>			
<u>Note 2. An external AIFM that is a full-scope UK AIFM must not provide:</u> (a) only the services in (2) to (5); or			

(b) only the services in (3) to (5) without also having been authorised to provide the services in (2); or

(c) only the *AIFM management functions* in point 2 of Annex I of *AIFMD*; or

(d) the *AIFM investment management function* in point 1(a) (portfolio management) of Annex I of *AIFMD* without also providing the *AIFM investment management function* in point 1(b) (risk management) of Annex I of *AIFMD* or vice versa.

Note 3. Where a *full-scope UK AIFM* carries on the activities in (2) and (3) in relation to assets which are not *financial instruments* and it is not carrying on the activities of *managing investments* or *advising on investments*, the *FCA* will deem the *firm* as having been authorised to carry on such activities by virtue of its authorisation as an *AIFM*. However, for such an *AIFM* to be able to carry on the activity in (3) in relation to assets which are *financial instruments* or the activities in (4) and (5) it must have a *Part 4A permission to manage investments*.

App
3.9.6

G Activities set out in Article 6(2) and (3) of the UCITS Directive

Table 2A: UCITS Directive activities		Part II RAO Activities	Part III RAO Investments
1.	...	Articles 14, 21, 25, 37, 51, 53, 64 OR <u>Article 51ZA</u>	Articles 76-81, 83-85, 89 OR <u>N/A (activity relates to property of any kind) (Note 1A)</u>
2.	...	Articles 14, 21, 25, 37, 53, 64	...
....			
Note 1. A UCITS management company can only exercise passport rights under the UCITS Directive (article 2(1)(h) of MiFID). A UCITS management company can only be authorised to carry on the non-core services set out in rows (3) and (4) of Table 2A if it is also authorised to carry on the activity set out in row (2) of the table.			
<u>Note 1A. The <i>regulated activity</i> of <i>managing a UCITS</i> may be carried on for property of any kind (article 4(2) of the <i>regulated activities order</i>). However, the <i>scheme property</i> of a <i>UCITS scheme</i> is limited to certain types of property, in line with COLL 5 (Investment and borrowing powers).</u>			

...

...

Part II: Comes into force on 22 July 2014

3 Auditors

3.1 Application

...

Material elsewhere in the Handbook

...

3.1.10 G Other relevant sections of the Handbook (see SUP 3.1.9G)

...	
<i>UCITS firm</i>	<i>UPRU</i>
...	

...

16 Reporting requirements

...

16.12 Integrated Regulatory Reporting

...

Reporting requirement

...

16.12.4 R Table of applicable rules containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
RAG number	Regulated Activities	Provisions containing:		
		applicable <i>data items</i>	reporting frequency/period	due date

...				
RAG 6	• acting as the depositary of an authorised contractual scheme ...	...		...
...				

...

App 3 Guidance on passporting issues

...

3.9 Mapping of MiFID, Banking Consolidation Directive, AIFMD, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order

...

3.9.6 G Activities set out in Article 6(2) and (3) of the UCITS Directive

Table 2A: UCITS Directive activities		Part II RAO Activities	Part III RAO Investments
1.	...	Articles 14, 21, 25, 37, 51, 53, 64 OR Article 51ZA	Articles 76-81, 83-85, 89 OR N/A (activity relates to property of any kind) (Note 1A)
...			

Annex I

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 **Statutory notices and the allocation of decision making**

...

2.5 **Provision for certain categories of decision**

...

Modified procedures in collective investment scheme and certain other cases

...

2.5.14 G In determining whether there is agreement to or acceptance of the action proposed, an indication by the following *persons* will be regarded as conclusive:

(1) in relation to an authorised unit trust, the ~~manager~~ manager and ~~trustee~~ trustee;

...

(3) in relation to an *ICVC*, the directors and the ~~depository~~ depository;

...

...

Annex J

Amendments to the Compensation sourcebook (COMP)

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

4 **Eligible claimants**

...

4.2 **Who is eligible to benefit from the protection provided by the FSCS?**

...

- 4.2.2 R Table COMP 4.2.2R Persons not eligible to claim unless COMP 4.3 applies
(see COMP 4.2.1R)

This table belongs to *COMP 4.2.1R*

...	
(3)	<i>Collective investment schemes</i> , and anyone who is the operator <u>operator</u> or trustee <u>trustee</u> of such a scheme <u>scheme</u> .
...	

...

Annex K

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

5 Investment and borrowing powers

...

5.2 General investment powers and limits for UCITS schemes

...

Investment in collective investment schemes

5.2.13 R A *UCITS scheme* must not invest in *units* in a *collective investment scheme* ("second *scheme*") unless the second *scheme* satisfies all of the following conditions, and provided that no more than 30% of the value of the *UCITS scheme* is invested in second schemes within (1)(b) to (e):

(1) the second *scheme* must:

...

(b) be ~~recognised~~ a *recognised scheme* under the provisions of section ~~270~~ 272 of the *Act* (~~Schemes authorised in designated countries or territories~~ Individually recognised overseas schemes) that is authorised by the supervisory authorities of Guernsey, Jersey or the Isle of Man (provided the requirements of article 50(1)(e) of the *UCITS Directive* are met); or

...

...

Qualifying non-UCITS collective investment schemes

5.2.14 G (1) *COLL* 9.3 gives further detail as to the recognition of a scheme under section ~~270~~ 272 of the *Act*.

(2) Article 50 of the *UCITS Directive* sets out the general investment limits. So, a ~~*non-UCITS retail scheme*~~, or its equivalent ~~*EEA scheme*~~ *scheme* which has the power to invest in gold or immovables would not meet the criteria set out in ~~*COLL* 5.2.13R(1)(e) and *COLL* 5.2.13R(1)(d)~~ *COLL* 5.2.13R(1).

(3) In determining whether a *scheme* (other than a *UCITS*) meets the

requirements of article 50(1)(e) of the *UCITS Directive* for the purposes of ~~COLL 5.2.13R (1)(d) or COLL 5.2.13R (1)(e)~~ COLL 5.2.13R(1), the *authorised fund manager* should consider the following factors before deciding that the *scheme* provides a level of protection for *unitholders* which is equivalent to that provided to *unitholders* in a ~~*UCITS scheme*~~ *UCITS*:

...

...

6 Operating duties and responsibilities

...

6.9 Independence, names and UCITS business restrictions

...

Restrictions of business for UCITS management companies

6.9.9 R A *UCITS management company* must not engage in any activities other than:

(1) ~~acting as:~~

(a) ~~an authorised fund manager of an authorised fund; or~~

(b) ~~an operator of any other collective investment scheme for which the firm is subject to prudential supervision; [deleted]~~

(1A) managing a UCITS;

(1B) managing an AIF; or

(1C) acting as a residual CIS operator.

(2) activities for the purposes of or in connection with those in ~~(1)~~ (1A), (1B) or (1C);

...

...

9 Recognised schemes

...

9.3 Section ~~270~~ and 272 recognised schemes

Information and documents to be supplied for a ~~section 270 notification or~~ section 272 application

- 9.3.1 D (1) If the *operator* of a *scheme* ~~gives notice to the FCA under section 270 of the Act (Schemes authorised in designated countries or territories) or~~ makes an application under section 272 of the *Act* (Individually recognised overseas schemes), the ~~notice or~~ application must include the information in paragraph (4).

...

- (4) The *operator* of the *scheme* must provide the following information and *documents* with the ~~notification or~~ application:

...

- (k) a copy of the latest annual report and any subsequent half-yearly report; and
- (l) a copy of any other *document* affecting the rights of *participants* in the *scheme*; and
- (m) ~~for notifications under section 270 only, a copy of the authorisation document issued by the authority in the designated territory confirming that the *scheme* is of a class covered by the designation order.~~

...

Preparation and maintenance of prospectus

- 9.3.3 R (1) An *operator* of a *scheme* which is a *recognised scheme* by virtue of section ~~270 or~~ 272 of the *Act* must comply, ~~subject to paragraph (2) below,~~ with the requirements set out in COLL 4.2 (Pre-sale notifications).
- (2) Where a *scheme* recognised under section ~~270~~ 272 of the *Act* is managed and authorised in Guernsey, Jersey, or the Isle of Man, the *prospectus* need not comply with the requirements of COLL 4.2.5R (Table: contents of prospectus), providing it contains corresponding matter required under the law in its home territory.

9.4 Facilities in the United Kingdom

General

- 9.4.1 R (1) The *operator* of a *recognised scheme* under section 264, ~~section 270 or~~ section 272 of the *Act* must maintain facilities in the *United Kingdom* in order to satisfy the requirements of COLL 9.4.2R to COLL 9.4.6R.

...

...

Place of facilities

9.4.6 R (1) ...

(2) The address of the facilities referred to in (1) must be the address of the *operator's* principal place of business in the *United Kingdom*, or, if there is no such address, ~~the alternative address in paragraph (3)~~ such convenient address in the *United Kingdom* as the *operator* determines.

(3) ~~The alternative address is such convenient address as the *operator* determines, except that, in the case of a *scheme* recognised under section 272 of the Act where the *operator* is not an *authorised person*, the alternative address is to be the principal place of business in the *United Kingdom* of the *authorised person* who is the representative of the *operator*.~~ [deleted]

...

Annex L

Amendments to the Listing Rules (LR)

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

App 1.1

Relevant definitions

...

recognised scheme a *scheme* recognised under:

...

(a) ...

(b) ~~section 270 of the Act (Schemes authorised in designated countries or territories); or~~ [deleted]

(c) ...

...

Annex M

Amendments to the Energy Market Participants Guide (EMPS)

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

1 Special guide for energy market participants

...

1.2 Parts of the Handbook applicable to energy market participants

...

1.2.3 G Applicability of parts of Handbook to energy market participants

This table belongs to *EMPS* 1.2.1G

	Part of Handbook	Applicability to energy market participants
Specialist sourcebooks	Collective Investment Schemes sourcebook (<i>COLL</i>)	<i>COLL</i> will ordinarily apply to an energy market participant that carries on regulated activities in relation to an energy collective investment scheme. <u>This does not apply to an energy market participant</u>
	<u>Investment Funds sourcebook (<i>FUND</i>)</u>	<u>This does not apply to an energy market participant.</u>
	...	...
...		

...

Annex N

Amendments to the Oil Market Participants Guide (OMPS)

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

1 Special guide for oil market participants

...

1.2 Parts of the Handbook applicable to oil market participants

...

1.2.2 G Parts of Handbook applicable to oil market participants

This table belongs to *OMPS* 1.2.1G

	Part of Handbook	Applicability to oil market participants
Specialist sourcebooks	Collective Investment Schemes sourcebook (<i>COLL</i>)	<i>COLL</i> will ordinarily apply to an oil market participant that carries on regulated activities in relation to an oil collective investment scheme. <u>This does not apply to an oil market participant that</u>
	<u>Investment Funds sourcebook (<i>FUND</i>)</u>	<u>This does not apply to an oil market participant.</u>
	...	...
...		

...

Annex O

Amendments to the Service Companies Guide (SERV)

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

1 Handbook requirements for service companies

...

1.2 Parts of the Handbook applicable to service companies

...

1.2.2 G Parts of Handbook applicable to service companies

This table belongs to *SERV* 1.2.1G

	Part of Handbook	Applicability to services companies
...		
Specialist sourcebooks	Collective Investment Schemes sourcebook (<i>COLL</i>)	None of the other specialist sourcebooks applies.
	<u>Investment Funds sourcebook (<i>FUND</i>)</u>	
	...	
...		

...

Annex P

Amendments to the Enforcement Guide (EG)

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

8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

8.1 The *FCA* has powers under section 55J of the *Act* to vary or cancel an *authorised person's Part 4A permission* and a power under section 55L to impose requirements on an *authorised person*. The *FCA* may use these powers where:

...

- (2) the person has not carried on a *regulated activity* to which the *Part 4A permission* relates for a period of at least 12 months (or six months in the case of a *full-scope UK AIFM*); ~~or~~
- (3) it is desirable to exercise the power in order to advance one or more of its operational objectives; or
- (4) the person has failed to comply with a requirement in Part 5 of the *AIFMD UK regulation* (AIFs which acquire control of non-listed companies and issuers), or it is for some other reason desirable to exercise the power for the purposes of ensuring compliance with such a requirement.

...

Limitations and requirements that the *FCA* may impose when exercising its section 55J and 55L powers

...

8.12 Examples of *requirements* that the *FCA* may consider imposing when exercising its *own-initiative power* in support of its enforcement function are: ... a *requirement* that all or any of the *firm's* assets, or all or any assets belonging to investors but held by the *firm* to its order, must be transferred to a ~~trustee~~ trustee approved by the *FCA*.

Cancelling a firm's Part 4A permission on its own initiative

...

8.14 The grounds on which the *FCA* may exercise its power to cancel an authorised person's permission under section 55J of the *Act* are the same as the grounds for variation and for imposition of requirements. They are set out in section 55J(1) and section 55L(2) and described in *EG* 8.1. Examples of the types of circumstances in

which the *FCA* may cancel a *firm's Part 4A permission* include:

...

Sections 55J(6) and 55K of the *Act* sets out further grounds on which the *FCA* may cancel the permission of *authorised persons* which are *investment firms* and section 55J(6A) of the *Act* set out further grounds on which the *FCA* may cancel the permission of *authorised persons* who are *full-scope UK AIFMs*.

...

9 Prohibition Orders and withdrawal of approval

...

Prohibition orders and withdrawal of approval - approved persons

...

- 9.9 When it decides whether to make a *prohibition order* against an *approved person* and/or withdraw its approval, the *FCA* will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below.

...

- (3) Whether, and to what extent, *the approved person* has:

...

- (b) been knowingly concerned in a contravention by the relevant *firm* of a requirement imposed on the *firm* by or under the *Act* (including the *Principles* and other rules), the *AIFMD UK regulation* or failed to comply with any directly applicable Community regulation made under *MiFID* or any directly applicable provision of the *auction regulation* any qualifying EU provision specified, or of a description specified, for the purpose of subsection 66(2) by the Treasury by order.

...

10 Injunctions

...

Section 380 (injunctions for breaches of relevant requirements⁹) and section 381 (injunctions in cases of market abuse): the *FCA's* policy

...

⁹ Under sections 380(6)(a) and (7)(a), a 'relevant requirement' in relation to an application by the appropriate

regulator means a requirement: which is imposed by or under the *Act* or by a qualifying EU provision specified, or of a description specified, for the purpose of subsection 380(6) by the Treasury by order; or which is imposed by or under any other *Act* and whose contravention constitutes an offence mentioned in section 402(1) of the *Act*; or which is imposed by the AIFMD UK regulation. The definition of “appropriate regulator” is set out in subsections 380(8) to (12) of the *Act*.

...

11 Restitution and redress

...

The FCA’s choice of powers

...

11.5 However, there may be circumstances in which the *FCA* will choose to use the powers under section 382 or section 383 of the *Act* to apply to the court for an order for restitution against a *firm*. Those circumstances may include, for example, where:

- (1) the *FCA* wishes to combine an application for an order for restitution with other court action against the *firm*, for example, where it wishes to apply to the court for an *injunction* to prevent the *firm* breaching a relevant requirement^{10A} ~~of the *Act* or any directly applicable Community regulation or decision made under MiFID or the UCITS Directive or the auction regulation~~; the *FCA*’s powers to apply for *injunctions* restraining *firms* from breaching one of those relevant requirements are discussed in chapter 10 of this guide.

...

^{10A} Under section 380(6)(a) and (7)(a), a ‘relevant requirement’ in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the *Act* or by a qualifying EU provision specified, or of a description specified, for the purpose of subsection 380(6) by the Treasury by order; or which is imposed by or under any other *Act* and whose contravention constitutes an offence mentioned in section 402(1) of the *Act*; or which is imposed by the AIFMD UK regulation. The definition of “appropriate regulator” is set out in subsections 380(8) to (12) of the *Act*.

...

Other relevant powers

11.8 The *FCA* may apply to the court for an *injunction* if it appears that a *person*, whether authorised or not, is reasonably likely to breach a relevant requirement^{10B} ~~of the *Act* or any directly applicable Community regulation or decision under MiFID or the UCITS Directive or the auction regulation~~, or engage in *market abuse*. It can also apply for an *injunction* if a *person* has breached one of those requirements or has engaged in *market abuse* and is likely to continue doing so.

^{10B} Under section 380(6)(a) and (7)(a), a ‘relevant requirement’ in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the *Act* or by a qualifying EU provision specified,

or of a description specified, for the purpose of subsection 380(6) by the Treasury by order; or which is imposed by or under any other *Act* and whose contravention constitutes an offence mentioned in section 402(1) of the *Act*; or which is imposed by the *AIFMD UK regulation*. The definition of “appropriate regulator” is set out in subsections 380(8) to (12) of the *Act*.

- 11.9 The *FCA* may consider taking action for a financial penalty or *public censure*, as well as seeking restitution, if a *person* has breached a relevant requirement^{10C} ~~of the *Act* or any directly applicable Community regulation or decision under *MiFID* or the *UCITS Directive* or the *auction regulation*~~, or has engaged in, or required or encouraged others to engage in *market abuse*.

^{10C} Under section 204A(2), a 'relevant requirement' in relation to an application by the appropriate regulator means a requirement: which is imposed by or under the *Act* or by a qualifying EU provision specified, or of a description specified, for the purpose of subsection 204A(2) by the Treasury by order or which is imposed by the *AIFMD UK regulation*. The definition of “appropriate regulator” is set out in subsection 204A(3) of the *Act*.

...

Annex R

Amendments to the Perimeter Guidance manual (PERG)

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

1 Introduction to the Perimeter Guidance manual

...

1.4 General guidance to be found in PERG

...

1.4.2 G Table: list of general guidance to be found in PERG.

Chapter:	Applicable to:	About:
...	...	...
<i>PERG 8:</i> Financial promotion and related activities	any <i>person</i> who needs to know ... • whether his activities in making or helping others to make <i>financial promotions</i> are <i>regulated activities</i> :- • <u>whether he is</u> <u>marketing an AIF.</u>	... • the circumstances in which <i>persons</i> who are primarily involved in making or helping others to make <i>financial promotions</i> may themselves be conducting <i>regulated</i> <i>activities</i> requiring <i>authorisation</i> or exemption • <u>the marketing of an</u> <u>AIF</u>
...	...	...
<i>PERG 15:</i> Guidance on the scope of the Payment Services Regulations 2009		...
<u><i>PERG 16:</i> Scope of the Alternative Investment Fund Managers Directive</u>	<u>any person who needs to know whether a collective investment undertaking is an AIF.</u>	<u>the scope of the regulated activities of managing an AIF and acting as trustee or depository of an AIF.</u>

2 Authorisation and regulated activities

2.2 Introduction

2.2.3 G Any *person* who is concerned that his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form in the decision tree in *PERG 2 Annex 1G*):

(3) If the answer is ‘Yes’ to (1) or (2), will my activities ~~involve~~ relate to specified investments in any way (see *PERG 2.6*)?

(3A) Are my activities specified for the purposes of section 22(1)(b) of the Act (and, accordingly, when carried on by way of business, are a regulated activity when carried on in relation to property of any kind) or related to a specified benchmark (see *PERG 2.5.1AG*)?

2.3 The business element

2.3.2 G ...

(3) A *person* managing assets on a discretionary basis while acting as ~~trustee~~ trustee of an *occupational pension scheme* may in certain circumstances be regarded as acting by way of business even if he would not, in the ordinary meaning of the phrase, be regarded as doing so. The Financial Services and Markets Act (Carrying on Regulated Activities by Way of Business) Order 2001 (as amended) contains some exceptions from this (see article 4).

2.5 Investments and activities: general

2.5.1A G The following regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark do not require the involvement of a *specified investment* in any way:

- (1) managing a UCITS;
- (2) acting as trustee or depositary of a UCITS;
- (3) managing an AIF;
- (4) acting as trustee or depositary of an AIF;
- (5) establishing, operating and winding up a collective investment scheme;
- (6) establishing, operating and winding up a stakeholder pension scheme
- (7) establishing, operating and winding up a personal pension scheme;
- (8) meeting of repayment claims;
- (9) managing dormant account funds (including the investment of such funds)
- (10) providing information in relation to a specific benchmark; and
- (11) administering a specified benchmark.

...

Investment services and activities

...

2.5.5 G For persons who are *MiFID investment firms*, the activities that must be caught by the *Regulated Activities Order* are those that are caught by *MiFID*. To achieve this result, some of the exclusions in the Order (that will apply to *persons* who are not caught by *MiFID*) have been made unavailable to *MiFID investment firms* when they provide or perform *investment services and activities*. A "MiFID investment firm", for these purposes, includes *credit institutions* to which *MiFID* applies (see *PERG 13, Q5 and 9*); ~~and UCITS investment firms~~ collective portfolio management investment firms providing the services of *portfolio management* and *personal recommendations* in relation to *financial instruments* or the ancillary service of *safekeeping and administration* in relation to units of collective investment undertakings; ~~and AIFM investment firms~~ providing the ancillary service of reception and transmission of orders in relation to financial instruments. The same exclusions are also unavailable to...

...

2.7 Activities : a broad outline

...

Establishing Managing a UCITS, managing an AIF, and establishing etc collective investment schemes

- 2.7.12 G ~~The *regulated activities* carried on in relation to a *collective investment scheme* generally are the *establishing, operating or winding up a collective investment scheme*. Acting as the *depository* and acting as sole director of an *open-ended investment company* are also separate *regulated activities*. In all these cases, the activities are regulated where the *schemes* themselves are authorised schemes for the purposes of the UK product regulation regime under Part XVII of the Act (Collective investment schemes) as well as where the schemes are unregulated schemes. The process for applying for authorisation of a *collective investment scheme* is described in COLLG 2 (Authorised fund applications). *Guidance* on whether certain types of *scheme* (property and land investment schemes) may amount to *collective investment schemes* is set out in PERG 11 (Property investment clubs and land investment schemes). [deleted]~~
- 2.7.13 G ~~In addition, express provision is included in the *Regulated Activities Order* to make *acting as trustee of an authorised unit trust scheme* and *acting as the depository of an authorised contractual scheme* a *regulated activity*. The full picture for authorised schemes (that is, schemes that can be promoted to the public) is as follows:~~
- ~~(1) *Acting as trustee of an authorised unit trust scheme* is expressly included as a *regulated activity*.~~
 - ~~(1A) *Acting as the depository of an authorised contractual scheme* is expressly included as a *regulated activity*.~~
 - ~~(2) *Acting as depository of an open-ended investment company* that is authorised under regulations made under section 262 of the Act (Open-ended investment companies), is a *regulated activity*.~~
 - ~~(3) Acting as a sole director of such a *company* is a *regulated activity*.~~
 - ~~(4) Managing an *authorised unit trust scheme* will amount to operating the scheme and so will be a *regulated activity*. A person acting as *manager* is also likely to be carrying on other *regulated activities* (such as *dealing* (see PERG 2.7.5G) or *managing investments* (see PERG 2.7.8G)).~~
 - ~~(4A) Managing an *authorised contractual scheme* will amount to operating the scheme and so will be a *regulated activity*. A person acting as the *authorised contractual scheme manager* is also likely to be carrying on other *regulated activities* (such as *dealing* (see PERG~~

~~2.7.5G) or managing investments (see PERG 2.7.8G)).~~

- (5) ~~An open-ended investment company will, once it is authorised under regulations made under section 262 of the Act, become an authorised person in its own right under Schedule 5 to the Act (Persons concerned in Collective Investment Schemes). Under ordinary principles, a company operates itself and an authorised open-ended investment company will be operating the collective investment scheme constituted by the company. It is not required to go through a separate process of authorisation as a person because it has already undergone the process of product authorisation.~~
- (6) ~~Operators, trustees or depositaries of UCITS schemes constituted in other EEA States are also authorised persons under Schedule 5 of the Act if those schemes qualify as recognised collective investment schemes for the purposes of section 264 of the Act. [deleted]~~

2.7.13A G There are five regulated activities associated with AIFs and collective investment schemes:

- (1) managing a UCITS;
- (2) acting as trustee or depositary of a UCITS.
- (3) managing an AIF;
- (4) acting as trustee or depositary of an AIF;
- (5) establishing, operating and winding up a collective investment scheme;

2.7.13B G The activity of managing a UCITS is derived from the UCITS directive. A person will manage a UCITS where they carry on collective portfolio management of a UCITS. A UCITS is a type of collective investment scheme which is authorised by a competent authority in an EEA State as meeting the requirements under the UCITS Directive.

2.7.13C G A person will carry on the activity of acting as trustee or depositary of a UCITS if they act as:

- (1) trustee of an authorised unit trust scheme; or
- (2) depositary of an open-ended investment company or authorised contractual scheme,

where, in either case, the scheme or company is a UCITS.

2.7.13D G PERG 16 provides guidance on the activities of managing an AIF (see PERG 16.3) and acting as trustee or depositary of an AIF (see PERG 16.4).

2.7.13E G Most collective investment scheme will also be either a UCITS or an AIF (although not all AIFs are collective investment schemes). As a result, there

is a potential overlap between the activity of *establishing, operating and winding up a collective investment scheme* and the activities of *managing an AIF* and *managing a UCITS*. However, there are exclusions in the *RAO* which considerably reduce the overlap (see *PERG 2.8.10G(2)* and *PERG 16.3*).

2.7.13F G An open-ended investment company will, once it is authorised under regulations made under section 262 of the *Act*, become an authorised person in its own right under Schedule 5 to the *Act* (Persons concerned in Collective Investment Schemes). Under ordinary principles, a company operates itself and an authorised open-ended investment company will be operating the collective investment scheme constituted by the company. It is not required to go through a separate process of authorisation as a person because it has already undergone the process of product authorisation.

2.7.13G G Operators, trustees or depositaries of UCITS schemes constituted in other EEA States are also authorised persons under Schedule 5 of the *Act* if those schemes qualify as recognised schemes for the purposes of section 264 of the *Act*.

...

Agreeing

2.7.21G G Agreeing to carry on most *regulated activities* is itself a *regulated activity*. But this is not the case if the underlying activities to which the agreement relates are those of *accepting deposits, issuing electronic money, effecting or carrying out contracts of insurance, operating a multilateral trading facility, managing dormant account funds, the meeting of repayment claims* or carrying on any of the activities that are regulated in relation to *collective investment schemes, AIFs, stakeholder pension schemes or personal pension schemes*. A person will need to make sure that he has appropriate *authorisation* at the stage of agreement and before he actually carries on the underlying activity (such as the *dealing or arranging*).

2.8 Exclusions applicable to particular regulated activities

...

Accepting deposits

2.8.2 G ~~Only one exclusion applies~~ Two exclusions apply to the *regulated activity of accepting deposits*. ~~A~~ The first is that a deposit taker providing its services as an *electronic commerce activity* from another EEA State into the United Kingdom (see *PERG 2.9.18G*) does not carry on a regulated activity. The second relates to a firm with a Part 4A permission to manage an AIF or manage a UCITS (see *PERG 2.9.23G* (Managers of UCITS and AIFs)). In addition to the situations that are excluded from being '*deposits*' (see *PERG 2.6.2G* to *PERG 2.6.4G*), several persons are *exempt persons* in relation to

the *regulated activity of accepting deposits* (see PERG 2.10.8G(2)).

Effecting and carrying out contracts of insurance

- 2.8.3 G The following activities are excluded from both the *regulated activities of effecting and carrying out contracts of insurance*.

...

(3) ...

(4) Activities carried on by a firm with a Part 4A permission to manage an AIF or manage a UCITS, where they are in connection with, or for the purposes of, managing an AIF or managing a UCITS (see PERG 2.9.23G (Managers of UCITS and AIFs)).

Dealing in investments as principal

- 2.8.4 G The *regulated activity of dealing in investments as principal* applies to specified transactions relating to any security or to any *contractually based investment* (apart from rights under *funeral plan contracts* or rights to or interests in such contracts). The activity is cut back by exclusions as follows.

...

(6) A person will not be treated as carrying on the activity of *dealing in investments as principal* if, in specified circumstances (outlined in PERG 2.9), he enters as principal into a transaction:

...

(g) as an *incoming ECA provider* (see PERG 2.9.18G);

(h) where it is in connection with or for the purposes of managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.23G (Managers of UCITS and AIFs)).

...

Arranging deals in investing and arranging a home finance transaction

...

- 2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows:

...

(13) The following exclusions from both article 25(1) and (2) (outlined in PERG 2.9) apply in specified circumstances where a person makes arrangements:

...

- (l) for or with a view to transactions to be entered into by or on behalf of the participants of a business angel-led enterprise capital fund and that person is a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*;
- (m) in connection with, or for the purposes of, managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.23G (Managers of UCITS and AIFs)).

The exclusions referred to in (a), (b), (g), ~~and (h)~~ and (m) also apply to *arranging* activities related to *home finance transactions*. More detailed guidance on the exclusions that relate to *contracts of insurance* is in PERG 5 (Insurance mediation activities).

...

Managing investments

- 2.8.7 G The activities of *persons* appointed under a power of attorney are excluded under article 38 of the *Regulated Activities Order*, from the *regulated activity* of *managing investments*, if specified conditions are satisfied. The exclusion only applies where a *person* is not carrying on *insurance mediation* or *reinsurance mediation* and is subject to further limitations discussed below. In addition, the following exclusions (outlined in PERG 2.9) apply in specified circumstances where a *person* manages assets:

...

- (5) belonging to the participants of a business angel-led enterprise capital fund and that person is a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*; or
- (6) in connection with, or for the purposes of, managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.23G (Managers of UCITS and AIFs)).

...

...

Assisting in the administration and performance of a contract of insurance

...

- 2.8.7B G The following exclusions from *assisting in the administration and performance of a contract of insurance* also apply to a *person* in specified circumstances:

...

- (5) that involve the provision, on an incidental basis, of information to *policyholders* or potential *policyholders* about *contracts of insurance* (see *PERG 2.9.19G(2)*); ~~or~~
- (6) that involve a *contract of insurance* covering large risks situated outside the *EEA* (see *PERG 2.9.19*); or
- (7) where it is in connection with, or for the purposes of, managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.23G (Managers of UCITS and AIFs)).

Safeguarding and administering investments

- 2.8.8 G The exclusions from the *regulated activity* of *safeguarding and administering investments* are as follows.

...

- (3A) A person with a Part 4A permission to act as trustee or depositary of an AIF or act as trustee or depositary of an UCITS will not carry on the activity of safeguarding and administering investments in respect of their activities for an AIF or UCITS for which they are acting as trustee or depositary.
- (4) The following exclusions apply in specified circumstances where a *person* safeguards and administers assets (or arranges for another to do so):

...

- (g) that are *contracts of insurance* and, in so doing, provides information to *policyholders* or potential *policyholders* on an incidental basis in the course of his carrying on a business or profession not otherwise consisting of *regulated activities* (see *PERG 2.9.19G(2)*); ~~and~~
- (h) Belonging to the participants in a business angel-led enterprise capital fund, but only where such safeguarding and administration is carried on by a *body corporate* as specified in article 72E(7) of the *Regulated Activities Order*; and
- (i) in connection with or for the purposes of managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.23G (Managers of UCITS and AIFs)).

Sending dematerialised instructions

- 2.8.9 G Exclusions from the *regulated activity of sending dematerialised instructions* apply in relation to certain types of instructions sent in the operation of the system maintained under the Uncertified Securities Regulations 2001 (SI 2001/3755). The various exclusions relate to the roles played by participating issuers, settlement *banks* and network providers (such as Internet service providers) and to instructions sent in connection with takeover offers (as long as specified conditions are met). In addition, the following exclusions (outlined in *PERG 2.9*) apply in specified circumstances where a *person* sends dematerialised instructions:

...

- (3) as an *incoming ECA provider* (see *PERG 2.9.18G*);
- (4) where it is in connection with, or for the purposes of, *managing a UCITS* or *managing an AIF* and the *person* has a *Part 4A permission to manage a UCITS* or *manage an AIF* (see *PERG 2.9.23G* (Managers of UCITS and AIFs)).

~~Establishing~~ Managing a UCITS, managing an AIF and establishing etc collective investment schemes

- 2.8.10 G (1) ~~There are two exclusions from the range of activities specified as being regulated in relation to *collective investment schemes*. These exclusions relate to *incoming ECA providers* (see *PERG 2.9.18G*) and to business angel-led capital funds (see *PERG 2.9.20G*). In other cases, the key issue is whether or not what is being done relates to something that is a *collective investment scheme*. Exclusions exist in relation to that issue (see *PERG 2.6.18G*)~~ The exclusion for *incoming ECA providers* (see *PERG 2.9.18G*) applies to the range of activities specified as being regulated in relation to *AIFs* and *collective investment schemes* (see *PERG 2.7.13AG*). The exclusion for business angel-led capital funds (see *PERG 2.9.20G*) applies to the activities of *managing an AIF*, *managing a UCITS* and *establishing, operating and winding up a collective investment scheme*.
- (2) In addition, there are two further exclusions which apply to the activity of *establishing, operating or winding up a collective investment scheme*:
- (a) the exclusion in *PERG 2.9.23G* (Managers of UCITS and AIFs); and
 - (b) a *person* (A) does not carry on the *regulated activity of establishing, operating or winding up a collective investment scheme* if:
 - (i) in relation to a *UCITS*, at the time A carries on the activity, the *UCITS* is managed by a *person* with a *Part 4A permission to manage a UCITS* or, no more than 30

days have passed since the UCITS was managed by a person with that permission (this 30-day period can be extended in certain circumstances, as set out in article 51ZG(2) of the RAO); or

(ii) in relation to an AIF, the exclusion described in PERG 16.5, question 5.2(2) applies.

(3) In other cases, the key issue is whether or not what is being done relates to something that is a collective investment scheme (see PERG 2.6.18G and PERG 11) or an AIF (see PERG 16.1 and 16.2).

Establishing etc pension schemes

- 2.8.11 G ~~The only exclusion from~~ Two exclusions apply to the range of activities specified as being regulated in relation to *stakeholder pension schemes* and *personal pension schemes*. The first relates to *incoming ECA providers* (see PERG 2.9.18G). The second relates to firms with a Part 4A permission to manage an AIF or manage a UCITS (see PERG 2.9.23G (Managers of UCITS and AIFs)).

Advising on investments

...

- 2.8.12A G Advice given by an *unauthorised person* in relation to a *home finance transaction* in the circumstances referred to in PERG 2.8.6AG(5)(a) or (b) (Arranging deals in investments and arranging a home finance transaction) is also excluded. In addition:
- (1) the following exclusions apply in specified circumstances where a person is *advising on investments* or *advising on a home finance transaction*:
- ...
- (b) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see PERG 2.9.5G); ~~and~~
- (c) as an *incoming ECA provider* (see PERG 2.9.18G); and
- (d) where it is in connection with, or for the purposes of, managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.23G (Managers of UCITS and AIFs)).

...

...

Lloyd's activities

- 2.8.13 G *Electronic commerce activities* provided by an *incoming ECA provider* are excluded from the *regulated activities* that relate expressly to business carried on at Lloyds (see PERG 2.9.18G). A firm with a Part 4A permission to manage an AIF or manage a UCITS is also excluded from carrying on a regulated activity if the person carries on that activity in connection with, or for the purposes of, managing an AIF or managing a UCITS (see PERG 2.9.23G). Otherwise the only exclusions that apply concern the *regulated activity of arranging deals* in its application to business carried on at Lloyd's.

Entering funeral plan contracts

- 2.8.14 G *Entering as provider into a funeral plan contract* is not treated as a *regulated activity* where:
- ...
- (3) it is provided as an *electronic commerce activity* by an *incoming ECA provider* (see PERG 2.9.18G); or
 - (4) it is provided by a firm with a Part 4A permission to manage an AIF or manage a UCITS in connection with, or for the purposes of, managing an AIF or managing a UCITS (see PERG 2.9.23G (Managers of UCITS and AIFs)).

Administering regulated mortgage contracts

- ...
- 2.8.14B G The following exclusions apply in specified circumstances where a *person* is *administering a home finance transaction*:
- ...
- (2) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see PERG 2.9.5G); ~~and~~
 - (3) as an *incoming ECA provider* (see PERG 2.9.18G); and
 - (4) in connection with, or for the purposes of, managing a UCITS or managing an AIF and the person has a Part 4A permission to manage a UCITS or manage an AIF (see PERG 2.9.23G (Managers of UCITS and AIFs)).
- ...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

Business angel-led enterprise capital funds

2.9.20 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

...

(4) *safeguarding and administering investments;*

(4A) *managing a UCITS;*

(4B) *managing an AIF;*

...

...

Managers of UCITS and AIFs

2.9.23 G This exclusion applies to a person with a Part 4A permission to carry on the activity of *managing an AIF* or *managing a UCITS*. The exclusion means that activities carried on by the person in connection with, or for the purposes of, *managing a UCITS* or (as the case may be) *managing an AIF*, are excluded from being *regulated activities* (except the activities of *managing an AIF* and *managing a UCITS* themselves). In the FCA's view this is likely to affect the following *regulated activities*:

(1) *dealing in investments as principal;*

(2) *dealing in investments as agent;*

(3) *arranging (bringing about) deals in investments;*

(4) *managing investments;*

(5) *sending dematerialised instructions; and*

(6) *advising on investments (except pension transfers and pension opt-outs).*

...

2.10 Persons carrying on regulated activities who do not need authorisation

...

Members of the professions

...

- 2.10.14 G The *regulated activities* that may be carried on in this way are restricted by an Order made by the Treasury under section 327(6) of the *Act* (Exemption from the general prohibition) (the *Non-Exempt Activities Order*). Accordingly, under that section, a *person* may not by way of business carry on any of the following activities without *authorisation*:

...

(3A) *bidding in emissions auctions*;

(3B) *managing a UCITS*;

(3C) *acting as trustee or depositary of a UCITS*;

(3D) *managing an AIF*;

(3E) *acting as trustee or depositary of an AIF*;

...

...

2 Annex Regulated activities and the permission regime
2G

...

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	...
Designated investment business [see notes 1A, 1B and 1C to Table 1]	
...	...
(m) establishing, operating or winding up a collective investment scheme (article 51) For the purposes of the <i>permission regime</i> , this <i>regulated activity</i> is subdivided into: (i) establishing, operating or winding up a	[see note 5 to Table 1]

regulated collective investment scheme; and (ii) establishing, operating or winding up an unregulated collective investment scheme. (ma) managing a UCITS (article 51ZA); (mb) acting as trustee or depositary of a UCITS (article 51ZB); (mc) managing an AIF (article 51ZC); <u>For the purposes of the <i>permission</i> regime, this <i>regulated activity</i> is subdivided into:</u> <u>(i) managing an authorised AIF; and</u> <u>(ii) managing an unauthorised AIF.</u> <u>(md) acting as trustee or depositary of an AIF (article 51ZD);</u> <u>For the purposes of the <i>permission</i> regime, this <i>regulated activity</i> is subdivided into:</u> <u>(i) acting as trustee or depositary of an authorised AIF; and</u> <u>(ii) acting as trustee or depositary of an unauthorised AIF.</u> <u>(me) establishing, operating or winding up a collective investment scheme (article 51ZE);</u> (n) acting as trustee of an authorised unit trust scheme (article 51) (na) acting as the depositary of an authorised contractual scheme (article 51) (o) acting as the depositary or sole director of an open-ended investment company (article 51) (p) establishing, operating or winding up a stakeholder pension scheme (article 52(a))	
...	...

Notes to Table 1

Note 1:

In addition to the *regulated activities* listed in Table 1, article 64 of the *Regulated Activities Order* specifies that *agreeing to carry on a regulated activity* is itself a *regulated activity* in certain cases. This applies in relation to all the *regulated activities* listed in Table 1 apart from:

...
• establishing, operating or winding up a collective investment scheme (article 51(1)(a)); • acting as trustee of an authorised unit trust scheme (article 51(1)(b)); • acting as the depositary of an authorised contractual scheme (article 51(1)(bb)); • acting as the sole depositary or sole director of an open-ended investment company (article 51(1)(e)); • <u>managing a UCITS</u> (article 51ZA); • <u>acting as trustee or depositary of a UCITS</u> (article 51ZB); • <u>managing an AIF</u> (article 51ZC); • <u>acting as trustee or depositary of an AIF</u> (article 51ZD); • <u>establishing, operating or winding up a collective investment scheme</u> (article 51ZE);
...
Note 5: Article 4(2) of the <i>Regulated Activities Order</i> specifies the activities (m) <u>(ma)</u> to (p) for the purposes of section 22(1)(b) of the <i>Act</i>. That is, these activities will be <i>regulated activities</i> if carried on in relation to any property and are not expressed as relating to a <i>specified investment</i>.
...

...

4 Guidance on regulated activities connected with mortgages

...

4.10 Exclusions applying to more than one regulated activity

...

Exclusion: Managers of UCITS and AIFs

- 4.10.9 G Article 72AA of the *Regulated Activities Order* (Managers of UCITS and AIFs) contains an exclusion relating to firms with a *Part 4A permission to manage a UCITS or manage an AIF* (see PERG 2.9.23G)

...

5 Guidance on insurance mediation activities

...

5.11 Other aspects of exclusions

5.11.1 G This part of the *guidance* deals with:

...

(3) the following exclusions applying to more than one *regulated activity*:

...

(b) activities carried on by a provider of relevant goods or services (article 72B (Activities carried on by a provider of relevant goods or services)); ~~and~~

(c) large risks (article 72D (Large risks contracts where risk situated outside the EEA)); and

(d) activities carried on by firms with a Part 4A permission to manage a UCITS or manage an AIF (article 72AA (Managers of UCITS and AIFs)).

...

Exclusions applying to more than one regulated activity

5.11.8 G Chapter XVII of the *Regulated Activities Order* (Exclusions applying to several specified kinds of activity) contains various exclusions applying to several kinds of activity. ~~Three~~ Four exclusions of relevance in relation to *contracts of insurance* are dealt with in this section and a fourth, *overseas persons*, in *PERG 5.12* (Link between activities and the United Kingdom)

...

Managers of UCITS and AIFs

5.11.17 G Article 72AA of the *Regulated Activities Order* (Managers of UCITS and AIFs) contains an exclusion relating to firms with a Part 4A permission to manage a UCITS or manage an AIF (see *PERG 2.9.23G*)

...

8 Financial promotion and related activities

8.1 Application and purpose

Application

...

8.1.1A G This chapter also applies to *persons* who need to know whether they are *marketing an AIF*.

Purpose of guidance

8.1.2 G The purpose of this *guidance* is ~~two~~ three-fold:

...

(2) to outline the main circumstances in which *persons* who are primarily involved in making or helping others to make *financial promotions* may be conducting *regulated activities* requiring *authorisation* or exemption themselves; this part of the *guidance* may also be of more general relevance to *persons* who may be concerned whether or not they are carrying on the *regulated activities* of *advising on investments* or *making arrangements with a view to transactions in investments*; and

(3) to provide *guidance* in relation to *marketing an AIF*.

8.1.3 G In particular, this *guidance* covers:

...

(16) *regulated activities*:

...

(b) *making arrangements with a view to transactions in investments* (see PERG 8.32); ~~and~~

(17) the business test for *regulated activities* (see PERG 8.34); and

(18) the *marketing of an AIF* (see PERG 8.37).

...

8.20 Additional restriction on the promotion of collective investment schemes

8.20.1 G Where *collective investment schemes* are concerned, additional restrictions are placed on their promotion to ensure that only those which are regulated are promoted to the general public. This is achieved by a combination of

sections 21 and 238 (Restrictions on promotion) of the *Act* as explained in *PERG* 8.20.2G. A regulated collective investment scheme is:

...

- (4) ~~a scheme recognised under section 270 of the *Act* (Schemes authorised in designated countries or territories); or [deleted]~~

...

...

- 8.20.5 G In addition, where the *collective investment scheme* is an *AIF*, the *marketing* of that *scheme* is subject to additional restrictions (see *PERG* 8.37).

...

9 Meaning of open-ended investment company

9.1 Application and Purpose

...

Other guidance that may be relevant

...

- 9.1.5 G *Open-ended investment companies* constituted in other *EEA States* which are seeking to exercise rights conferred by the *UCITS Directive* should refer to *COLL* 9 (Recognised schemes) for *guidance* on the requirements of section 264 of the *Act* (Schemes constituted in other *EEA States*). Those seeking to exercise rights under *AIFMD* should refer to *FUND* 10.

...

9.10 Significance of being an open-ended investment company

...

Implications for regulated activities

...

- 9.10.10 G (1) *A person* carrying on the *regulated activity* of *establishing, operating or winding up a collective investment scheme* that is constituted ~~by~~ as an *open-ended investment company* will need *permission* for those activities. In line with section 237(2) of the *Act* (Other definitions), the *operator* of a *collective investment scheme* that is an *open-ended investment company* is the *company* itself. ~~But~~

~~where the open-ended investment company is incorporated outside the United Kingdom, it will only require permission if its operation takes place in the United Kingdom.~~ However, where an *open-ended investment company* is managed by a firm with a *Part 4A permission to manage an AIF* or *manage a UCITS* the exclusions described in *PERG 2.9.23G (Managers of UCITS and AIFs)* and *PERG 2.8.10G(2)(b)* mean that the *open-ended investment company* would not carry on the *regulated activity of establishing, operating or winding up a collective investment scheme*.

- (2) If an *open-ended investment company* is authorised by the FCA under the *OEIC Regulations* and that company has only one *director*, the *OEIC regulations* require that director to be a *body corporate* which is an *authorised person* and which has a *Part 4A permission to carry on the regulated activity of managing a UCITS* or *managing an AIF*. This reflects the fact that, in those circumstances, the *director* is a separate legal person who is responsible for overseeing compliance by the company with requirements implementing the *UCITS Directive* and *AIFMD*.

...

11 Guidance on property investment clubs and land investment schemes

...

11.2 Guidance on property investment clubs

...

Q3. Does the FCA regulate property investment clubs?

The ~~FCA~~ FCA regulates the operation and promotion of property investment clubs if, in substance, they amount to *collective investment schemes* or *AIFs*.

...

Q4A. What is an *AIF* and will my property investment club be one?

PERG 16.1 and *16.2* provide guidance on what constitutes an *AIF*, you should consult this guidance to determine whether the management and marketing of a property investment club will be regulated by the *FCA*. You should be aware that a property investment club may be both a *collective investment scheme* and an *AIF*, and may be an *AIF* even if it does not amount to a *collective investment scheme*. The remainder of this section does not address whether or not a property investment club may be an *AIF* or the consequences if it is an *AIF*.

...

12 Guidance for persons running or advising on personal pension schemes

...

12.2 Establishing, operating or winding up a personal pension scheme

...

Q14. I intend to operate a personal pension scheme under which members will acquire benefits derived from the management of a pool of assets. Will the scheme become a collective investment scheme or an AIF?

No. *Personal pension schemes* (along with *stakeholder pension schemes*) are specifically exempted from being *collective investment schemes*. In the FCA's view *personal pension schemes* also do not amount to an *AIF* (see *PERG 16.2, question 2.32*). However, where a ~~personal pension scheme~~ *personal pension scheme* invests in a pooled investment vehicle of some kind, that vehicle may itself be a ~~collective investment scheme~~ *collective investment scheme or an AIF* unless another exemption applies to it.

...

13 Guidance on the scope of the Markets in Financial Instruments Directive and the recast Capital Adequacy Directive

13.1 Introduction

...

MiFID scope

...

In addition to investment firms, ~~MiFID~~ *MiFID* is also relevant to credit institutions providing investment services or performing investment activities (see Q5), *AIFMs* to which article 6.4 of *AIFMD* applies (in other words, *AIFM investment firms*) and ~~to~~ *UCITS management companies* to which article 6.4 of the *UCITS Directive* applies (in other words, *UCITS investment firms*).

...

Recast Capital Adequacy Directive (recast CAD)

Investment firms subject to ~~MiFID~~ *MiFID*, including those who fall within the article 3 ~~MiFID~~ *MiFID* exemption but opt not to take advantage of it, and *UCITS investment firms* *collective portfolio management investment firms* (a term that is used to refer to both *AIFM investment firms* and *UCITS investment firms*) are

subject to the requirements of the recast CAD...

...

13.2 General

...

Q6A. We are an AIFM that, in addition to managing AIFs, provides portfolio management services to third parties. How does MiFID apply to us?

If you are the AIFM of an AIF with a Part 4A permission to manage investments including MiFID financial instruments pursuant to article 6.4 of AIFMD, certain MiFID provisions apply to you when you provide investment services to third parties (see article 6.6 of AIFMD). These include initial capital endowment, organisational and conduct of business requirements. You are an AIFM investment firm for the purposes of the Handbook. Article 6.6 of AIFMD is reflected in paragraph (3) of the Handbook definition of "MiFID investment firm".

...

13.3 Investment Services and Activities

...

Q17. What is portfolio management under MiFID? (A4 and article 4.1(9))

Portfolio management is managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more ~~MiFID~~ MiFID financial instruments. If there is only a single financial instrument in a portfolio, you may be carrying on portfolio management, even if the rest of the portfolio consists of other types of assets, such as real estate. Portfolio management includes acting as a third party manager of the assets of a ~~collective investment scheme~~ fund, where discretion has been delegated to the manager by the operator of the ~~scheme~~ fund...

...

13.4 Financial Instruments

...

Q.29. What are units in collective investment undertakings (C3)?

This category of financial instrument includes units in regulated and unregulated ~~collective investment schemes~~ collective investment schemes and units or shares

in an AIF (whether or not the *AIF* is also a *collective investment scheme*). In our view, in accordance with article 1.2(a) and 2.1(o) of the *Prospectus Directive*, units or shares in an AIF include shares in closed-ended corporate schemes, such as shares in investment trust companies, and so are also units in collective investment undertakings for this purpose (as well as being transferable securities).

...

13.5 Exemptions from MiFID

...

Q43. Are we right in thinking that MiFID does not apply to collective investment undertakings and their operators?

Yes. Generally speaking, collective investment undertakings are specifically exempt, as are their depositaries and managers. For collective investment undertakings within the scope of the UCITS Directive or AIFMD the “manager” corresponds to the management company or AIFM of the undertaking. So far as collective investment schemes collective investment schemes which are outside the scope of the UCITS Directive or AIFMD are concerned, the “manager” corresponds, in essence, to the operator of a scheme and not to a person who is managing the assets of the scheme (unless that person is also the operator)....

In the case of *UCITS management companies*, some ~~MiFID~~ *MiFID* provisions will apply to those who provide portfolio management services (other than *collective portfolio management*), investment advice or safekeeping and administration services in relation to *units* to third parties, by virtue of article 6.4 of the *UCITS Directive* (see Q6). UK AIFMs will also be subject to MiFID if they provide investment services or activities for an undertaking other than a fund for which they are appointed as manager or operator. Full-scope UK AIFMs are only able to provide a limited range of such activities, for which they are subject to specific MiFID provisions by virtue of article 6.6 of AIFMD.

...

13.6 The recast Capital Adequacy Directive

Q54. What is the purpose of this section

This section is designed to help UK investment firms consider:

- whether the recast ~~CAD~~ *CAD*, as implemented in the UK, applies to them;
- if so, which category of ~~firm~~ *firm* they are for the purposes of the ~~FCA's base capital resources requirements~~ *FCA's base capital resources requirements* made under the recast ~~CAD~~ *CAD*, for example whether they are a *BIPRU 50K firm*, a *BIPRU 125K firm*, a *BIPRU 730K firm*, a ~~UCITS investment firm~~ *collective portfolio management investment firm*, an exempt *CAD firm* or a ~~firm~~ *firm* falling

within the transitional regime for certain commodity brokers and dealers; and

...

Q55. Are we subject to the recast CAD?

Only investment firms subject to the requirements of ~~MiFID~~ MiFID are subject to the requirements of the recast ~~CAD~~ CAD. This includes ~~UCITS investment firms~~ collective portfolio management investment firms (see Q6, Q6A and Q63).

...

Q56. We are an investment firm to which MiFID applies and do not fall into one of the limited categories described above. How does the recast CAD apply to us?

...

You are either a *BIPRU 50K firm* (subject to a base capital requirement of euro 50,000) (see Q60), a *BIPRU 125K firm* (subject to a base capital requirement of euro 125,000) (see Q61), a *BIPRU 730K firm* (subject to a base capital requirement of euro 730,000) (see Q62) or a ~~UCITS investment firm~~ collective portfolio management investment firm (see Q63)...

...

Q62. Are we a BIPRU 730K firm?

If you are a *CAD investment firm* and you are neither a *BIPRU 50K firm* nor a *BIPRU 125K firm* nor a ~~UCITS investment firm~~ collective portfolio management investment firm (see Q63), you will be a *BIPRU 730K firm*.

Q63. We are a ~~UCITS investment firm~~ collective portfolio management investment firm. How will the recast CAD apply to us?

~~UCITS investment firms~~ Collective portfolio management investment firms (*AIFMs* that are authorised to perform the additional services of portfolio management, investment advice, safeguarding and administering of units and reception and transmission of orders in relation to financial instruments and *UCITS management companies* that are authorised to perform the additional services of portfolio management, investment advice and safeguarding and administration of units) are subject to the recast ~~CAD~~ CAD in parallel with the capital requirements in AIFMD and/or the *UCITS Directive* (as applicable).

If you are a ~~UCITS investment firm~~ collective portfolio management investment firm, your minimum base capital requirement is euro 125,000 and is contained in *GENPRU 2.1.48R₂* (which refers to *UPRU 2.1.2R(1)*) and in summary is:

- ~~a minimum base capital requirement of euro 125,000; and~~
- ~~an additional amount of own funds equal to 0.02% of the amount by which the value of the portfolios under management exceeds euro 250,000,000 (subject to an overall maximum base capital requirement of euro 10,000,000).~~

In our view, a ~~UCITS investment firm~~ collective portfolio management investment

firm should be a *limited licence firm*, as *AIFMD* and/or the *UCITS Directive* (as applicable) prevents it from dealing on own account outside its scheme management activities. As a result, where a *UCITS investment firm collective portfolio management investment firm* has a *dealing in investments as principal* permission, this should be limited to box management activities where ~~MiFID~~ financial instruments are concerned. In our view, a *UCITS investment firm* which has this limitation and complies with it will only be required as a result of its individual portfolio management activity and it will not be dealing on own account for the purposes of the ~~MiFID~~ *MiFID* and the recast ~~CAD~~ *CAD*.

Q64. Are we a limited licence firm?

...

For calculation of the variable capital requirement for a *BIPRU limited licence firm* (including a *UCITS investment firm collective portfolio management investment firm*), see *GENPRU* 2.1.45R.

...

**13
Annex 3**

Flow chart 1 - Are you subject to the recast CAD?

[see end of instrument]

Flow chart 2 - *CAD investment firms* (excluding *UCITS investment firms collective portfolio management investment firms*)

...

Does MiFID apply to you - see Annex 1 flow chart 1?

No

You are not subject to the recast CAD.

Yes

Are you a firm whose main business consists exclusively of providing investment services or activities in relation to commodity derivatives and/or C10 derivatives and meets the other conditions outlined in Q57?

Yes

You are not subject to the capital requirements of the recast CAD but you are subject to the organisational requirements of recast CAD (see Q57).

No

Are you a firm only authorised to provide investment advice and/or receive and transmit orders without holding client money or securities (see Q58 and Q59)?

Yes

You are an *exempt* CAD firm. Are you an authorised insurance intermediary?

No

Article 7 recast CAD applies (see Q58).

Yes

Article 8 recast CAD applies (see Q59).

No

You are subject to the recast CAD. You are a CAD *investment firm*.

Are you a 50K firm?
(See Q60 and Annex 3 flow chart 2).

Yes

You are a *limited licence firm*
(See Q64).

Are you a 125K firm?
(See Q61 and Annex 3 flow chart 2.)

Yes

You are a *limited licence firm*.

Are you a 730K firm?
(See Q62 and Annex 3 flow chart 2.)

Yes

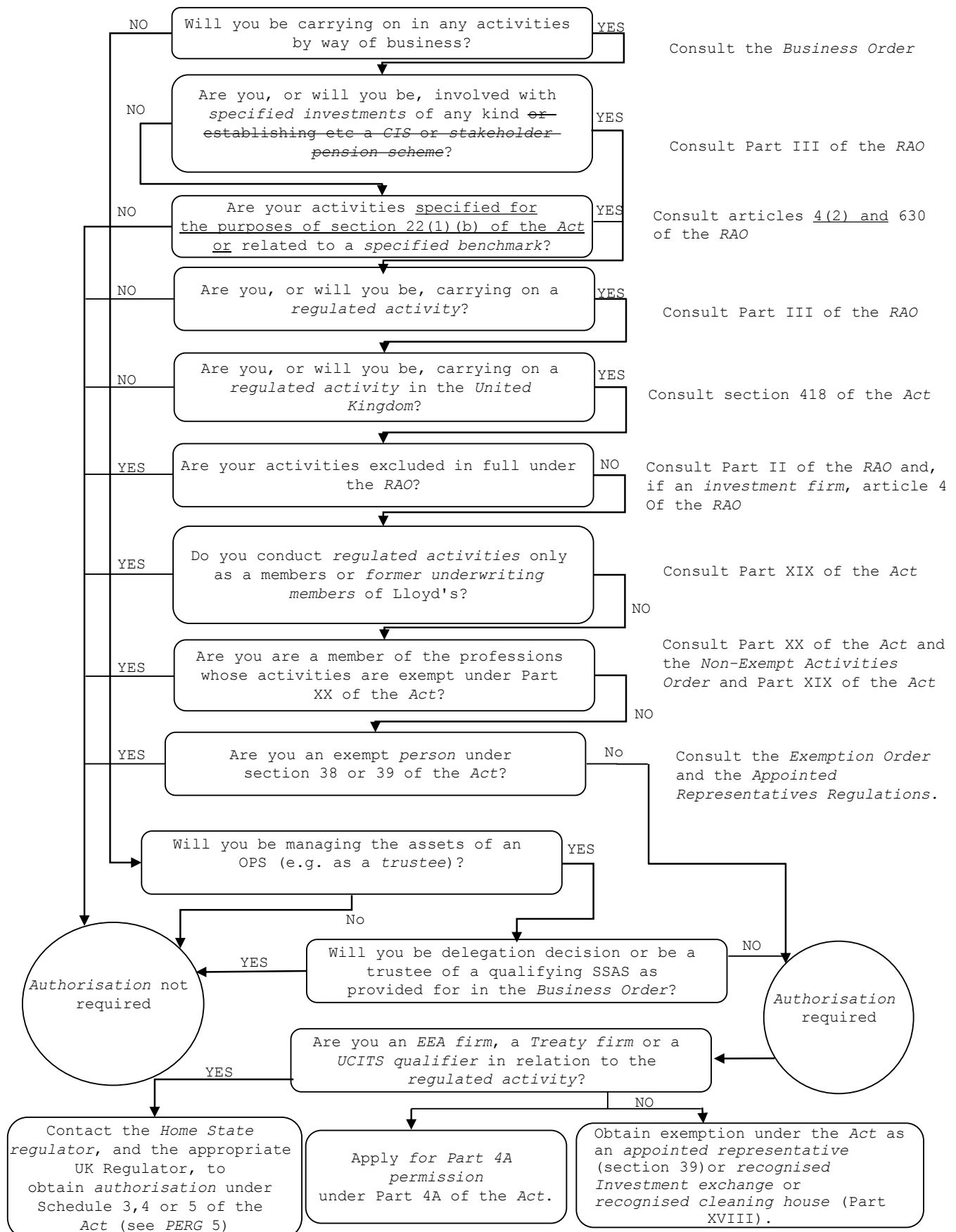
You may be either a *limited licence firm* or *limited activity firm* or a *full scope BIPRU investment firm* (see Qs. 64 to 66.)

Are you UCITS *investment firm* or an AIFM investment firm?
(See Q6, Q6A and Q63.)

Yes

You are a *limited licence firm*.

PERG 2 Annex 1G Authorisation and regulated activities



Appendix 16: CRD IV consequential changes

CAPITAL REQUIREMENTS DIRECTIVE IV (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2013

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 137B (FCA general rules: clients’ money, right to rescind etc);
 - (3) section 137T (General supplementary powers);
 - (4) section 138D (Actions for damages);
 - (5) section 139A (Power of the FCA to give guidance);
 - (6) section 213 (The compensation scheme); and
 - (7) paragraph 23 (Fees) of schedule 1ZA (The Financial Conduct Authority).
- 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 January 2014.

Amendments to the FCA Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
General Provisions (GEN)	Annex D
Fees manual (FEES)	Annex E
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex F
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex G
Prudential sourcebook for UCITS Firms (UPRU)	Annex H
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex I
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex J
Client Assets sourcebook (CASS)	Annex K
Market Conduct sourcebook (MAR)	Annex L
Supervision manual (SUP)	Annex M

Compensation sourcebook (COMP)	Annex N
Collective Investment Schemes sourcebook (COLL)	Annex O
Credit Unions New sourcebook (CREDS)	Annex P
Investment Funds sourcebook (FUND)	Annex Q
Regulated Covered Bonds sourcebook (RCB)	Annex R
Prospectus Rules sourcebook (PR)	Annex S
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex T
Energy Market Participants Guide (EMPS)	Annex U
Oil Market Participants Guide (OMPS)	Annex V

Material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex W to this instrument.
- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex X to this instrument.

Notes

- G. 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

- H. This instrument may be cited as the Capital Requirements Directive IV (Consequential Amendments) Instrument 2013.

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

Annex A

Amendments to the Glossary of definitions

Note to reader: Some of the italicised terms are new Glossary definitions related to, or used in, the proposed version of the Prudential sourcebook for Investment Firms (IFPRU) in CP13/6 (CRD IV for Investment Firms) which have not been made. The Glossary terms marked with “*” are those which CP13/6 has proposed to amend; however, the amendment below supersedes that proposed amendment.

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

Amend the following definitions as shown.

<i>AMA permission</i>	an <i>Article 129 implementing measure</i> , a requirement or a waiver that requires a <i>BIPRU firm</i> or an institution a <u>CAD investment firm</u> to use the <i>advanced measurement approach</i> to <i>operational risk</i> on a solo basis or, if the context requires, a consolidated basis.
<i>approved credit institution</i>	a <i>credit institution</i> recognised or permitted under the law of an <i>EEA State</i> to carry on any of the activities set out in Annex 1 to the Banking Consolidation Directive <u>CRD</u> .
<i>branch</i>	(a) (in relation to a <i>credit institution</i>): (i) ... (ii) for the purposes of the Banking Consolidation Directive <u>CRD</u> and in accordance with article 38 of the <u>CRD</u>, any number of places of business set up in the same <i>EEA State</i> by a <i>credit institution</i> with headquarters in another <i>EEA State</i> are to be regarded as a single <i>branch</i>;
	...
<i>capital resources gearing rules</i>	(1) ... (2) (in relation to a bank or building society) GENPRU 2.2.29R, GENPRU 2.2.30R, GENPRU 2.2.46R and GENPRU 2.2.49R. [deleted] (3) (in relation to a <i>BIPRU investment firm</i>) <i>GENPRU</i>

2.2.30R, GENPRU 2.2.46R and GENPRU 2.2.49R and GENPRU 2.2.50R.

capital resources table

(in relation to an *insurer* or *BIPRU firm*) the table specified in GENPRU 2.2.19R (Applicable capital resources calculation) which in summary is as follows:

- (1) (in the case of an *insurer*) GENPRU 2 Annex 1R; and
- (2) ~~(in the case of a *bank*) GENPRU 2 Annex 2R;~~
[deleted]
- (3) ~~(in the case of a *building society*) GENPRU 2 Annex 3R; and~~ [deleted]
- (4) (in relation to a *BIPRU investment firm*) whichever of the tables in GENPRU 2 Annex 4R, GENPRU 2 Annex 5R or GENPRU 2 Annex 6R applies to the *firm* under GENPRU 2.2.19R.

CCR internal model method permission

an Article 129 implementing measure, Article 129 permission, a requirement or a waiver that requires a *BIPRU firm* or ~~an institution~~ a CAD investment firm to use the CCR internal model method.

common platform firm

a *firm* that is:

- (a) a *BIPRU firm*; or
- (aa) a *bank*; or
- (ab) a *building society*; or
- (ac) a *designated investment firm*; or
- (ad) an *IFPRU investment firm*; or

...

consolidated requirement component

has the meaning in BIPRU 8.7.11R (Calculation of the consolidated requirement components), which in summary is one of the following:

...

- (c) the consolidated market risk requirement; ~~or~~ —
- (d) ~~the consolidated operational risk requirement.~~
[deleted]

consolidation group

- (1) the following:

	...
	(2) <u>(in SYSC) the undertakings included in the scope of prudential consolidation to the extent and in the manner prescribed in Part One, Title II, Chapter 2, Sections 2 and 3 of the EU CRR and IFPRU 8.1.3R to IFPRU 8.1.4R (Prudential consolidation) for which the FCA is the consolidating supervisor under [article 111 of the CRD].</u>
consumer	...
	(D) (for the purposes of (2A)(b)):
	(a) “credit institution” means:
	(i) a credit institution authorised under the banking consolidation directive <u>CRD</u> ;
	or
	...
conversion factor	(in accordance with Article 4(28) of the <i>Banking Consolidation Directive</i> (Definitions) <u>and for the purposes of BIPRU</u>) the ratio of the currently undrawn amount of a commitment <i>conversion factor</i> that will be drawn and outstanding at default to the currently undrawn amount of the commitment; the extent of the commitment is determined by the advised limit, unless the unadvised limit is higher.
counterparty credit risk	(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) <u>and for the purposes of BIPRU</u>) the risk that the counterparty to a transaction could default before the final settlement of the transaction's cash flows.
covered bond	...
	(2) (in accordance with point 68 of Part 1 of Annex VI of the <i>Banking Consolidation Directive</i> (Exposures in the form of covered bonds) and for the purposes of the IRB approach or the <i>standardised approach</i> to credit risk <u>in BIPRU</u>) a covered bond as defined in (1) collateralised in accordance with <i>BIPRU</i> 3.4.107R (Exposures in the form of covered bonds).
	...
CRD implementation measure	(in relation to a <i>person</i> <u>and for the purposes of GENPRU and BIPRU</u> (except in <i>GENPRU</i> 3 and <i>BIPRU</i> 12), a provision of the <i>Banking Consolidation Directive</i> or the <i>Capital Adequacy</i>

Directive and an *EEA State* other than the *United Kingdom*) a measure implementing that provision of that Directive for that type of *person* in that *EEA State*.

credit enhancement

(in accordance with Article 4(43) of the *Banking Consolidation Directive* (Definitions) and for the purposes of *BIPRU*) a contractual arrangement whereby the credit quality of a *position* in a *securitisation* (within the meaning of paragraph (2) of the definition of *securitisation*) is improved in relation to what it would have been if the enhancement had not been provided, including the enhancement provided by more junior *tranches* in the *securitisation* and other types of credit protection.

*credit institution**

(1) (except in *REC*) ~~(in accordance with articles 4(1) and 107 of the *BCD*):~~

(a) ~~an undertaking whose business is to receive deposits and other repayable funds from the public and to grant credits for its own account has the meaning in article 4(1)(1) of the *EU CRR*; or~~

(b) [deleted]

(c) [deleted]

(d) ~~for the purpose of *BIPRU* 10 (Large exposures requirements) it means:~~

(i) ~~a credit institution defined by (1)(a) to (1)(b) that has been authorised in an *EEA State*; or~~

(ii) ~~any private or public undertaking which meets the definition in (1)(a)–(1)(b) and which has been authorised in a non-*EEA State*. [deleted]~~

~~(see also *BCD credit institution*, *full credit institution*, *full BCD credit institution* and *Zone A credit institution*.)~~

(2) (in *REC*) and in *SUP* 11 (Controllers and close links and *SUP* 16 (Reporting requirements)):

(a) a credit institution authorised under the *Banking Consolidation Directive* *CRD*;

(b) an institution which would satisfy the requirements for authorisation as a credit institution under the *Banking Consolidation*

~~Directive CRD~~ if it had its registered office (or if it does not have a registered office, its head office) in an *EEA State*.

- (3) (in relation to the definition of *electronic money issuer*) a credit institution as defined by (1)(a) and includes a branch of the credit institution within the meaning of ~~Article 4(3) of the Banking Consolidation Directive~~ article 4(1)(17) of the *EU CRR* which is situated within the *EEA* and which has its head office in a territory outside the *EEA* in accordance with ~~Article 38 of the Banking Consolidation Directive~~ article 47 of the *CRD*.

credit valuation adjustment (in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purposes of BIPRU) an adjustment to the mid-market valuation of the portfolio of transactions with a counterparty; and so that this adjustment:

...

default (in relation to the *IRB approach* and for the purposes of BIPRU) has the meaning in *BIPRU* 4.3 (The *IRB approach*: Provisions common to different exposure classes).

DGD claim a *claim*, in relation to a *protected deposit*, against a ~~BCD~~ *CRD credit institution*, whether established in the *United Kingdom* or in another *EEA State*.

DLG by default

...

For these purposes:

- (iii) *credit institution* has the meaning used in *SUP* 16 (Reporting requirements), namely either of the following:
- (A) a credit institution authorised under the ~~Banking Consolidation Directive~~ *CRD*; or
 - (B) an institution which would satisfy the requirements for authorisation as a credit institution under the ~~Banking Consolidation Directive~~ *CRD* if it had its registered office (or if it does not have a registered office, its head office) in an *EEA State*; and

...

EEA bank an *incoming EEA firm* which is a ~~BCD~~ *CRD credit*

	<i>institution.</i>
<i>EEA firm</i>	(in accordance with paragraph 5 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) any of the following, if it does not have its relevant office in the <i>United Kingdom</i> : ... (b) a <i>credit institution</i> (as defined in article 4(1)(1) of the <i>Banking Consolidation Directive EU CRR</i>); (c) a financial institution (as defined in article 4(5)(1)(26) of the <i>Banking Consolidation Directive EU CRR</i>) which is a subsidiary of the kind mentioned in article 24 <u>34</u> of the <i>CRD</i> and which fulfils the conditions in articles 23 <u>33</u> and 24 <u>34</u> ; ...
<i>effective expected positive exposure</i>	(in accordance with Part 1 of Annex III of the <i>Banking Consolidation Directive</i> (Definitions) <u>and for the purpose of BIPRU 13</u>) the weighted average over time of <i>effective expected exposure</i> over the first year, or, if all the contracts within the <i>netting set</i> mature before one year, over the time period of the longest maturity contract in the <i>netting set</i> , where the weights are the proportion that an individual <i>expected exposure</i> represents of the entire time interval.
<i>eligible institution</i>	(in <i>COLL</i>): (a) a BCD <u>CRD</u> <i>credit institution</i> authorised by its <i>Home State regulator</i> ; ...
<i>energy market participant</i>	a <i>firm</i> : ... (b) which is not an <i>authorised professional firm</i> , <i>bank</i> , <i>BIPRU investment firm</i> (unless it is an <i>exempt BIPRU commodities firm</i>), <i>IFPRU investment firm</i> (unless it is an <i>exempt IFPRU commodities firm</i>), <i>building society</i> , <i>credit union</i> , <i>friendly society</i> , <i>ICVC</i> , <i>insurer</i> , <i>MiFID investment firm</i> (unless it is an <i>exempt BIPRU commodities firm</i> or <i>exempt IFPRU commodities firm</i>), <i>media firm</i> , <i>oil market participant</i> , <i>service company</i> , <i>insurance intermediary</i> , <i>home finance administrator</i> , <i>home finance provider</i> , <i>incoming EEA firm</i> (without a <i>top-up permission</i>), or <i>incoming Treaty firm</i> without a <i>top-up permission</i>).

<i>fee-paying electronic money issuer</i>	any of the following when they issue <i>electronic money</i> : ... (d) a <i>full credit institution</i> , including a branch of the <i>full credit institution</i> within the meaning of article 4(3) (17) of the BCD <u>EU CRR</u> which is situated within the <i>EEA</i> and which has its head office in a territory outside the <i>EEA</i> in accordance with article 38 47 of the BCD <u>EU CRR</u> ; ...
<i>financial derivative instrument</i>	(for the purposes of <i>BIPRU</i>) has the meaning in <i>BIPRU</i> 13.3.3R (Definition of a financial derivative instrument); the definition is adjusted for the purposes of the definition of <i>counterparty risk capital component</i> in accordance with <i>BIPRU</i> 14.2.3 R (Credit derivatives).
<i>fixed overheads requirement</i>	(1) (except in <i>IPRU(INV)</i> and for the purposes of <u><i>GENPRU</i> (except in <i>GENPRU</i> 3) and <i>BIPRU</i> (except in <i>BIPRU</i> 12))</u> the part of the <i>capital resources requirement</i> calculated in accordance with <i>GENPRU</i> 2.1.53R (Calculation of the fixed overheads requirement). ...
<i>free delivery</i>	(for the purposes of <i>BIPRU</i>) a transaction of the type set out in <i>BIPRU</i> 14.4.2R (Requirement to hold capital resources with respect to free deliveries) which, in summary, is a transaction under which a <i>person</i> : ...
<i>full BCD <u>CRD</u> credit institution</i>	a BCD <u>CRD</u> <i>credit institution</i> that falls within paragraph (1)(a) of the definition of <i>credit institution</i> .
<i>funded credit protection</i>	in accordance with Article 4(31) of the <i>Banking Consolidation Directive</i> (Definitions) and for the purposes of <u><i>BIPRU</i></u> a technique of <i>credit risk mitigation</i> where the reduction of the credit risk on the <i>exposure</i> of an undertaking derives from the right of the <i>undertaking</i> , in the event of the default of the counterparty or on the occurrence of other specified credit events relating to the counterparty, to liquidate, or to obtain transfer or appropriation of, or to retain certain assets or amounts, or to reduce the amount of the <i>exposure</i> to, or to replace it with, the amount of the difference between the amount of the <i>exposure</i> and the amount of a claim on the <i>undertaking</i> .

<i>Home State</i>	(1) (in relation to a <i>credit institution</i>) the <i>EEA State</i> in which the <i>credit institution</i> has been authorised in accordance with the <i>Banking Consolidation Directive CRD</i> .
	...
<i>institution*</i>	(1) (in accordance with Article 3(1)(c) of the <i>Capital Adequacy Directive</i> and Article 4(6) of the <i>Banking Consolidation Directive</i> (Definitions) and for the purposes of <i>GENPRU</i> and <i>BIPRU</i>) a <i>credit institution</i> or a <i>CAD investment firm</i> , whether or not it is incorporated in, or has its head office in, an <u><i>EEA State</i></u> has the meaning in article 4(1)(3) of the <i>EU CRR</i> .
	(2) <u>(for the purposes of <i>GENPRU</i> and <i>BIPRU</i>) includes a <i>CAD investment firm</i>.</u>
<i>investment management firm</i>	(subject to <i>BIPRU</i> TP 1.3R (Revised definition of investment management firm for certain transitional purposes)) , a firm whose permitted activities include designated investment business, which is not an authorised professional firm, bank, <i>BIPRU</i> <u><i>IFPRU</i></u> investment firm, <u><i>BIPRU</i></u> firm, building society, collective portfolio management firm, credit union, energy market participant, friendly society, ICVC, insurer, media firm, oil market participant, service company, incoming <i>EEA</i> firm (without a top-up permission), incoming Treaty firm (without a top-up permission), or UCITS qualifier (without a top-up permission), whose permission does not include a requirement that it comply with <i>IPRU(INV)</i> 3 or <i>IPRU(INV)</i> 13 (Personal investment firms) and which is within (a), (b) or (c):
	...
<i>IRB permission</i>	an Article 129 implementing measure, a requirement or a waiver that requires a <i>BIPRU</i> firm or an institution a <u><i>CAD investment firm</i></u> to use the <i>IRB</i> approach .
<i>lending firm</i>	(in accordance with Article 90 of the <i>Banking Consolidation Directive</i> (Credit risk mitigation) and for the purposes of rules <u>in <i>BIPRU</i></u> about credit risk mitigation) a firm that has an <i>exposure</i> , whether or not deriving from a loan.
<i>listed activity</i>	an activity listed in Annex 1 to the <i>Banking Consolidation Directive CRD</i> .
<i>main BIPRU firm Pillar 1 rules</i>	<i>GENPRU</i> 2.1.40R (Variable capital requirement for <i>BIPRU</i> firms), <i>GENPRU</i> 2.1.41R (Base capital resources requirement for <i>BIPRU</i> firms), <i>GENPRU</i> 2.1.48R (Table: Base capital resources requirement for a <i>BIPRU</i> firm) and ,

	where applicable, GENPRU 2.1.60 R (Calculation of base capital resources requirement for banks authorised before 1993).
<i>master netting agreement internal models approach permission</i>	a requirement or a waiver that requires a <i>BIPRU</i> firm to use the <i>master netting agreement internal models approach</i> on a solo basis or, if the context requires, a consolidated basis.
<i>matched principal exemption conditions</i>	(for the purposes of <i>BIPRU</i>) the conditions set out in <i>BIPRU</i> 1.1.23R(1) (Meaning of dealing on own account).
<i>MiFID investment firm</i>	... (in full) a <i>firm</i> which is: ... (2) a BCD <i>CRD credit institution</i> (only when providing an <i>investment service or activity</i> in relation to the rules implementing the Articles referred to in Article 1(2) of <i>MiFID</i>); ...
<i>mixed-activity holding company</i>	one of the following: (a) (in accordance with Article 4(20) of the <i>Banking Consolidation Directive</i> (Definitions)) a parent undertaking, other than a financial mixed-activity holding company, a credit institution or a mixed financial holding company, the subsidiary undertakings of which include at least one credit institution; or (b) (in accordance with Articles 2(2) and 37(1) of the <i>Capital Adequacy Directive</i> (Supervision on a consolidated basis) and in relation to a banking and investment group without any credit institutions in it) a parent undertaking, other than a financial holding company, an investment firm or a mixed financial holding company, the subsidiary undertakings of which include at least one investment firm. <u>has the meaning given to the definition of “mixed activity holding company” in article 4(1)(22) of the <i>EU CRR</i>.</u>
<i>multilateral development bank</i>	... (b) <u>(in <i>BIPRU</i>)</u> for the purposes of the <i>standardised approach</i> to credit risk the following are considered

to be a multilateral development bank:

...

oil market participant

a *firm*:

...

- (b) which is not an *authorised professional firm, bank, BIPRU investment firm*, (unless it is an *exempt BIPRU commodities firm*), *IFPRU investment firm (unless it is an exempt IFPRU commodities firm)*, *building society, credit union, friendly society, ICVC, insurer, MiFID investment firm* (unless it is an *exempt BIPRU commodities firm or exempt IFPRU commodities firm*), *media firm, service company, insurance intermediary, home finance administrator, mortgage intermediary, home finance provider, incoming EEA firm* (without a *top-up permission*), or *incoming Treaty firm* (without a *top-up permission*).

one-sided credit valuation adjustment

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purposes of *BIPRU*) a *credit valuation adjustment* that reflects the market value of the credit risk of the counterparty to a *firm*, but does not reflect the market value of the credit risk of the *firm* to the counterparty.

*operational risk**

...

- (2) (~~except in *COLL* and *FUND*~~ in *GENPRU* (except *GENPRU* 3) and *BIPRU*) (in accordance with Article 4(22) of the *Banking Consolidation Directive*) the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk.

- (3) (except in (1) and (2)) has the meaning in Article 4(1)(52) of the *EU CRR*.

option

...

but so that for the purposes of calculating capital requirements for *BIPRU firms* ~~and *BIPRU* 10 (Large exposures requirements)~~ it also includes any of the items listed in the table in *BIPRU* 7.6.18R (Option PRR: methods for different types of option) and any case settled option.

*own funds**

- (1) (in *GENPRU* (except *GENPRU* 3 (Cross sector groups) and *BIPRU* (except *BIPRU* 12 (Liquidity standards))) own funds described in articles 56 to 57 of the *Banking Consolidation Directive*.

	...	
	(5)	<u>(except in (1) to (4)) has the meaning in article 4(1)(118) of the <i>EU CRR</i>.</u>
<i>parent financial holding company in a Member State*</i>	(1)	<u>(in <i>GENPRU</i> (except <i>GENPRU</i> 3) and <i>BIPRU</i> (except <i>BIPRU</i> 12))</u> (in accordance with Article 4(15) of the <i>Banking Consolidation Directive</i> (Definitions) and Article 3 of the <i>Capital Adequacy Directive</i> (Definitions)) a <i>financial holding company</i> which is not itself a <i>subsidiary undertaking</i> of an <i>institution</i> authorised in the same <i>EEA State</i> , or of a <i>financial holding company</i> or <i>mixed financial holding company</i> established in the same <i>EEA State</i> .
	(2)	<u>(except in (1)) has the meaning in article 4(1)(30) of the <i>CRR</i>.</u>
<i>parent institution in a Member State*</i>	(1)	<u>(in <i>GENPRU</i> (except <i>GENPRU</i> 3) and <i>BIPRU</i> (except <i>BIPRU</i> 12))</u> (in accordance with Article 4(14) of the <i>Banking Consolidation Directive</i> and Article 3 of the <i>Capital Adequacy Directive</i> (Definitions)) an <i>institution</i> which has an <i>institution</i> or a <i>financial institution</i> as a <i>subsidiary undertaking</i> or which holds a <i>participation</i> in such an <i>institution</i> , and which is not itself a <i>subsidiary undertaking</i> of another <i>institution</i> authorised in the same <i>EEA State</i> , or of a <i>financial holding company</i> or <i>mixed financial holding company</i> established in the same <i>EEA State</i> .
	(2)	<u>(except in (1)) has the meaning in article 4(1)(28) of the <i>CRR</i>.</u>
<i>parent mixed financial holding company in a Member State*</i>	(1)	<u>(in <i>GENPRU</i> (except <i>GENPRU</i> 3) and <i>BIPRU</i> (except <i>BIPRU</i> 12))</u> (in accordance with Article 4(15a) of the <i>Banking Consolidation Directive</i> (Definitions)) a <i>mixed financial holding company</i> which is not itself a <i>subsidiary undertaking</i> of an <i>institution</i> authorised in the same <i>EEA State</i> , or of a <i>financial holding company</i> or <i>mixed financial holding company</i> established in the same <i>EEA State</i> .
	(2)	<u>(except in (1)) has the meaning in article 4(1)(32) of the <i>CRR</i>.</u>
<i>parent undertaking*</i>	(1)	...
	(c)	for the purposes of <i>BIPRU</i> (except <i>BIPRU</i> 12), <i>GENPRU</i> (except <i>GENPRU</i> 3) and <i>INSRU</i> as they apply on a consolidated basis, for the purposes of <i>BIPRU</i> 10 (Large exposures

~~requirements~~) and for the purposes of SYSC 12 (Group risk systems and controls requirement) and SYSC ~~19A~~ 19C (Remuneration Code for BIPRU firms) and in relation to whether an *undertaking* is a parent *undertaking*) an *undertaking* which has the following relationship to another *undertaking* ("S"):

...

...

(3) (for the purposes of GENPRU 3, BIPRU 12, IFPRU and SYSC 19A (Remuneration Code)) has the meaning in article 4(1)(15) of the CRR.

*participation**

(1) (for the purposes of UPRU and GENPRU (except GENPRU 3) and for the purposes of BIPRU (except BIPRU 12) and INSPRU as they apply on a consolidated basis):

...

(2) (except in (1)) has the meaning in article 4(1)(35) of the EU CRR.

permanent interest bearing shares

any shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 which are issued as permanent interest bearing shares and on terms which qualify them as own funds for the purposes of the ~~Banking Consolidation Directive~~ EU CRR.

personal investment firm

~~(subject to BIPRU TP 1 (Revised definition of personal investment firm for certain transitional purposes))~~ a firm whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, bank, ~~BIPRU~~ IFPRU investment firm, BIPRU firm, building society, collective portfolio management firm, credit union, energy market participant, ICVC, insurer, media firm, oil market participant, service company, incoming EEA firm (without a *top-up permission*), incoming Treaty firm (without a *top-up permission*) or UCITS qualifier (without a *top-up permission*), whose *permission* does not include a *requirement* that it comply with IPRU(INV) 3 (Securities and futures firms) or 5 (Investment management firms), and which is within (a), (b) or (c):

...

probability of default

(in accordance with Article 4(25) of the *Banking Consolidation Directive* (Definitions) and for the purpose of

	<i>BIPRU</i>) the probability of default of a counterparty over a one year period; for the purposes of the <i>IRB approach</i> , default has the meaning in the definition of <i>default</i> .
<i>protection buyer</i>	<u>(in BIPRU)</u> (in relation to a credit derivative and in accordance with paragraph 8 of Annex I of the <i>Capital Adequacy Directive</i> (Calculating capital requirements for position risk)) the <i>person</i> who transfers credit risk.
<i>protection seller</i>	<u>(in BIPRU)</u> (in relation to a credit derivative and in accordance with paragraph 8 of Annex I of the <i>Capital Adequacy Directive</i> (Calculating capital requirements for position risk)) the <i>person</i> who assumes the credit risk.
<i>PRR item</i>	<u>(in BIPRU)</u> a <i>commodity</i> or a <i>CRD financial instrument</i> .
<i>public sector entity</i>	(in accordance with Article 4(18) of the <i>Banking Consolidation Directive</i> (Definitions) <u>and for the purposes of BIPRU</u>) any of the following: ...
<i>qualifying equity index</i>	<u>(in BIPRU)</u> an <i>equity index</i> falling into <u>within</u> <i>BIPRU</i> 7.3.38 R (Definition of a qualifying equity index).
<i>recognised third country investment firm</i>	a <i>CAD investment firm</i> that satisfies the following conditions: ... (d) that investment <i>firm</i> is subject to and complies with prudential rules of or administered by that <i>third country competent authority</i> that are at least as stringent as those laid down in the EEA prudential sectoral legislation for the investment services sector <u><i>Banking Consolidation Directive</i> and the <i>Capital Adequacy Directive</i> as applied under the third paragraph of article 95(2) of the <i>EU CRR</i>.</u>
<i>regulatory system</i>	the arrangements for regulating a <i>firm</i> or other <i>person</i> in or under the <i>Act</i> , including the <i>threshold conditions</i> , the <i>Principles</i> and other <i>rules</i> , the <i>Statements of Principle</i> , codes and <i>guidance</i> and including any relevant directly applicable provisions of a Directive or Regulation such as those contained in the <i>MiFID implementing Directive</i> , and the <i>MiFID Regulation</i> <u>and the <i>EU CRR</i>.</u>
<i>remuneration</i>	any form of remuneration, including salaries, <i>discretionary pension benefits</i> and benefits of any kind. [Note: paragraph 23 of Annex V to the <i>Banking Consolidation Directive</i> <u>article 92(2) of <i>CRD</i></u>]

<i>Remuneration Code staff</i>	(for a <i>BIPRU CRR firm</i> and a third country BIPRU firm <u>an overseas firm</u> in SYSC 19A1.1.1R(1)(f)) has the meaning given in SYSC 19A.3.4 R.
<i>repurchase transaction</i>	(in accordance with Article 3(1)(m) of the <i>Capital Adequacy Directive</i> and Article 4(33) of the <i>Banking Consolidation Directive</i> (Definitions) <u>and for the purposes of BIPRU</u>) any agreement in which an <i>undertaking</i> or its counterparty transfers securities or <i>commodities</i> or guaranteed rights relating to title to securities or <i>commodities</i> where that guarantee is issued by a <i>designated investment exchange</i> or <i>recognised investment exchange</i> which holds the rights to the securities or <i>commodities</i> and the agreement does not allow an <i>undertaking</i> to transfer or pledge a particular security or <i>commodity</i> to more than one counterparty at one time, subject to a commitment to repurchase them or substituted securities or <i>commodities</i> of the same description at a specified price on a future date specified, or to be specified, by the transferor, being a <i>repurchase agreement</i> for the <i>undertaking</i> selling the securities or <i>commodities</i> and a <i>reverse repurchase agreement</i> for the <i>undertaking</i> buying them.
<i>risk capital requirement</i>	(1) (in relation to the appropriate regulator's <u>FCA's</u> rules) one of the following: ... (b) the <i>fixed overheads requirement</i>; <u>or</u> (c) the <i>market risk capital requirement</i>; or (d) the operational risk capital requirement; <u>or</u> [deleted] ...
<i>risk weight</i>	(in relation to an <i>exposure</i> <u>for the purposes of BIPRU</u>) a degree of risk expressed as a percentage assigned to that <i>exposure</i> in accordance with whichever is applicable of the <i>standardised approach</i> to credit risk and the <i>IRB approach</i> , including (in relation to a <i>securitisation position</i>) under <i>BIPRU 9</i> (Securitisation).
<i>risk weighted exposure amount</i>	(in relation to an <i>exposure</i> <u>for the purposes of BIPRU</u>) the value of an <i>exposure</i> for the purposes of the calculation of the <i>credit risk capital component</i> after application of a <i>risk weight</i> .
<i>secured lending transaction</i>	(in accordance with point 2 of Part 1 of Annex VIII of the <i>Banking Consolidation Directive</i> (Eligibility of credit risk mitigation) <u>and for the purposes of BIPRU</u>) any transaction

giving rise to an *exposure* secured by collateral which does not include a provision conferring upon the *person* with the *exposure* the right to receive margin frequently.

securities and futures firm

~~(subject to BIPRU TP 1 (Revised definition of securities and futures firm for certain transitional purposes))~~ a firm whose *permitted activities* include *designated investment business* or *bidding in emissions auctions*, which is not an *authorised professional firm*, *bank*, *BIPRU investment firm* (unless it is an *exempt BIPRU commodities firm*), *IFPRU investment firm* (unless it is an exempt IFPRU investment firm), *building society*, *collective portfolio management firm*, *credit union*, *friendly society*, *ICVC*, *insurer*, *media firm*, *service company*, *incoming EEA firm* (without a *top-up permission*), *incoming Treaty firm* (without a *top-up permission*) or *UCITS qualifier* (without a *top-up permission*), whose *permission* does not include a *requirement* that it comply with *IPRU(INV) 5* (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e), (f), (g), (ga) or (h):

...

(g) an *exempt BIPRU commodities firm*;

(ga) an exempt IFPRU commodities firm;

...

securities or commodities lending or borrowing transaction

(in accordance with Article 4(34) of the *Banking Consolidation Directive* and Article 3(1)(n) of the *Capital Adequacy Directive* (Definitions) and for the purposes of BIPRU) any transaction in which an *undertaking* or its counterparty transfers securities or *commodities* against appropriate collateral subject to a commitment that the borrower will return equivalent securities or *commodities* at some future date or when requested to do so by the transferor, that transaction being *securities or commodities lending* for the *undertaking* transferring the securities or *commodities* and being *securities or commodities borrowing* for the *undertaking* to which they are transferred.

securitisation position

(in accordance with Article 4(40) (Definitions) and Article 96 (Securitisation) of the *Banking Consolidation Directive* and for the purposes of BIPRU) an *exposure* to a *securitisation* within the meaning of paragraph (2) of the definition of *securitisation*; and so that:

...

securitisation special

(in accordance with Article 4(44) of the *Banking*

<i>purpose entity</i>	<i>Consolidation Directive</i> (Definitions) <u>and for the purposes of BIPRU</u>) a corporation, trust or other entity, other than a <i>credit institution</i> , organised for carrying on a <i>securitisation</i> or <i>securitisations</i> (within the meaning of paragraph (2) of the definition of <i>securitisation</i>), the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the <i>SSPE</i> from those of the <i>originator</i> , and the holders of the beneficial interests in which have the right to pledge or exchange those interests without restriction.
<i>securitised exposure</i>	<u>(for the purposes of BIPRU)</u> an <i>exposure</i> in the pool of <i>exposures</i> that has been securitised, either via a <i>traditional securitisation</i> or a <i>synthetic securitisation</i> . The cash-flows generated by the securitised exposures are used to make payments to the <i>securitisation positions</i> .
<i>simple capital issuer</i>	a <i>BIPRU firm</i> that meets the following conditions: ... (d) it only includes <i>capital instruments</i> in its <i>tier one capital resources</i> consisting of ordinary <i>shares</i> , <i>PBS</i> , perpetual non-cumulative preference <i>shares</i> or partnership or <i>limited liability partnership</i> capital accounts; ... (a) the <i>Banking Consolidation Directive</i> <u>(to the extent it applies to <i>CAD investment firms</i>)</u> <u>(aa)</u> <u>the <i>CRD</i></u> ; ...
<i>Single Market Directives</i>	
<i>specific risk position risk adjustment</i>	<u>(in BIPRU)</u> a <i>position risk adjustment</i> for specific risk including any such <i>position risk adjustment</i> as applied under <i>BIPRU</i> 7.6.8R (Table: Appropriate position risk adjustment).
<i>sponsor*</i>	(1) ... (2) (in <i>BIPRU</i> and <i>FUND</i>), in accordance with Article 4(42) of the <i>Banking Consolidation Directive</i> (Definitions) and in relation to a <i>securitisation</i> within the meaning of paragraph (2) of the definition of <i>securitisation</i>) an <i>undertaking</i> other than an <i>originator</i> that establishes and manages an <i>asset backed commercial paper programme</i> or other <i>securitisation</i> scheme that purchases <i>exposures</i> from third party entities.

	(3) <u>(in IFPRU and FUND) has the meaning in article 4(1)(14) of the EU CRR.</u>
<i>standard market risk PRR rules</i>	<u>(in BIPRU)</u> the rules relating to the calculation of the <i>market risk capital requirement</i> excluding the <i>VaR model approach</i> and any rules modified so as to provide for the <i>CAD 1 model approach</i> .
<i>standardised approach</i>	<u>(for the purposes of BIPRU)</u> one of the following: ...
<i>stressed VaR</i>	<u>(in BIPRU)</u> The the stressed VaR measure in respect of <i>positions</i> coming within the scope of the <i>VaR model permission</i> , calculated in accordance with the <i>VaR model</i> , <i>BIPRU 7.10 (Use of a Value at Risk Model)</i> and any methodology set out in the <i>VaR model permission</i> based on a stressed historical period.
<i>synthetic securitisation</i>	(in accordance with Article 4(38) of the <i>Banking Consolidation Directive (Definitions)</i> <u>and for the purpose of BIPRU</u>) a <i>securitisation</i> (within the meaning of paragraph (2) of the definition of securitisation) where the <i>tranching</i> is achieved by the use of credit derivatives or guarantees, and the pool of <i>exposures</i> is not removed from the balance sheet of the <i>originator</i> .
<i>third country BIPRU firm*</i>	(1) <u>(in BIPRU (except in BIPRU 12 (Liquidity standards)) and SYSC 19C) an overseas firm that:</u> ... (2) <u>(in BIPRU 12 (Liquidity standards)) an overseas firm that:</u> (a) <u>is a bank;</u> (b) <u>is not an EEA firm; and</u> (c) <u>has its head office outside the EEA.</u>
<i>trading book*</i>	... (2) (in BIPRU, and GENPRU, BSOCS and IPRU(INV) 11 <u>and in relation to a BIPRU firm</u>) has the meaning in <i>BIPRU 1.2 (Definition of the trading book)</i> which is in summary, all that <i>firm's positions</i> in <i>CRD financial instruments</i> and <i>commodities</i> held either with trading intent or in order to hedge other elements of the <i>trading book</i> , and which are either free of any restrictive covenants on their tradability or able to be

hedged.

...

(4) (in IFPRU and in relation to an IFPRU investment firm) has the meaning in article 4(1)(86) of the CRR.

traditional securitisation

(in accordance with Article 4(37) of the *Banking Consolidation Directive* (Definitions) and for the purpose of BIPRU) a *securitisation* (within the meaning of paragraph (2) of the definition of securitisation) involving the economic transfer of the *exposures* being *securitised* to a *securitisation special purpose entity* which issues securities; and so that:

...

tranche

(in accordance with Article 4(39) of the *Banking Consolidation Directive* (Definitions) and in relation to a *securitisation* within the meaning of paragraph (2) of the definition of securitisation and for the purposes of BIPRU) a contractually established segment of the credit risk associated with an *exposure* or number of *exposures*, where a position in the segment entails a risk of credit loss greater than or less than a position of the same amount in each other such segment, without taking account of credit protection provided by third parties directly to the holders of positions in the segment or in other segments.

UK lead regulated firm

...

For the purposes of this definition:

- (a) Consolidated supervision of a group of *persons* means supervision of the adequacy of financial and other resources of that group on a ~~consolidated basis~~ *consolidated basis*. ~~For example, this includes supervision under BIPRU 8 (Group risk consolidation).~~
- (d) It is not relevant whether or not any supervision by another *regulatory body* has been assessed as equivalent under the *CRD* and EU CRR or the *Financial Groups Directive*.
- (e) If the group is a ~~UK~~ *consolidation group* or *financial conglomerate* of which the *FCA* or the *PRA* is lead regulator that is headed by an *undertaking* that is not itself the *subsidiary undertaking* of another *undertaking* the *firm* is a 'UK lead regulated firm'.

...

<i>unfunded credit protection</i>	(in accordance with Article 4(32) of the <i>Banking Consolidation Directive</i> (Definitions) <u>and for the purposes of BIPRU</u>) a technique of <i>credit risk mitigation</i> where the reduction of the credit risk on the <i>exposure</i> of an undertaking derives from the <i>undertaking</i> of a third party to pay an amount in the event of the default of the borrower or on the occurrence of other specified events.
<i>value at risk</i>	(in relation to risk modelling or estimation for the <u>purposes of BIPRU</u>) the measure of risk described in <i>BIPRU</i> 7.10.146R (Requirement to use value at risk methodology).
<i>VaR measure</i>	(in <i>BIPRU</i>) an estimate by a <i>VaR model</i> of the worst expected loss on a portfolio resulting from market movements over a period of time with a given confidence level.
<i>VaR model permission</i>	an <i>Article 129 implementing measure</i> , a <i>requirement</i> or a <i>waiver</i> that requires a <i>BIPRU firm</i> or an institution a <u>CAD investment firm</u> to use the <i>VaR model approach</i> on a solo basis or, if the context requires, a consolidated basis.

Amend the following definitions and re-position them in the appropriate alphabetical position.

BCD <u>CRD</u> <i>credit institution</i>	a <i>credit institution</i> that has its registered office (or, if it has no registered office, its head office) in an <i>EEA State</i> , excluding an <i>institution</i> to which the BCD <u>CRD</u> does not apply under article 2 of the BCD <u>CRD</u> (see also <i>full BCD CRD credit institution</i>).
CAD <u>CRD</u> <i>bank</i>	a <i>bank</i> which uses the Capital Adequacy Directive <u>EU CRR</u> to measure the capital requirement on its trading book.

Delete the following definitions altogether. The deleted text is not shown.

CNCOM

concentration risk capital component

consolidated operational risk requirement

consolidation UK integrated group

consolidation wider integrated group

connected lending of a capital nature

group of connected clients

individual CNCOM

individual counterparty CNCOM

operational risk capital requirement

ORCR

trading book concentration risk excess

In the following table, the words in Column (2) of the definition in Column (1) are replaced by the word in Column (3), except where indicated in Column (4), unless the context otherwise requires.

Column (1) (Glossary provision to be amended)	Column (2) (current wording)	Column (3) (new wording)	Column (4) (Glossary provisions not amended)
<i>advanced IRB approach</i>	<i>appropriate regulator</i>	<i>FCA</i>	-
<i>advanced measurement approach</i>			
<i>advanced prudential calculation approach</i>			
<i>alternative standardised approach</i>			
<i>Article 129 implementing measure</i>			
<i>CAD 1 model approach</i>			
<i>CCR internal model method</i>			
<i>credit quality assessment scale</i>			
<i>foundation IRB approach</i>			
<i>IRB approach</i>			
<i>master netting agreement internal models approach</i>			

<i>standardised approach</i>			
<i>VaR model approach</i>			

Annex B

Amendments to the Principles for Business (PRIN)

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

3 Rules about application

3.1 Who?

3.1.1 R *PRIN* applies to every *firm*, except that:

- (1) for an *incoming EEA firm* or an *incoming Treaty firm*, the *Principles* apply only in so far as responsibility for the matter in question is not reserved by an *EU* instrument to the *firm's Home State regulator*;
- (2) for an *incoming EEA firm* which is a ~~*BCD*~~ *CRD* credit institution without a *top-up permission*, *Principle 4* applies only in relation to the liquidity of a *branch* established in the *United Kingdom*

... ..

...

3.1.3 G *PRIN* 3.1.1R(2) reflects article 41 156 of the ~~*Banking Consolidation Directive*~~ *CRD* which provides that the *Host State regulator* retains responsibility in cooperation with the *Home State regulator* for the supervision of the liquidity of a *branch* of a ~~*BCD*~~ *CRD* credit institution.

...

Annex C

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

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

5 Employees, agents and other relevant persons

5.1 Skills, knowledge and expertise

...

Segregation of functions

...

- 5.1.7 R The *senior personnel* of a *common platform firm* must define arrangements concerning the segregation of duties within the *firm* and the prevention of conflicts of interest.

[**Note:** article 88 of the CRD and annex V paragraph 1 of the *Banking Consolidation Directive*].

...

6 Compliance, internal audit and financial crime

6.1 Compliance

...

- 6.1.4-A G In setting the method of determining the *remuneration* of *relevant persons* involved in the compliance function:

(1) *firms* that SYSC 19A applies to will also need to comply with the *Remuneration Code*; and

(2) *BIPRU firms* will also need to comply with the *BIPRU Remuneration Code*.

...

10 Conflicts of interest

10.1 Application

...

Corporate finance

...

- 10.1.15 G Measures that a *firm* might wish to consider in drawing up its *conflicts of interest policy* in relation to the management of an offering of *securities* include:

...

[**Note:** The provisions in SYSC 10.1 also implement articles 74(1) and 88 of the CRD and as applied under the discretion in the third paragraph of article 95(2) of the EU CRR, BCD Article 22 and BCD Annex V paragraph 1]

...

20 Reverse Stress Testing

20.1 Application and purpose

...

Purpose

...

- 20.1.4A G The reverse stress testing requirements are an integral component of a *firm's* business planning and risk management under SYSC. For ~~BIPRU~~ *firms* as referred to in SYSC 20.1.1R(1)(a) and IFPRU investment firms as referred to in SYSC 20.1.1AR(1)(a), this chapter amplifies SYSC 7.1.1G to SYSC 7.1.8G on risk control.

...

21 Risk control: additional guidance

21.1 Risk control: guidance on governance arrangements

...

- 21.1.2 G (1) A Chief Risk Officer should:
- (a) ...
- ...
- (j) provide risk-focused advice and information into the setting and individual application of the *firm's remuneration policy*. ~~(Where the Remuneration Code applies, see in particular SYSC 19A.3.15E. Where the BIPRU Remuneration Code applies, see in particular SYSC 19C.3.15E.)~~

Annex D

Amendments to the General Provisions (GEN)

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

2 Interpreting the Handbook

...

2.2 Interpreting the Handbook

...

2.2.25 G Examples of rules being interpreted as cut back by *GEN* 2.2.23R include the following:

- (1) ~~*BIPRU* 4 imposes capital requirements that, for a *PRA-authorised person* such as a *bank*, are the exclusive responsibility of the *PRA*; accordingly this section is not applied by the *FCA* to a *PRA-authorised person*.~~[deleted]
- (2) *SYSC* 6.1.1R requires a *firm* to maintain adequate policies and procedures to ensure compliance with its obligations under the *regulatory system*; *SYSC* 6.1.1R should be interpreted:

...

 - (b) as applied by the *PRA* in respect of a *PRA-authorised person's* compliance with those regulatory obligations that are the responsibility of the *PRA* (for example, in respect of a *bank* maintaining policies and procedures to ensure compliance with financial resources requirements in *BIPRU* [the *PRA Handbook*]¹ and the *EU CRR*).

...

¹ Reference to the *PRA Handbook* may be replaced with a more specific term or *PRA* sourcebook depending on the *PRA's* views.

Annex E

Amendments to the Fees manual (FEES)

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

6 Financial Services Compensation Scheme Funding

...

6.6 Incoming EEA firms

- 6.6.1 R If an *incoming EEA firm*, which is a ~~BCD~~ CRD credit institution, an *IMD insurance 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 F

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

TP 15 Commodities firm transitionals: Exemption from capital requirements

	Application	
15.1	R	Subject to <i>BIPRU</i> TP 15.2R, <i>BIPRU</i> TP 15 applies to a <i>BIPRU investment firm</i> :
...		
	Purpose	
15.3	G	<i>BIPRU</i> TP 15 implements Article 48(1) of the <i>Capital Adequacy Directive</i> as applied pursuant to the discretion in the third paragraph of article 95(2) of the <i>EU CRR</i> .
	Duration of exemption	
15.4	R	<i>BIPRU</i> TP 15 applies until 31 December 2014 the entry into force of any <u>amendments to <i>BIPRU</i> TP 15 under any legislative amendments to <i>CRD</i> and <i>EU CRR</i> following from the Commission's report under article 508(3) of the <i>EU CRR</i> on an appropriate prudential regime for the prudential supervision of investment firms and firms referred to in article 4(1)(2)(b) and (c) of the <i>EU CRR</i>.</u>
		[Note: <i>CAD</i> Article 48(1)]
15.5	G	If there are any modifications pursuant to paragraphs 2 and 3 of Article 48 of the <i>Capital Adequacy Directive</i> (European Commission review of prudential regime for exempt commodities firms), the appropriate regulator will revoke TP 15 if the date of coming into force of the implementing measures in relation to those changes is before the date in <i>BIPRU</i> TP 15.4. [deleted]
	Exemption	
15.6	R	The provisions of <i>GENPRU</i> and <i>BIPRU</i> on capital requirements and <i>GENPRU</i> 1.2 (Adequacy of financial resources) do not apply to a firm to which <i>BIPRU</i> TP 15 applies. However <i>BIPRU</i> 10 (Large exposures requirements) continues to apply, including the <i>CNCOM</i>.

15.7	G	If a <i>firm</i> meets the conditions in <i>BIPRU</i> TP 16 (Commodities firm transitionals: large exposures) it will be exempt from <i>BIPRU</i> 10 as well. [deleted]
...		
15.10	G	Table: Parts of GENPRU and BIPRU that apply to exempt BIPRU commodities firms
		This table belongs to <i>BIPRU</i> TP 15.9G

<i>GENPRU</i> and <i>BIPRU</i> provisions	A Y denotes that the provision generally does apply A N denotes that generally it does not apply	Remarks
...		
<i>GENPRU</i> 2.2 (Capital resources)	Y <u>N</u>	This applies for the purposes of <i>BIPRU</i> 10. If <i>BIPRU</i> 10 does not apply this does not apply either.
...		
<i>BIPRU</i> 2.1 (Solo consolidation)	Y <u>N</u>	Applies for the purposes of <i>BIPRU</i> 10.
...		
<i>BIPRU</i> 10 (Large exposures)	Y	If <i>firm</i> also qualifies for exemption under <i>BIPRU</i> TP 16 (Commodities firms transitionals: large exposures) <i>BIPRU</i> 10 does not apply except as described in <i>BIPRU</i> TP 16.7G
...		

...		
	Consolidation	

15.13	R	<i>BIPRU</i> TP 15 does not apply for the purposes of <i>BIPRU</i> 8 with respect to a firm's <i>UK consolidation group</i> or, as the case may be, <i>non-EEA sub-group</i> unless the following conditions are satisfied:		
		...		
		(2)	each <u>CAD</u> investment firm in the group meets the conditions in <i>BIPRU</i> TP 15.1R(1);	
		(3)	each <u>CAD</u> investment firm whose head office is in an <i>EEA State</i> satisfies the conditions in <i>BIPRU</i> TP 15.1R(2); and	
		(4)	any <u>CAD</u> investment firm whose head office is outside the <i>EEA</i> would have fallen into <i>BIPRU</i> TP 15.1R(2) if:	
			...	
...				

Annex G

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

4 Capital resources

4.2 Capital resources requirements

...

Capital resources requirement: firms carrying on regulated activities including designated investment business

- 4.2.5 R The capital resources requirement for a *firm* (other than a *credit union*) carrying on *regulated activities*, including *designated investment business*, is the higher of:

...

- (2) the financial resource requirement which is applied by the Interim Prudential sourcebook for investment businesses, the Prudential sourcebook for Investment Firms and the *EU CRR* or the Prudential sourcebook for Banks, Building Societies and Investment Firms.

...

4.4 Calculation of capital resources

The calculation of a firm's capital resources

- 4.4.1 R (1) ...
- (2) If the *firm* is subject to the Interim Prudential sourcebook for investment businesses, the Prudential sourcebook for Investment Firms and the *EU CRR*, the Prudential sourcebook for Banks, Building Societies and Investment Firms or the Credit Unions sourcebook, the capital resources are the higher of:
- (a) the amount calculated under (1); and
- (b) the financial resources calculated under those sourcebooks and regulations.

Annex H

Amendments to the Prudential sourcebook for UCITS Firms (UPRU)

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

1 UCITS firms

1.1 Introduction

...

- 1.1.3 G This sourcebook only applies to *UCITS firms*. *UCITS investment firms* are ~~*BIPRU limited licence firms*~~ *IFPRU limited licence firms* and the prudential requirements for those *firms* are set out in the ~~Prudential sourcebook for banks, building societies and investment firms and the General prudential sourcebook~~ Prudential sourcebook for Investment Firms and the EU CRR. The difference between the two types of *UCITS management companies* is that a *UCITS investment firm* in addition to carrying on the activities permitted by Article 6(2) of the *UCITS Directive* (scheme management), may also carry on the activities permitted by Article 6(3) such as portfolio management.

Annex I

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

7 Chapter 7: Definitions

PART I DEFINITIONS

7.1 In this Part of the *IPRU(FSOC)*, unless the contrary intention appears, the following definitions apply.

...
<i>approved credit institution</i> means an institution recognised or permitted under the law of an <i>EEA State</i> to carry on any of the activities set out in Annex 1 to the <i>Banking Consolidation Directive</i> <u>CRD</u> ;
...

Annex J

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

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

1 Chapter 1: Application and General Provisions

1.1 PURPOSE

1.1.1 Before 1 January 2007, the Interim Prudential Sourcebook for Investment Businesses ~~(IPRU(INV))~~ was the part of the *Handbook* that dealt with capital requirements for *investment firms* subject to the position risk requirements of the previous version of the *Capital Adequacy Directive*. Now, however, *investment firms* which are subject to the risk-based capital requirements of the *Capital Adequacy Directive* are subject to the General Prudential sourcebook ~~(GENPRU)~~ and the Prudential sourcebook for Banks, Building Societies and Investment Firms ~~(BIPRU)~~. [deleted]

...

1.1.3A This sourcebook does not apply to *BIPRU investment firms* firms except as follows:

- (1) it does apply to certain exempt *BIPRU commodities firms*; ~~and~~
- (2) ~~chapter TP of BIPRU applies parts of IPRU(INV) to certain BIPRU investment firms on a transitional basis.~~

1.1.3B This sourcebook does not apply to IFPRU investment firms except it does apply to exempt IFPRU commodities firms.

...

1.2 APPLICATION

...

- 1.2.2 R (1) ...
- (2) IPRU(INV) does not apply to:
- ...
- (b) a *media firm*; or

(c) a ~~BIPRU investment~~ firm (unless it is an *exempt BIPRU commodities firm*); or

(d) an IFPRU investment firm (unless it is an exempt IFPRU commodities firm).

1.2.3 G For the avoidance of doubt, *IPRU(INV)* does not apply to any of the following:

...

(b) ...

(ba) a designated investment firm; or

(c) ...

...

1.2.5 R Table

This table belongs to *IPRU(INV)* 1.2.4R

...	
<i>Securities and futures firm</i> (which is an <i>exempt BIPRU commodities firm</i> or an <i>exempt IFPRU commodities firm</i>)	Chapters 1 and 3
...	

...

3 Chapter 3: Financial resources for Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms or Exempt IFPRU Commodities Firms

...

3-1 R This chapter applies to a *securities and futures firm* which:

(a) ...

(b) is an *exempt CAD firm* that carries on any *regulated activity* other than *MiFID business*; ~~or~~

(c) is an ~~exempt~~ exempt BIPRU commodities firm; or

(d) is an exempt IFPRU commodities firm.

G An *exempt BIPRU commodities firm* is subject to the non-capital

requirements of *GENPRU* and *BIPRU* as indicated in *BIPRU* TP 15. An exempt IFPRU commodities firm is subject to the non-capital requirements of IFPRU and the EU CRR.

...

- 3-1B R The provisions on concentrated risk in this chapter: ~~do not apply~~
- (a) apply to an exempt BIPRU commodities firm if it satisfies the conditions in BIPRU TP 16 (Commodities firm transitionals: large exposures) in the version as at 31 December 2013; and
- (b) do not apply to an exempt IFPRU commodities firm which applies the large exposure requirements in ~~BIPRU 10~~ Part Four (articles 387 – 403) of the EU CRR.
- G ~~BIPRU 10 applies to an exempt BIPRU commodities firm unless it qualifies for exemption under BIPRU TP 16. Part Four (articles 387 – 403) of the EU CRR applies to an exempt IFPRU commodities firm unless it qualifies for exemption under article 493(1) of the EU CRR.~~
- 3-1C G The table in *IPRU(INV)* 3-1DG sets out the parts of the *Handbook* and the EU CRR containing provisions on *large exposure* or concentrated risk which apply to a *securities and futures firm*.
- 3-1D G Table

Applicability of the provisions to securities and futures firms

This table belongs to *IPRU(INV)* 3-1CG

(1)	(2)	(3)
Type of securities and futures firm	Whether conditions in BIPRU TP 16 article 493(1) of the <i>EU CRR</i> are satisfied	Part of Handbook <u>and EU CRR</u> applicable for large exposure or concentrated risk requirements
<i>Energy market participant</i> (which is an exempt BIPRU commodities firm <u>exempt IFPRU commodities firm</u>) with a waiver from <i>IPRU(INV)</i> 3	...	...
	No	BIPRU 10 Part Four (articles 387 – 403) of the <i>EU CRR</i> applies
<i>Energy market participant</i> (which is an exempt BIPRU commodities firm <u>exempt IFPRU commodities firm</u>) to	...	...
	No	BIPRU 10 Part Four (articles 387 – 403) of the

which <i>IPRU(INV)</i> 3 applies		<u><i>EU CRR</i></u> applies
<i>Oil market participant</i> (which is an <i>exempt BIPRU commodities firm</i> <u><i>exempt IFPRU commodities firm</i></u>) if it is a member of a <i>recognised investment exchange</i> or a <i>designated investment exchange</i> which is, under the rules of that exchange, entitled to trade with other members to which <i>IPRU(INV)</i> 3 applies	...	...
	No	<i>BIPRU 10</i> <u>Part Four (articles 387 – 403) of the <i>EU CRR</i></u> applies
<i>Other</i> <u><i>Other oil market participant</i></u> (which is an <i>exempt BIPRU commodities firm</i> <u><i>exempt IFPRU commodities firm</i></u>) to which <i>IPRU(INV)</i> 3 does not apply	...	...
	No	<i>BIPRU 10</i> <u>Part Four (articles 387 – 403) of the <i>EU CRR</i></u> applies
<i>Exempt BIPRU commodities firm</i> <u><i>Exempt IFPRU commodities firm</i></u> which is not an <i>energy market participant</i> or <i>oil market participant</i>	...	...
	No	<i>BIPRU 10</i> <u>Part Four (articles 387 – 403) of the <i>EU CRR</i></u> applies
...		

...

3-60 FIRMS TO WHICH RULES 3-61 TO 3-182 APPLY

...

Exempt IFPRU commodities firm

3-60(10) G An *exempt IFPRU commodities firm* should determine whether it is a *broad scope firm* or one of the other categories in this rule.

...

3-166 GENERAL RULE

...

3-166(3) R (a) Positions which are purely ~~stock financing~~ *stock financing* may be omitted from the calculation of *PRR* on commodities positions under rule 3-166 and a *firm* may net notional long and short government

securities arising from *swaps*, *FRAs*, *futures* and *options* on interest rates and debt *securities*, cash borrowings, *qualifying deposits*, the cash legs of “repurchase or similar agreements”, forward foreign exchange and foreign currency futures against each other, provided:

...

- G ~~Stock financing is defined under the *Capital Adequacy Directive*. Where physical stock has been sold forward, the cost of funding must be locked in until the date of the forward sale. [deleted]~~

...

4 Chapter 4: Lloyd’s firms

...

4.2 Purpose

...

- 4.2.4 G A *members’* adviser is not regulated by the *Society* and accordingly this chapter specifies the financial resource and accounting requirements to be met. *Firms* which fall within the scope of this chapter will be *firms* with *permission* only to advise persons on *syndicate* participation at Lloyd’s. The nature of that advisory business is akin to corporate finance advice and so the applicable requirements are those in *IPRU(INV)* 3 relevant to *firms* giving corporate finance advice. *Firms* with other permissions will fall within the scope of other chapters of *IPRU(INV)*, *GENPRU*, *BIPRU*, *IFPRU* (and the *EU CRR*) or *INSPRU*.

...

5 Chapter 5: Financial Resources

...

Appendix 1: Interpretation

...

~~*recognised third country investment firm*~~ means an ~~*investment firm*~~ which is authorised in a country other than a ~~*member state*~~ and which is subject to and complies with prudential rules equivalent to the requirements of the ~~*Capital Adequacy Directive*~~.

~~**Note:** A *recognised third country investment firm* is not necessarily a *firm* for the purposes of the *rules*.~~

~~**Note:** A list of the non-EEA regulators which are approved by the *FCA* or *PRA* for the purposes of recognising *recognised third country investment firms* under the *Capital Adequacy Directive* is available on request from the *FCA*.~~

...

9 Chapter 9: Financial resources requirements for an exempt CAD firm

...

9.2 GENERAL REQUIREMENTS

...

Initial capital and professional indemnity insurance requirements – exempt CAD firms that are not IMD insurance intermediaries

- 9.2.4 R (1) *An exempt CAD firm which is not an IMD insurance intermediary must have:*
- (a) *initial capital* of €50,000; or
 - (b) professional indemnity insurance covering the whole territory of the *EEA* or some other comparable guarantee against liability arising from professional negligence, representing at least €1,000,000 applying to each claim and in aggregate €1,500,000 per year for all claims; or
 - (c) a combination of *initial capital* and professional indemnity insurance in a form resulting in a level of coverage equivalent to (a) or (b).

[Note: Article 67(3) of *MiFID* and ~~Article 7 of CAD~~ article 31(1) of CRD]

- ...
- 9.2.5 R (1) ~~A~~ An *exempt CAD firm* that is also an *IMD insurance intermediary* must comply with the professional indemnity insurance requirements at least equal to those set out in 9.2.4R(1)(b) (except that the minimum *limits of indemnity* are at least €1,120,200 for a single claim and €1,680,300 in aggregate) and in addition has to have:
- (a) *initial capital* of €25,000; or
 - (b) professional indemnity insurance covering the whole territory of the *EEA* or some other comparable guarantee against liability arising from professional negligence, representing at least €500,000 applying to each claim and in aggregate €750,000 per year for all claims; or
 - (c) a combination of *initial capital* and professional indemnity insurance in a form resulting in a level of coverage equivalent to (a) or (b).

[Note: Article 67(3) of *MiFID* and ~~Article 8 of CAD~~ article 31(2) of CRD]

...

Initial capital and ongoing capital requirements for local firm

9.2.8 R A *local firm* must:

- (a) have *initial capital* of €50,000; and

[Note: Article 67(2) of *MiFID* and ~~Article 6 of CAD~~ article 30 of CRD]

...

...

13 Chapter 13: Financial Resource Requirements for Personal Investment Firms

APPLICATION, GENERAL REQUIREMENTS AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

...

13.1.11 R If the *firm* is an *exempt CAD firm* that maintains professional indemnity insurance under 13.1A.3(1)(b), the appropriate minimum *limits of indemnity* per year are no lower than:

- (1) €1,000,000 for a single claim against the *firm*; and
(2) €1,500,000 in the aggregate;

[Note: Article 67(3) of *MiFID* and ~~Article 7 of CAD~~ article 31(1) of CRD (see also rule 13.1A.3)]

13.1.12 R If the *firm* is both an *IMD insurance intermediary* and an *exempt CAD firm* that maintains professional indemnity insurance under 13.1A.4(1)(b), the appropriate additional *limits of indemnity* to 13.1.10R per year are no lower than:

- (1) €500,000 for a single claim against the *firm*; and
(2) €750,000 in the aggregate.

[Note: Article 67(3) of *MiFID* and ~~Article 8 of CAD~~ article 31(2) of CRD (see also rule 13.1A.4)]

...

13.1A CAPITAL RESOURCES AND PROFESSIONAL INDEMNITY

INSURANCE REQUIREMENT FOR AN EXEMPT CAD FIRM

...

13.1A.3 R (1) A *firm* which is not an *IMD insurance intermediary* must have:

- (a) *initial capital* of €50,000; or
- (b) professional indemnity insurance at least equal to the requirements of 13.1.11R and 13.1.15R to 13.1.27R; or
- (c) a combination of *initial capital* and professional indemnity insurance in a form resulting in a level of coverage equivalent to (a) or (b).

[Note: Article 67(3) of *MiFID* and ~~Article 7 of CAD~~ article 31(1) of CRD (see also rule 13.1.11R)]

- (2) If a *firm* chooses to comply with either (b) or (c) above, it must nevertheless have *initial capital* of at least £10,000.

13.1A.4 R (1) A *firm* that is also an *IMD insurance intermediary* must have professional indemnity insurance at least equal to the limits set out in 13.1.10R and in addition has to have:

- (a) *initial capital* of €25,000; or
- (b) professional indemnity insurance at least equal to the requirements of 13.1.12R and 13.1.15R to 13.1.27R; or
- (c) a combination of *initial capital* and professional indemnity insurance in a form resulting in a level of coverage equivalent to (a) or (b).

[Note: Article 67(3) of *MiFID* and ~~Article 8 of CAD~~ article 31(2) of the CRD (see also rule 13.1.12R)]

- (2) If a *firm* chooses to comply with either (b) or (c) above, it must nevertheless have *initial capital* of at least £10,000.

...

14 Chapter 14: Consolidated Supervision for Investment Businesses

14.1 Application

14.1.1 R Subject to rule 14.1.2, *consolidated* supervision and this chapter apply to a *firm* which is a member of a group if:

- (1) ...
- (2) It is ~~not~~ neither a *BIPRU firm* nor an IFPRU investment firm.

...

Cases where consolidated supervision under this chapter will not apply

14.1.2 R A *firm* is not subject to *consolidated supervision* under the rules in this Chapter where any of the following conditions are fulfilled:

- (1) ...
- (2) the *firm* is a member of a *UK consolidation group* already included in the supervision on a consolidated basis of the group of which it is a member by the *FCA* ~~or *PRA*~~ under *BIPRU 8*; or
- (3) the *firm* is a member of a group already included in the supervision on a consolidated basis of the group of which it is a member by the appropriate regulator under Part One, Title II, Chapter 2 of the *EU CRR*.

...

Exemption from consolidated supervision

14.1.4 R A *firm* need not meet the requirements in rules 14.3.1 and 14.3.2 if:

- (1) there is no *credit institution* in the group;
- (2) no *firm* in the group *deals in investments as principal*, except where it is dealing solely as a result of its activity of operating a *collective investment scheme*, or where the *firm's* positions fulfil the *CAD Article 35* exempting criteria;

...

...

Appendix 14(1): Interpretation

Delete the following definitions. The deleted text is not shown.

CAD investment firm

Listed activity

Annex K

Amendments to the Client Assets sourcebook (CASS)

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

6 Custody rules

...

6.5 Records, accounts and reconciliations

...

Internal reconciliation of safe custody assets held for clients

- 6.5.4 G (1) Carrying out internal reconciliations of the *safe custody assets* held for each *client* with the *safe custody assets* held by the *firm* and third parties is an important step in the discharge of the *firm's* obligations under CASS 6.5.2R (Records and accounts) and, where relevant, SYSC 4.1.1R and SYSC 4.1.1CR (General requirements) and SYSC 6.1.1R (Compliance).
- (1A) For a *firm acting as trustee or depositary of an AIF* that is an *authorised AIF*, carrying out internal reconciliations of the *safe custody assets* held for each *client* with the *safe custody assets* held by the *firm* and third parties is an important step in the discharge of the *firm's* obligations under article 89(1)(b) (Safekeeping duties with regard to assets held in custody) of the *AIFMD level 2 regulation* and, where relevant, SYSC 4.1.1R and SYSC 4.1.1CR (General requirements) and SYSC 6.1.1R (Compliance).

...

...

7 Client money rules

7.1 Application and Purpose

...

Credit institutions and approved banks

- 7.1.8 R The *client money rules* do not apply to a ~~BCD~~ CRD *credit institution* in relation to deposits within the meaning of the ~~BCD~~ CRD held by that *institution*.

...

...

- 7.1.11A R (1) This *rule* applies to a *firm* which is an *approved bank* but not a ~~BCD~~ CRD credit institution.

...

...

7.4 Segregation of client money

Depositing client money

- 7.4.1 R A *firm*, on receiving any *client money*, must promptly place this *money* into one or more accounts opened with any of the following:

- (1) a central bank;
- (2) a ~~BCD~~ CRD credit institution;

...

- 7.4.2 G An account with a central bank, a ~~BCD~~ CRD credit institution or a bank authorised in a third country in which *client money* is placed is a *client bank account*.

...

A firm's selection of a credit institution, bank or money market fund

...

- 7.4.9B R For the purpose of CASS 7.4.9AR an entity is a relevant group entity if it is:
- (1) a ~~BCD~~ CRD credit institution, a bank authorised in a third country, a *qualifying money market fund*, or the entity operating or managing a *qualifying money market fund*; and

...

...

Payment of client money into a client bank account

...

- 7.4.18 G Under the alternative approach, a *firm* that receives *client money* should:
- (1) (a) ...

- (b) perform a reconciliation of records and accounts required under CASS 7.6.2R (Records and accounts), and where relevant SYSC 4.1.1R and SYSC 4.1.1CR (General requirements) and SYSC 6.1.1R (Compliance), adjust the balance held in its *client bank accounts* and then segregate the *money* in the *client bank account* until the calculation is re-performed on the next *business day*; or

...

7.6 Records, accounts and reconciliations

...

Client entitlements

- 7.6.3 G Pursuant to CASS 7.6.2R (Records and accounts), and where relevant SYSC 4.1.1R and SYSC 4.1.1CR (General requirements) and SYSC 6.1.1R (Compliance), a *firm* should take reasonable steps to ensure that it is notified promptly of any receipt of *client money* in the form of a *client* entitlement.

...

Internal reconciliations of client money balances

- 7.6.6 G (1) Carrying out internal reconciliations of records and accounts of the entitlement of each *client* for whom the *firm* holds *client money* with the records and accounts of the *client money* the *firm* holds in *client bank accounts* and *client transaction accounts* should be one of the steps a *firm* takes to satisfy its obligations under CASS 7.6.2R, and where relevant SYSC 4.1.1R, SYSC 4.1.1CR and SYSC 6.1.1R.

...

...

7 Annex 1 Annex 1

- 7 Annex 1 G As explained in CASS 7.6.6 G, in complying with its obligations under CASS 7.6.2R (Records and accounts), and where relevant SYSC 4.1.1R and SYSC 4.1.1CR (General organisational requirements) and SYSC 6.1.1R (Compliance), a *firm* should carry out internal reconciliations of records and accounts of *client money* the *firm* holds in *client bank accounts* and *client transaction accounts*. This Annex sets out a method of reconciliation that the *FCA* believes is appropriate for these purposes (the *standard method of internal client money reconciliation*).

...

...

7A Client money distribution

...

7A.3 Secondary pooling events

...

Failure of an intermediate broker, settlement agent or OTC counterparty: Pooling

...

7A.3.17 R *Money held in each general client bank account and client transaction account of the firm must be treated as pooled and:*

...

- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), and where relevant SYSC 4.1.1R and SYSC 4.1.1CR (General organisational requirements) and SYSC 6.1.1R (Compliance).

Annex L

Amendments to the Market Conduct sourcebook (MAR)

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

5 Multilateral trading facilities (MTFs)

...

5.3 Trading process requirements

5.3.1 R A *firm* operating an *MTF* must have:

...

- (4) transparent rules, based on objective criteria, governing access to its facility, which rules must provide that its members or participants are *investment firms*, ~~BCD~~ CRD *credit institutions* or other persons who:

...

...

Annex M

Amendments to the Supervision manual (SUP)

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

3.1.10 G Other relevant sections of the Handbook (see SUP 3.1.9G)

<i>Friendly society</i>	<i>IPRU(FSOC)</i>
<i>Insurer (other than a friendly society)</i>	<i>IPRU(INS)</i>
<i>Investment management firm, personal investment firm, securities and futures firm (other than <u>IFPRU investment firms</u> and <u>BIPRU investment firms</u>)</i>	<i>IPRU(INV)</i>
<i>UCITS firm</i>	<i>(UPRU)</i>
<i>Society of Lloyd's and Lloyd's managing agents</i>	<i>IPRU(INS)</i>

...

3.10.5 R Client assets report

Whether in the auditor's opinion	
(1)	...
(2)	...
(3)	in the case of an <i>investment management firm, personal investment firm, a UCITS firm, securities and futures firm, firm acting as trustee or depository of an AIF, firm acting as trustee or depository of a UCITS or BIPRU <u>IFPRU</u> investment firm or <u>BIPRU</u> firm</i> , when a <i>subsidiary of the firm</i> is during the period a <i>nominee company</i> in whose name <i>custody assets</i> of the <i>firm</i> are registered during the period, that <i>nominee company</i> has maintained throughout the period systems for the custody, identification and control of <i>custody assets</i> which: ...
...	

...

9.3 Giving individual guidance to a firm on the FCA's own initiative

...

- 9.3.2 G The *FCA* may give individual *guidance* to a *firm* on its own initiative if it considers it appropriate to do so. For example:

...

- (5) in relation to the maintenance of adequate financial resources, the *FCA* may give a *firm* individual *guidance* on the amount or type of financial resources the *FCA* considers appropriate, for example *individual capital guidance* for *IFPRU investment firms* or *BIPRU firms*; further *guidance* on how and when the *FCA* may give *individual capital guidance* on financial resources is contained in the Prudential Standards part of the *Handbook*:
- (a) for a *BIPRU firm*: *GENPRU* 1.2 and *BIPRU* 2.2; ~~and~~
 - (b) [deleted]
 - (c) for a *securities and futures firm* (or other *firm* required to comply with *IPRU(INV)*3): *IPRU(INV)* 3-79R; and
 - (d) [deleted]
 - (e) for an *IFPRU investment firm*: *IFPRU* 2.2. and 2.3.

...

11.8 Changes in the circumstances of existing controllers

- 11.8.1 R A *firm* must notify the *appropriate regulator* immediately it becomes aware of any of the following matters in respect of one or more of its *controllers*:

...

- (4) if a *controller*, who is authorised in another *EEA State* as a *MiFID investment firm*, ~~*BCD*~~ *CRD credit institution* or *UCITS management company* or under the *Insurance Directives* or the *Insurance Mediation Directive*, ceases to be so authorised (registered in the case of an *IMD insurance intermediary*).

...

13 Exercise of passport rights by UK firms

...

- 13.2.1 G This chapter gives *guidance* to *UK firms*. In most cases *UK firms* will be *authorised persons* under the *Act*. However, under the ~~*Banking Consolidative Directive*~~ *CRD*, a subsidiary of a *firm* which is a *credit institution* which meets the criteria set out in that Directive also has an *EEA right*. Such an authorised subsidiary is known as a *financial institution*. References in this

chapter to a *UK firm* include a *financial institution*.

...

13.3.2 G A *UK firm* other than a *UK pure reinsurer* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the relevant conditions in paragraph 19 of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

(1) the *UK firm* has given the *appropriate UK regulator*, in accordance with the *appropriate UK regulator's rules* (see SUP 13.5.1R) or the directly applicable regulations made under the CRD (see SUP 13.5.1C), notice of its intention to establish a *branch* (known as a *notice of intention*) which:

(a) identifies the activities which it seeks to carry on through the *branch*; and

...

(b) includes such other information as may be specified by the *appropriate UK regulator* (see SUP 13.5.1R) or by the directly applicable regulations made under the CRD (see SUP 13.5.1C);

...

...

13.3.5 G (1) If the *UK firm's EEA right* derives from the ~~*Banking Consolidation Directive*~~ CRD or MiFID, the *appropriate UK regulator* will give the *Host State regulator* a *consent notice* within three months unless it has reason to doubt the adequacy of a *UK firm's* resources or its administrative structure. The *Host State regulator* then has a further two months to notify the *applicable provisions* (if any) and prepare for the supervision, as appropriate, of the *UK firm*, or in the case of a *MiFID investment firm*, to inform the *UK firm* that a *branch* can be established.

...

13.4.4 G (1) If the *UK firm's EEA right* derives from MiFID, the ~~*Banking Consolidation Directive*~~ CRD or the *UCITS Directive*, paragraph 20(3) of Part III of Schedule 3 to the *Act* requires the *appropriate UK regulator* to send a copy of the *notice of intention* to the *Host State Regulator* within one month of receipt. A *UK firm* passporting under the ~~*Banking Consolidation Directive*~~ CRD may start providing *cross border services* as soon as it satisfies the relevant conditions (see SUP 13.4.2G).

...

...

- 13.5.2 R A *UK firm* wishing to provide *cross border services* into a particular *EEA State* for the first time under an *EEA right* other than the *auction regulation* must submit a notice in the form set out in:

...

- (2) ~~*Sup*~~ SUP 13 Annex 4R if the *UK firm* is passporting under the ~~*Banking Consolidation Directive*~~ CRD; or

...

...

- 13.6.1 G Where a *UK firm* is exercising an *EEA right*, other than under the *Insurance Mediation Directive* (see SUP 13.6.9AG) or the *Reinsurance Directive* (see SUP 13.6.9BR) ~~or the CRD~~, and has established a *branch* in another *EEA State*, any changes to the details of the *branch* are governed by the *EEA Passport Rights Regulations*. ...

...

Firms passporting under the ~~*Banking Consolidation Directive*~~ CRD and the UCITS Directive:

- 13.6.4 G If a *UK firm* has exercised an *EEA right*, under the ~~*Banking Consolidation Directive*~~ CRD or the *UCITS Directive*, and established a *branch* in another *EEA State*, regulation 11(1) states that the *UK firm* must not make a change in the *requisite details* of the *branch* (see SUP Annex 1), unless it has satisfied the requirements of regulation 11(2), or, where the change arises from circumstances beyond the *UK firm's* control, regulation 11(3) (see SUP 13.6.10G).

...

Firms passporting under the ~~*Banking Consolidation Directive*~~ CRD and Insurance Mediation Directive

- 13.7.11 G A *UK firm* providing *cross border services* under the ~~*Banking Consolidative Directive*~~ CRD or *Insurance Mediation Directive* is not required to supply a change to the details of *cross border services* notice.

...

- 13.8.2 G *UK firms* passporting under the ~~*Banking Consolidative Directive*~~ CRD or the *Insurance Directives* may be required to submit the change to details notice in the language of the *Host State* as well as in English.

...

13 Annex **Passporting: Notification of intention to establish a branch in another EEA**

1R state

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fsa.gov.uk/Pages/doing/index.shtml>
<http://www.bankofengland.co.uk/pru/Pages/authorisations/passporting/notifyi ng.aspx>

The forms are also to be found through the following address:
Passporting: Notification of intention to establish a branch in another EEA state - SUP 13 Annex 1

...

In SUP 13 Annex 1 form, on page 1 substitute 'Capital Requirements Directive' for 'Banking Consolidation Directive'

Amend the following as shown.

13A Qualifying for authorisation under the Act

...

13A.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

...

(b) authorised in Gibraltar under the ~~*Banking Consolidation Directive*~~ *CRD*; or

...

...

13A.5 EEA firms providing cross border services into the United Kingdom

...

13A.5.3 G (1) ...

(2) For the purposes of paragraph 14(1)(b) of Part II of Schedule 3 to the *Act*, the information to be contained in the regulator's notice has been prescribed under regulation 3 of the *EEA Passport Rights Regulations*; and in the case of the *CRD*, the information has been prescribed in Annex [...] of Commission Regulation (EU) .../.... [insert full citation for Commission regulation adopted under Article 39 *CRD*.]

...

The notification procedure

- 13A.5.4 G (1) Unless the *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that received authorisation under article 18 of the *auction regulation*) is passporting under the *Insurance Medication Directive*, if the *appropriate UK regulator* receives a regulator's notice or, where no notice is required (~~in the case of an *EEA firm* passporting under the *Banking Consolidation Directive*~~), is informed of the *EEA firm's* intention to provide *cross border services* into the *United Kingdom*, the *appropriate UK regulator* will, under paragraphs 14(2) and 14(3) of Part II of Schedule 3 to the *Act*, notify the *EEA firm* of the *applicable provisions* (if any) within two *months* of the *day* on which the *appropriate UK regulator* received the regulator's notice or was informed of the *EEA firm's* intention.

(2) ...

...

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
<i>PRIN</i>	The <i>Principles</i> apply only in so far as responsibility for the matter in question is not reserved by an <i>EU</i> instrument to the <i>firm's Home State regulator</i> (<i>PRIN</i> 3.1.1R(1)). For an <i>incoming EEA Firm</i> which is a <i>BCD</i> <i>CRD</i> credit institution without a <i>top-up permission</i>, <i>Principle 4</i> applies only in relation to the liquidity of a branch established in the <i>United Kingdom</i> (<i>PRIN</i> 3.1.1R(2)).	...
...		

<i>BIPRU</i>	<i>EEA firms that are CAD investment firms</i> are subject to the prudential standards of their home state regulator (<i>BIPRU 1.1.7R and BIPRU 1.1.9 G</i>). However, <i>BIPRU 12</i> applies to an <i>EEA firm that is an IFPRU investment firm or BIPRU firm</i> as respects the activities of its <i>UK branch</i>, but in relation to <i>liquidity risk</i> only.	Does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> .
...		
<i>INSPRU</i>	...	
<i>IFPRU</i>	<i>EEA firms that are investment firms</i> (as defined in the <i>EU CRR</i>) are subject to the <i>EU CRR</i> as implemented by their home state regulator (<i>IFPRU 1.1.5R</i>).	Does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> .
...		
<i>COMP</i>	Applies, except in relation to the <i>passported activities</i> of a <i>MiFID investment firm</i>, a <i>BCD CRD</i> <i>credit institution</i> (other than an electronic money institution within the meaning of article 1(3)(1) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <i>Banking Consolidation Directive</i> <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> and an <i>incoming AIFM branch</i> 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>passported activities</i> (see <i>COMP 14</i> (Participation by EEA Firms)).	Does not apply in relation to the <i>passported activities</i> of an <i>MiFID investment firm</i> , a <i>BCD CRD</i> <i>credit institution</i> , an <i>IMD insurance intermediary</i> 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 <i>non-UK activities</i>

		(see <i>COMP 5</i>).
...		

13A Annex 2 Matters reserved to a Home State regulator

G

Introduction		
1.	...	
Requirements in the interest of the general good		
2.	The <i>Single Market Directives</i> , and the <i>Treaty</i> (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the <i>Home State regulator</i> . To summarise, the <i>FCA</i> or <i>PRA</i> , as <i>Host State regulator</i> , is entitled to impose requirements with respect to activities carried on within the <i>United Kingdom</i> if these can be justified in the interests of the “general good” and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the <i>Single Market Directives</i> :	
	(1)	the <i>Single Market Directives</i> expressly reserve responsibility for the prudential supervision of a <i>MiFID investment firm</i> , <i>BCD</i> <i>CRD credit institution</i> , <i>UCITS management company</i> , <i>AIFM</i> or passporting <i>insurance undertaking</i> to the <i>Firm’s Home State regulator</i> . The <i>Insurance Mediation Directive</i> reaches the same position without expressly referring to the concept of prudential supervision. Accordingly, the <i>FCA</i> as <i>Host State Regulator</i> , is entitled to regulate only the conduct of the firm’s business within the <i>United Kingdom</i> ;
	(2)	...
	(3)	for a <i>BCD</i> <i>CRD credit institution</i> , the <i>PRA</i> or <i>FCA</i> , as <i>Host State regulator</i> , is jointly responsible with the <i>Home State regulator</i> under article 41 156 of the <i>Banking Consolidative Directive</i> <i>CRD</i> for supervision of the liquidity of a <i>branch</i> in the <i>United Kingdom</i> ;
	(4)	for a <i>MiFID investment firm</i> including a <i>BCD</i> <i>CRD credit institution</i> which is a <i>MiFID investment firm</i>), the protection of <i>clients’ money</i> and <i>clients’ assets</i> is reserved to the <i>Home State regulator</i> under <i>MiFID</i> ; and
	(5)	responsibility for participation in compensation schemes for <i>BCD</i> <i>CRD credit intuitions</i> and <i>MiFID investment firm</i> is reserved in most cases to the <i>Home State regulator</i> under the <i>Deposit Guarantee Directive</i> and the <i>Investor Compensation Directive</i> .

...

14.1 Application and Purpose

...

14.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

(a) authorised in Gibraltar under the *Insurance Directives*; or

(b) authorised in Gibraltar under the ~~*Banking Consolidation Directive*~~ CRD; or

...

...

Purpose

14.1.4 G This chapter gives *guidance* on the *Act* and the *EEA Passport Rights Regulations* made under the *Act*, for an *incoming EEA firm* which has established a *branch* in, or is providing *cross border services* into, the *United Kingdom* and wishes to change the details of the *branch* or *cross border services*.

Note: An *EEA bank* must comply with the requirements set out in Commission Regulation .../.... and Commission Regulation .../....[insert full citation to Commission Regulation adopted under Articles 35, 36 and 39 CRD.]

...

14.2 Changes to branch details

...

Firms passporting under the ~~*Banking Consolidation Directive*~~ CRD and the UCITS Directive

14.2.2 G (1) Where an *incoming EEA firm* passporting under the ~~*Banking Consolidation Directive*~~ CRD or the *UCITS Directive* has established a *branch* in the *United Kingdom*, regulation 4 states that it must not make a change in the *requisite details* of the *branch* unless it has complied with the relevant requirements.

(2) ...

...

Changes arising from circumstances beyond the control of an incoming EEA firm passporting under the ~~*Banking Consolidation Directive*~~ CRD, UCITS Directive or Insurance Directive

14.2.8 ...

...

14.6 Cancelling qualification for authorisation

Incoming EEA firms

14.6.1 G Section 34 of the *Act* states that an *incoming EEA firm* no longer qualifies for *authorisation* under Schedule 3 to the *Act* if it ceases to be an *incoming EEA firm* as a result of:

- (1) having its *EEA authorisation* withdrawn by its *Home State regulator*; or
- (2) ceasing to have an *EEA right* in circumstances in which *EEA* authorisation is not required; this is relevant to a *financial institution* that is a subsidiary of a *credit institution* (of the kind mentioned in Article ~~19~~ 34 of the ~~*Banking Consolidation Directive*~~ *CRD*) which fulfils the conditions in articles ~~18~~ 33 and ~~19~~ 34 of that *Directive*.

...

15 Notifications to the FCA or PRA

...

15.1.3 G In some cases, the application of provisions set out in *SUP 15 Annex 1* depends on whether responsibility is reserved to a *Home State regulator*. ~~*SYSC App 1* contains guidance on this.~~

...

Breaches of rules and other requirements in or under the Act

15.3.11 R (1) A *firm* must notify the *appropriate regulator* of:

...

(d) ...

(da) a breach of a directly applicable provision in the *EU CRR* or any directly applicable regulations made under *CRD* or *EU CRR*

...

...

15 Annex 1R Application of SUP 15 to incoming EEA firms and incoming Treaty

firms

1.	...	
3.	For any other <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> , SUP 15 applies as set out in the following table.	
Applicable sections		Application
SUP 15.1, SUP 15.2	Application, Purpose	Apply in full
SUP 15.3.1R to SUP 15.3.6G	Matters having a serious regulatory impact	SUP 15.3.1R does not apply, otherwise apply in full <u>Apply in so far as responsibility for the matter in question is not reserved by an <i>EU</i> instrument to the <i>firm's Home State regulator</i></u>
...		
SUP 15.3.1R 15.3.11R to SUP 15.3.14G	Breaches of rules and other requirements in or under the Act	Apply in full
SUP 15.3.1R 15.3.15R to SUP 15.3.16G	Civil, criminal or disciplinary proceedings against a firm	Apply in so far as responsibility for the matter in question is not reserved by an <i>EU</i> instrument to the <i>firm's Home State Regulator</i>
SUP 15.3.1R 15.3.17R to SUP 15.3.20G	Fraud, errors and other irregularities	Apply in so far as responsibility for the matter in question is not reserved by an <i>EU</i> instrument to the <i>firm's Home State regulator</i>
...		

...

Appendix 3 Guidance on passporting issues

App 3.3.6 G (1) The European Commission has not produce an interpretative communication on *MiFID*. It is arguable, however, that the principles

in the communication on the Second Banking Directive can be applied to *investment services and activities*. This is because Chapter II of Title II of *MiFID* (containing provisions relating to operating conditions for investment firms) also applies to the *investment services and activities* of firms operating under the *Banking Consolidation Directive*, which is repealed and replaced by the *CRD*.

(2) ...

...

App 3.9 Mapping of MiFID, ~~Banking Consolidation Directive~~ CRD, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order

App 3.9.1 G The following Tables 1, 2, 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to firms considering undertaking *passport activities* under the ~~*Banking Consolidation Directive*~~ CRD, *MiFID*, the *UCITS Directive* and the *Insurance Mediation Directive*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.

App 3.9.2 G The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in the ~~*Banking Consolidation Directive*~~ CRD, *MiFID*, the *UCITS Directive* of the *Insurance Mediation Directive*. The tables do not provide definitive *guidance* as to whether a *firm* is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a *firm* is carrying on a *passport activity* will depend on the particular circumstances of the *firm*. If a *firm's* activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.

...

App 3.9.4 Activities set out in Annex 1 of the ~~BCD~~ CRD

	Table 1: BCD <u>CRD</u> activities		Part II RAO Activities	Part III RAO Investments
	1.	Acceptance of <u>Taking</u> deposits and other repayable funds from the public	Article 5	Article 74
	...			
	15.	<u>Issuing electric money</u>	<u>Article 9B</u>	<u>Article 74A</u>
	...			
	Note 1 : The services and activities provided for in Sections A and B of Annex I of <i>MiFID</i> when referring to the <i>financial instruments</i> provided for in Section C of			

	Annex I of that Directive are subject to mutual recognition according to the BCD <u>CRD</u> from 1 November 2007 <u>January 2013</u>. See the table at <i>SUP</i> App 3.9.5G below for mapping of <i>MiFID investment services and</i> activities. For further details relating to this residual category, please see the “Banking Consolidation Directive” <u>“CRD”</u> section of the passporting forms entitled “Notification of intention to establish a branch in another EEA State” and “Notification of intention to provide cross border services in another EEA State”.
--	--

Annex N

Amendments to the Compensation sourcebook (COMP)

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

1 Introduction and Overview

...

1.4 EEA Firms

- 1.4.1 G *Incoming EEA firms* which are conducting *regulated activities* in the *United Kingdom* under a ~~BCD~~ CRD, *IMD* or *MiFID* passport are not required to participate in the *compensation scheme* in relation to those *passported activities*. They may apply to obtain the cover of, or ‘top-up’ into, the *compensation scheme* if there is no cover provided by the *incoming EEA firm’s Home State* compensation scheme or if the level or scope of the cover is less than that provided by the *compensation scheme*. This is covered by *COMP 14*.

Annex O

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Spread: general

- 5.6.7 R (1) This *rule* does not apply in respect of *government and public securities*.
- ...
- (9) For the purpose of calculating the limit in (5), *OTC derivative* positions with the same counterparty may be netted provided that the netting procedures:
- (a) comply with the conditions set out in Part 7 Three, Title II, Chapter 6, Section 7 (Contractual netting (Contracts for novation and other netting agreements)) of ~~Annex III of the Banking Consolidation Directive~~ the EU CRR; and
- (b) are based on legally binding agreements.
- ...

...

Spread: general

- 5.7.5 R (1) This *rule* does not apply in respect of *government and public securities*.
- ...
- (10) For the purpose of calculating the limit in (6), *OTC derivative* positions with the same counterparty may be netted provided that the netting procedures:
- (a) comply with the conditions set out in Part 7 Three, Title II, Chapter 6, Section 7 (Contractual netting (Contracts for novation and other netting agreements)) of ~~Annex III of the Banking Consolidation Directive~~ the EU CRR; and
- (b) are based on legally binding agreements.

Annex P**Amendments to the Credit Unions New sourcebook (CREDS)**

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

- 2.2.2 G For *credit unions*, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R should be comprehensive and proportionate to the nature, scale, and complexity of the risks inherent in the business model and of the *credit union's* activities. That is the effect of SYSC 4.1.2R and SYSC 4.1.2AG.

Annex Q

Amendments to Investment Funds sourcebook (FUND)

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

3 Requirements for alternative investment fund managers

...

Eligible depositaries for UK AIFs

...

- 3.11.11 G For a *depositary* to be *established* in the *UK* it must have its registered office or *branch* in the *UK*. A *MiFID investment firm* that has its registered office in the *UK* must be a ~~*full-scope BIPRU*~~ *full-scope IFPRU investment firm* to meet the requirements of *FUND* 3.11.10R(2). A *MiFID investment firm* that has a *branch* in the *UK* is ~~not subject to the requirements of *GENPRU* and *BIPRU*~~, but must meet the equivalent capital requirements to under the *EU CRR* for a ~~*full-scope BIPRU investment*~~ *CRD full-scope firm* as implemented in its *Home State* to meet the requirements of *FUND* 3.11.10R(2).

...

- 3.11.15 G For certain types of closed-ended *AIFs* (such as private equity, venture capital and real estate funds) a wider range of entities than those specified in *FUND* 3.11.10R may perform the relevant *depositary* functions. The *FCA* requires such entities to obtain authorisation as a *depositary* to demonstrate that they can meet the commitments inherent in those functions, but imposes a lower level of capital requirements in recognition of the different degree of risk implied by the characteristics of the *AIF*. The capital requirements of such *firms* are contained in *IPRU(INV)* 5 (particularly *IPRU(INV)* 5.2.3R(3)(a)(ia) (Own funds requirement)) or in ~~*GENPRU* and *BIPRU*~~ *IFPRU* and the *EU CRR* if the *firm* undertakes *MiFID business*.

...

Additional requirements for depositaries of authorised AIFs

...

- 3.11.17 G Where the *firm* referred to in *FUND* 3.11.16R is a ~~*full-scope BIPRU*~~ *full-scope IFPRU investment firm* which is a *depositary* for an *authorised AIF* appointed in line with *FUND* 3.11.10R(2), it is subject to the capital requirements of ~~*GENPRU* and *BIPRU*~~ *IFPRU* and the *EU CRR*. However, these requirements are not in addition to *FUND* 3.11.16R and, therefore, a

firm subject to this *rule* may use the *own funds* required under ~~GENPRU~~ and ~~BIPRU~~ IFPRU and the EU CRR to meet the £4 million requirement.

...

Depository functions: cash monitoring

3.11.20 R A *depository* must ensure that the *AIF*'s cash flows are properly monitored and that:

...

(2) all cash of the *AIF* has been booked in cash accounts opened:

...

(b) at:

(i) ...

(ii) a ~~BCD~~ CRD credit institution; or

...

...

Annex R

Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

- 1.1.6 G ~~*BIPRU IFPRU investment firms*~~ which have *exposures to covered bonds* which meet the requirements set out in the provisions of ~~*BIPRU 3.4.106R to BIPRU 3.4.109R*~~, whether made by the *FCA* or the *PR4* article 129 of the *EU CRR*, may benefit from reduced *risk weights* as set out in ~~the version of *BIPRU 3.4.110R* applying to that *BIPRU firm*~~ article 129 of the *EU CRR*.

...

Covered bonds collateralised by real estate

- 2.3.13 G In assessing whether the *asset pool* is of sufficient quality, the *FCA* will have regard to the requirements ~~about legal certainty~~ in relation to the collateralisation of real estate referred to in ~~*BIPRU 3.4.64R*~~, the ~~requirements about monitoring of property values in *BIPRU 3.4.66R*~~ article 208 of the *EU CRR* and the valuation rules in ~~*BIPRU 3.4.77R to BIPRU 3.4.80R*~~ article 229(1) of the *EU CRR*.

...

2 Annex 1D Application for admission to the register of issuers and register of regulated covered bonds

...

Application Form

Questions	Responses
...	
For covered bonds collateralised by real estate, provide information on how you have had regard to the requirements of <i>BIPRU 3.4.64R</i> (legal certainty), <i>BIPRU 3.4.66R</i> (monitoring of property values) and <i>BIPRU 3.4.77R to BIPRU 3.4.80R</i> (valuation) referred to in <u>article 208 of the <i>EU CRR</i></u> and <u>article 229(1) of the <i>EU CRR</i></u> (valuation).	
...	

Annex S

Amendments to the Prospectus Rules sourcebook (PR)

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

PR App 1	Relevant definitions	
App 1.1.1		
<i>credit institution</i>	as defined in article <u>(4)</u> (1)(1) of the <i>Banking Consolidated Directive</i> <u><i>EU CRR</i></u> .	
...		

Annex T

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

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

5 Vote Holder and Issuer Notification Rules

...

5.3 Notification of voting rights arising from the holding of certain financial instruments

5.3.1 R ...

(3) For the purposes of (2) a client-serving intermediary is a *person* satisfying the following conditions:

- (a) (i) it is authorised by its *Home State* under *MiFID* or the ~~*BCD*~~ *CRD*, or, subject to (iii), as a *third country investment firm*, to deal as principal, in a client-serving capacity, in *financial instruments* falling within (1)(b), and to carry on any relevant business connected to such dealing; or

...

...

Annex U

Amendments to the Guide for Energy Market Participants (EMPS)

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

1.2 Parts of the Handbook applicable to energy market participants

...

1.2.3 G Applicability of parts of Handbook to energy market participants

This table belongs to *EMPS* 1.2.1G

	Part of Handbook	Applicability to energy market participants
...	...	...
Prudential standards	Interim Prudential sourcebooks (<i>IPRU</i>)	Chapter 1 (Application and General) of <i>IPRU (INV)</i> (Interim Prudential sourcebook: Investment Businesses) applies. Chapter 3 (Financial resources for Securities and Futures Firms which are not MiFID investment firms or which are exempt BIPRU commodities firms <u>or exempt IFPRU commodities firms</u>) of <i>IPRU(INV)</i> applies, with the following qualifications: (a) <i>energy market participants</i> whose main business consists of the generation, production, storage, distribution and/or transmission of <i>energy</i> may be granted a <i>waiver</i> of Chapter 3 in the <i>FCA</i> 's discretion: see <i>SUP</i> 21; and (b) the concentrated risk requirements do not apply to an <i>energy market participant</i> if it is an <i>exempt BIPRU commodities firm</i> <u><i>exempt IFPRU commodities firm</i></u> that applies the <i>large exposure</i> requirements in <i>BIPRU 10 (Concentration risk)</i> Part Four (articles 387 to 403) of the <i>EU CRR</i>: see <i>IPRU(INV)</i> 3-1BR, <i>IPRU(INV)</i> 3-1CG and <i>IPRU(INV)</i> 3-1DG; <u>and</u> (c) the concentrated risk requirements <u>apply to an <i>energy market participant</i> if it is an</u>

		<u>exempt BIPRU commodities firm that satisfies the conditions in BIPRU TP 16 in the version as at 31 December 2013.</u> ...
	...	
	<u>Prudential sourcebook for Investment Firms (IFPRU)</u>	<u>Except for provisions on combined buffer, own funds, own funds requirements and the ICAAP rules, this applies to an energy market participant if it is an exempt IFPRU commodities firm: see IFPRU 1.1.1G.</u>
...		
Regulatory processes	[deleted]	[deleted]
	Supervision manual (SUP)	This applies, with the following qualifications: (a) in SUP 3 (Auditors), only some provisions apply if IPRU(INV) 3 (Financial Resources for Securities and Futures firms which are not MiFID investment firms or which are exempt BIPRU commodities firms or exempt IFPRU commodities firms) does not apply to an <i>energy market participant</i> (because it has been granted a <i>waiver</i> of that chapter): see SUP 3.1.2R; ...
...		

Annex V

Amendments to the Guide for Oil Market Participants (OMPS)

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

1.2 Parts of the Handbook applicable to oil market participants

...

1.2.2 G Parts of the Handbook applicable to oil market participants

This table belongs to OMPS 1.2.1G

	Part of Handbook	Applicability to oil market participants
...	...	...
Prudential standards	Interim Prudential sourcebooks (IPRU)	Chapter 1 (Application and General) of <i>IPRU (INV)</i> (Interim Prudential sourcebook: Investment Businesses) applies. Chapter 3 (Financial resources for Securities and Futures Firms which are not MiFID investment firms or which are exempt BIPRU commodities firms <u>or exempt IFPRU commodities firms</u>) of <i>IPRU(INV)</i> applies, with the following qualifications: (a) to an <i>oil market participant</i> only if it is a member of a <i>recognised investment exchange</i> or a <i>designated investment exchange</i> which is, under the rules of that exchange, entitled to trade with other members: see <i>IPRU(INV)</i> 3-1AR; and (b) the concentrated risk requirements do not apply to an <i>oil market participant</i> if it is an exempt BIPRU commodities firm <u>exempt IFPRU commodities firm</u> that applies the <i>large exposure</i> requirements in BIPRU 10 (Concentration risk) <u>Part Four (articles 387 - 403) of the EU CRR</u>: see <i>IPRU(INV)</i> 3-1BR, <i>IPRU(INV)</i> 3-1CG and <i>IPRU(INV)</i> 3-1DG; <u>and</u>

		(c) <u>the concentrated risk requirements apply to an oil market participant if it is an exempt BIPRU commodities firm that satisfies the conditions in BIPRU TP 16 in the version as at 31 December 2013.</u> ...
	...	
	<u>Prudential sourcebook for Investment Firms (IFPRU)</u>	<u>Except for provisions on combined buffer, own funds, own funds requirements and the ICAAP rules, this applies to an oil market participant if it is an exempt IFPRU commodities firm: see IFPRU 1.1.1G.</u>
...		
Regulatory processes	[deleted]	[deleted]
	Supervision manual (<i>SUP</i>)	This applies, with the following qualifications: (a) in <i>SUP</i> 3 (Auditors), only some provisions apply if <i>IPRU(INV)</i> 3 (Financial Resources for Securities and Futures firms which are not MiFID investment firms or which are exempt BIPRU commodities firms <u>or exempt IFPRU commodities firms</u>) does not apply to an <i>oil market participant</i>: see <i>SUP</i> 3.1.2R; ...
...		

Annex W

Amendments to the Enforcement Guide (EG)

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

8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

8.19 Relevant Community obligations which the *FCA* may need to consider include those under the ~~Banking Consolidation Directive~~ Capital Requirements Directive, the Insurance Directives, the Investment Services Directive/Markets in Financial Instruments Directive; and the Insurance Mediation Directive. Each of these Directives imposes general obligations on the relevant *EEA competent authority* to cooperate and collaborate closely in discharging their functions under the Directives.

...

19 Non-FSMA powers

...

19.64 The *FCA's* powers to vary a firm's *Part 4A permission* or to impose requirements under sections 55J and 55L of the *Act* ~~has~~ have been extended under these Regulations. The *FCA* is able to use ~~this power~~ these powers where it is desirable to do so for the purpose of:

...

- acting in accordance with specified provisions of the ~~Banking Consolidation Directive~~ Capital Requirements Directive; and

...

...

19.72 The *FCA* is responsible for monitoring and enforcing compliance with the Regulations not only by authorised firms who are within the *Money Laundering Regulations'* scope, but also by what the Regulations describe as "Annex I financial institutions". These are businesses which are not otherwise authorised by us but which carry out certain of the activities listed in Annex I of the Banking Consolidation Directive, now Annex I of the CRD. The activities include lending (e.g. forfaiters and trade financiers), financial leasing, and safe custody services. Annex I financial institutions are required to register with the *FCA*.

Footnote 24 ~~Credit~~ Consumer credit financial institutions and money service businesses are also outside the definition of “Annex I financial institution”, which is set out in Regulation 22(1).

Annex X

Amendments to the Perimeter Guidance manual (PERG)

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

1.4 General guidance to be found in PERG

...

1.4.2 G Table: list of general guidance to be found in *PERG*

Chapter:	Applicable to:	About:
...		
<i>PERG</i> 13: Guidance on the scope of the Markets in Financial Instruments Directive and the recast Capital Adequacy Directive <u>CRD IV (Directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and the Regulation on prudential requirements for credit institutions and investments firms)</u>	Any <i>UK person</i> who needs to know whether <i>MiFID</i> or the recast <u>CAD</u> <u>CRD</u> and <u>EU CRR</u> as implemented in the UK apply to him.	the scope of <i>MiFID</i> and the recast <u>CAD</u> <u>CRD</u> and <u>EU CRR</u>.
...		

...

- 4.11.5 G For the purposes of *regulated mortgage activities*, sections 418(2), (4), (5), (5A) and (6) are relevant as follows:

- (1) Section 418(2) refers to a case where a *UK-based person* carries on a *regulated activity* in another *EEA State* in the exercise of rights under a *Single Market Directive*. The only *Single Market Directive* which is relevant to mortgages is the ~~*Banking Consolidation Directive*~~ *CRD*.

...

...

10 Guidance on activities related to pension schemes

...

10.4A The application of EU Directives

Q41A. Are pension scheme trustees and administration service providers likely to be subject to authorisation under the Markets in Financial Instruments Directive or subject to the ~~Capital Adequacy Directive~~ Directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms?

...

As for the ~~re-cast Capital Adequacy Directive~~ *CRD*, this will only apply to persons who are *MiFID investment firms* or ~~*BCD*~~ *CRD* *credit institutions*.

Detailed guidance on the scope of MiFID and the ~~re-cast Capital Adequacy Directive~~ *CRD* and *EU CRR* is in *PERG* 13.

...

...

13 Guidance on the scope of the Markets in Financial Instruments Directive and the ~~re-cast Capital Adequacy Directive~~ *CRD IV (Directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and the Regulation on prudential requirements for credit institutions and investments firms)*

13.1 Introduction

The purpose of this chapter is to help UK firms consider:

- whether they fall within the scope of the Markets in Financial Instruments Directive 2004/39/EC ('MiFID') and therefore are subject to its requirements;

- how their existing *permissions* correspond to related MiFID concepts;
- whether the ~~recast Capital Adequacy Directive~~ (~~‘recast CAD’~~) applies CRD and the EU CRR to them; and
- if so, which category of investment firm they are for the purposes of the ~~transposition of the recast CAD~~ CRD and the EU CRR.

...

~~Recast Capital Adequacy Directive (recast CAD)~~ CRD IV

Investment firms subject to MiFID, including those who fall within the article 3 MiFID exemption but opt not to take advantage of it, and *UCITS investment firms* are subject to the requirements of the ~~recast CAD~~ CRD and the EU CRR. There are special provisions for certain commodities firms as well as firms whose MiFID investment services and activities are limited to only one or more of the following investment services and activities:

- execution of orders on behalf of clients;
- portfolio management;
- giving investment advice; or
- receiving and transmitting client orders; ~~or both~~ and

who are not permitted to hold client money or securities nor are authorised to provide ancillary service (1) referred to in Section B of Annex 1 to MiFID (which is safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management).

Under the UK implementation of the ~~recast CAD~~ CRD and the EU CRR, the level of capital an investment firm subject to MiFID requires is determined by the type of investment services and activities it provides or performs, its scope of permission and any limitations or requirements attaching to that permission (see *PERG 13.6*). A firm relying on an article 2 or 3 MiFID exemption is not subject to ~~recast CAD~~ CRD and the EU CRR.

How does this document work?

This document is made up of Q and As divided into the following sections:

- General (*PERG 13.2*);
- ...
- The ~~recast CAD~~ CRD and the EU CRR (*PERG 13.6*); and
- Flow charts, tables and lists (*PERG 13 Annex 1, PERG 13 Annex 2, PERG 13, Annex 3, PERG 13 Annex 4*).

We have also included guidance in the form of flow charts to help firms decide whether MiFID and the ~~recast CAD~~ CRD and the EU CRR apply to them as well as permission maps indicating which regulated activities and *specified investments* correspond to MiFID investment services, activities and MiFID financial instruments (see *PERG 13 Annex 1, PERG 13 Annex 2, PERG 13 Annex 3, PERG 13 Annex 4*).

...

13.2 General

Q1. Why does it matter whether or not we fall within the scope of MiFID?

Depending on whether or not you fall within the scope of MiFID, you may be subject to:

- domestic legislation implementing MiFID (for example, FCA rules);
- directly applicable legislation made by the European Commission (the *MiFID Regulation* and *EU CRR*); and
- domestic legislation implementing the ~~recast CAD~~ *CRD* (see *PERG* 13.6).

...

Q2. Is there anything else we should be reading?

The Q and As complement, and should be read in conjunction with, the relevant legislation and the general guidance on regulated activities, which is in chapter 2 of our Perimeter Guidance manual ('PERG'). The Q and As relating to the ~~recast CAD~~ *CRD* and the *EU CRR* should be read in conjunction with the relevant parts of our *Prudential sourcebook for Investment Firms* ('IFPRU'), the *General Prudential sourcebook* ('GENPRU') and the *Prudential sourcebook for banks, building societies and investment firms* ('BIPRU').

~~More generally, you should be aware that the recast CAD forms part of the Capital Requirements Directive ('CRD') which also amends the Banking Consolidation Directive.~~

Q3. How much can we rely on these Q and As?

The answers given in these Q and As represent the FCA's views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of MiFID and the ~~recast CAD~~ *CRD* and the *EU CRR* affect the regulatory position of any particular person will depend on his individual circumstances. If you have doubts about your position after reading these Q and As, you may wish to seek legal advice. The Q and As are not a substitute for reading the relevant provisions in MiFID, the ~~recast CAD~~ *CRD*, the *EU CRR*, the MiFID implementing measures and The Treasury's implementing legislation, including the statutory instruments listed in Annex 4 ('Principal Statutory Instruments relating to MiFID scope issues').

Moreover, although MiFID and the ~~recast CAD~~ *CRD* and the *EU CRR* set out most of the key provisions and definitions relating to scope, some provisions may be subject to further legislation by the European Commission. In addition to FCA guidance, MiFID's scope provisions may also be the subject of guidance or communications by the European Commission or the ~~Committee of European Securities and Markets Authority ('ESMA')~~ *Regulators* ('CESR'). Similarly, the ~~recast CAD~~ *CRD* and the *EU CRR* provisions may be the subject of guidance or communications by the European Commission or the ~~Committee of European Banking Authority ('EBA')~~ *Supervisors* ('CEBS').

...

13.3 Investment Services and Activities

...

Q12A. We carry out the activity of bidding in emissions auctions. Is this a MiFID service or activity?

Article 6(5) of the *auction regulation* deems as an *investment service or activity* the reception, transmission and submission of a bid for a *financial instrument* (the 'five-day future' auction product – see *PERG* 2.6.19GG(3)) on an *auction platform* by an *investment firm* to which *MiFID* applies or a ~~BCD~~ CRD credit institution. It does not specify which *investment service or activity*. In the *FCA*'s view, it is likely to be the reception and transmission of orders in relation to one or more *financial instruments*, *execution of orders on behalf of clients* or *dealing on own account*.

...

Q16. What is dealing on own account? (A3 and article 4.1(6))

...

In our view, where you are a firm which meets all of the conditions of article 5.2 of the recast ~~CAD~~ 29(2) of CRD (see Q61), you will not be dealing on own account.

...

Q.24 What is a multilateral trading facility?...

The concept of a multilateral trading facility (MTF) draws on standards, issued by CESR (now known as ESMA), on which the FSA's previous alternative trading system regime was based. ...

...

Q26. We are an investment firm – can we apply for passporting rights that include ancillary services?

...

You will not be able to apply for passporting rights in respect of ancillary services only. In our view, this does not restrict the ability of credit institutions to exercise passporting rights under the ~~BCD~~ CRD which correspond to ancillary services under *MiFID* (for example, the activity of safekeeping and administration of securities in Annex 1 paragraph 12 of the ~~BCD~~ CRD).

...

13.5 Exemptions from MiFID

...

Q49. Which firms might fall within this exemption?

The exemption applies to persons who meet all the following conditions:

- ...
- credit institutions authorised under the ~~BCD~~ CRD;
- branches of third country investment firms or credit institutions complying with rules considered by the FCA to be at least as stringent as those laid down in MiFID, ~~the BCD~~ or the ~~CAD~~ CRD and the EU CRR;
- ...

...

Q53. What is the practical effect of exercising the optional exemption for those firms falling within its scope?

You are not a firm to which MiFID applies and so are not a *MiFID investment firm* for the purposes of the Handbook. As such you are not subject to the requirements of the ~~recast CAD~~ CRD as transposed in the Handbook and the EU CRR and cannot exercise passporting rights.

...

13.6 The ~~recast Capital Adequacy Directive~~ CRD IV**Q54. What is the purpose of this section?**

This section is designed to help UK investment firms consider:

- whether the ~~recast CAD~~ CRD and the EU CRR, as implemented in the UK, applies to them;
- if so, which category of firm they are for the purposes of the FCA's base ~~capital resources~~ own funds requirements made under the ~~recast CAD~~ CRD, for example whether they are ~~a BIPRU~~ an IFPRU 50K firm, ~~a BIPRU~~ an IFPRU 125k firm, ~~a BIPRU~~ an IFPRU 730K firm, a UCITS investment firm, a BIPRU firm, an exempt CAD firm or a firm falling within the transitional regime for certain commodity brokers and dealers; and
- how the ~~recast CAD~~ CRD and the EU CRR otherwise ~~impacts~~ impact on their business, by explaining when a firm will be a *limited licence firm*, a *limited activity firm* or a *full-scope BIPRU IFPRU investment firm*.

This section is intended to provide a general summary of these issues and not a detailed or exhaustive explanation of the ~~recast CAD~~ CRD and the EU CRR as implemented in the UK.

Q55. Are we subject to the ~~recast CAD~~ CRD and the EU CRR?

Only investment firms subject to the requirements of MiFID are subject to the requirements of the ~~recast CAD~~ CRD and the EU CRR. This includes UCITS

investment firms (see Q6 and Q63).

Despite being subject to the requirements of MiFID, broadly speaking, if you are one of the following investment firms our implementation of the ~~reecast-CAD~~ CRD and the EU CRR will only apply to you in a limited way:

- a firm whose main business consists exclusively of providing *investment services or activities* in relation to commodity derivatives or C10 derivatives, or both, and to whom the ISD would not have applied. If you fall into this category, you will fall within a transitional regime under which you will not be subject to the capital requirements of the ~~reecast-CAD~~ EU CRR or CRD but will be subject to other requirements (see Q57); or
- a firm that is only authorised to provide investment advice or receive and transmit orders, or both, without holding client money or securities and does not provide the ancillary service (1) referred to in Section B of Annex I to MiFID, which is safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management. If you fall into this category, you will be an *exempt CAD firm* and only subject to base capital requirements under the CRD (see Q58 and Q59 below); or
- a firm that is authorised to provide one or more of the following investment services and activities; execution of orders on behalf of clients and/or portfolio management; without holding client money or securities and does not provide the ancillary service (1) referred to in Section B of Annex I to MiFID, which is safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management. If you fall into this category, you may be a *BIPRU firm* and as such would not be subject to the capital requirements of the EU CRR or CRD but would instead be subject to other requirements (see Q58A).

If you are an investment firm to which an exemption in either article 2 or article 3 MiFID applies (see *PERG* 13.5 and *PERG* 13 Annex 1 flow chart 2), you are not subject to the ~~reecast-CAD~~ CRD and the EU CRR. However, if you potentially fall within the article 3 exemption, but decide to opt into MiFID regulation, for instance to acquire passporting rights (see Q52), you are subject to the ~~reecast-CAD~~ CRD and the EU CRR. If you do so, you are an *exempt CAD firm* (see Q58 and Q59).

There is also a special exemption under the ~~reecast-CAD~~ EU CRR for locals that do not fall within the exemption for local firms under MiFID (see Q47). However, we do not think that UK regulated firms that were subject to the regulatory regime for locals prior to MiFID implementation are likely to fall within the exemption under the ~~reecast-CAD~~ EU CRR. This is because they are likely to fall within article 2.1(l) MiFID.

Q56. We are an investment firm to which MiFID applies and do not fall into one of the limited categories described above. How does the ~~reecast-CAD~~ CRD and the EU CRR apply to us?

You are ~~a CAD~~ an IFPRU investment firm. Broadly speaking, you should go through an initial two-stage process in considering how the ~~reast CAD~~ CRD and the EU CRR will apply to you:

- consider what kind of base ~~capital~~ own funds requirements apply to you; and
- consider whether you are a *limited licence firm*, a *limited activity firm* or a *full-scope BIPRU IFPRU investment firm* to determine how other capital requirements of the ~~reast CAD~~ CRD and the EU CRR apply to you.

You are either ~~a BIPRU~~ an IFPRU 50K firm (subject to a base ~~capital~~ own funds requirement of euro 50,000) (see Q60), ~~a BIPRU~~ an IFPRU 125K firm (subject to a base ~~capital~~ own funds requirement of euro 125,000) (see Q61), ~~a BIPRU~~ an IFPRU 730K firm (subject to a base ~~capital~~ own funds requirement of euro 730,000) (see Q62) or a *UCITS investment firm* (see Q63). Your base ~~capital~~ own funds requirement depends essentially on the scope of your permission and any limitations or requirements placed upon it.

If you are ~~a CAD~~ an IFPRU investment firm, in essence the scope of your *permission* and any limitations or requirements placed upon it also dictate whether you are a *limited licence firm*, a *limited activity firm* or a *full-scope BIPRU IFPRU investment firm*. Broadly speaking, the benefit of being a *limited licence firm* or a *limited activity firm* (see Q64 and Q65) is that you are exempt from:

- minimum own funds requirements to hold capital to cover operational risk, although you are subject to the requirements to hold own funds calculated by reference to credit risk, market risk and fixed overheads (see ~~GENPRU 2.1.45R~~ articles 95 and 96 of the EU CRR);
- the requirement to calculate a leverage ratio (see article 6(5) of the EU CRR).

A limited licence firm is further exempt from the requirements on capital buffers (see the last paragraph of article 128 of CRD) and liquidity requirements in Part Six of the EU CRR (see article 6(4) of the EU CRR).

A limited activity firm may be exempt from the liquidity requirements in Part Six of the EU CRR if it meets the conditions of not being a BIPRU ILAS firm nor a significant IFPRU firm (see article 6(4) of the EU CRR).

Other derogations may apply (see IFPRU).

If you are a *full-scope BIPRU IFPRU investment firm*, you are subject to the full range of ~~reast CAD~~ risk requirements in the EU CRR (see Q66). ~~See, generally, GENPRU 2.1.45R in relation to the calculation of capital resources requirements for limited licence firms, limited activity firms and full scope BIPRU investment firms.~~

The question of whether you are a *limited licence firm* or a *limited activity firm* may also be relevant to capital treatment at a group level. This is outside the scope of this guidance which focuses only on the application of the ~~reast CAD~~ CRD and the EU CRR at the level of the individual firm, ~~although you may find the decision tree at BIPRU 8 Annex 5R helpful in considering these issues.~~

Q57. How do we know if we are a firm to which the transitional regime for

certain commodity brokers and dealers applies?

You are a firm to which the transitional regime applies if:

- you are a firm to which the Directive 93/22/ECC (ISD) did not or would not have applied on 31 December 2006; and
- your main business consists exclusively of the provision of investment services or activities in relation to financial instruments set out in C5, 6, 7, 9 and 10 of Annex 1 of MiFID. See article 498 of the EU CRR or BIPRU TP 15, whichever is applicable.

This exemption is only relevant if you are a firm to which MiFID applies, that is, you do not fall within the exemptions in articles 2 or 3 of MiFID (see Q55).

Although you are exempt from the capital requirements of the ~~repealed CAD CRD~~ and the EU CRR, you are subject to risk management and other systems and control requirements in the form of SYSC (see BIPRU TP 15.11G or IFPRU 1.1.1G). You may also be subject to the requirements of chapter 3 of IPRU(INV).

If you fall into this category, you are either an exempt BIPRU commodities firm (see BIPRU TP 15 if you are a BIPRU firm) or an exempt IFPRU commodities firm (see article 498 of the EU CRR if you are an IFPRU investment firm).

In our view, your main business for the purposes of this exemption is the main business to which MiFID applies.

Q58. How do we know whether we are an exempt CAD firm and what does this mean in practice?

This category may be relevant to you if you have permission to *advise on investments* or *arrange deals in investments* in relation to MiFID financial instruments but fall outside the article 3 MiFID exemption (for example, because you choose to opt out of the exemption or because you transmit orders to persons not listed in the exemption or provide services in relation to derivatives that are not transferable securities). You can be an *exempt CAD firm* if you:

- are not authorised to hold client money or securities in relation to MiFID business;
- do not have a *safeguarding and administering investments* (without arranging) permission in relation to MiFID financial instruments; and
- have a requirement on your permission so that the only MiFID investment services and activities you can perform are reception and transmission of orders or investment advice or both.

Where you hold client money for purposes unconnected with providing investment advice or receiving and transmitting orders in relation to MiFID financial instruments, in our view you can still be an *exempt CAD firm*. This might include, for instance, when you hold money or securities for clients to whom you only provide services that do not constitute *investment services* and therefore fall outside the scope of MiFID.

The conditions relating to the article 3 MiFID exemption look similar to those for an *exempt CAD firm*. There are important differences, however, between the two:

- the article 3 MiFID exemption (see Q49) extends only to services provided

in relation to transferable securities and units in collective investment undertakings, whereas no such restriction applies to *exempt CAD firm*; and

- the article 3 MiFID exemption requires orders to be transmitted to certain persons only (see Q49 and Q50), whereas no such restriction arises in the case of *exempt CAD firm*.

If you are an *exempt CAD firm*, you are subject to base capital requirements which comprise the following broad options:

- base capital of euro 50,000; or
- professional indemnity insurance of euro 1,000,000 for any one claim and euro 1,500,000 in aggregate; or
- a combination of base capital and professional indemnity insurance resulting in an equivalent level of coverage to the options above.

For the rules transposing these requirements and supporting guidance, see *IPRU(INV)* and in particular sections 13.1 and 13.1A and chapter 9. You will be subject to the relevant ongoing requirements in the Interim Prudential Sourcebook for Investment Businesses relating to personal investment firms and securities and futures firms, as appropriate (see *IPRU(INV)* 13.1A.13R and *IPRU(INV)* 9.2.9R).

If you are an *exempt CAD firm* which has opted into MiFID legislation (see Q52), you will need to consider whether you are subject to the audit requirements of companies legislation (see Part VII of the Companies Act 1985 and Part 16 of the Companies Act 2006). You can benefit from the auditing exemption for small companies in companies legislation if you fulfil the conditions of regulation 4C(3) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments Regulations) 2007. In other words, if you continue to meet the conditions of the article 3 *MiFID* exemption (notwithstanding that you are an *exempt CAD firm*), you can benefit from the auditing exemption for small companies, as provided for in companies legislation. For further details, see The Markets in Financial Instruments Directive (Consequential Amendments) Regulations 2007 (SI 2007/2932). The same regulations also contain a transitional regime which has the effect of exempting *exempt CAD firm* from statutory audit requirements in relation to a financial year beginning before 1 November 2007 and ending on or after that date, where the *exempt CAD firm* was not an *ISD investment firm*.

Q58A. How do we know whether we are a BIPRU firm and what does that mean in practice?

This category may be relevant to you if you have permission to *execute orders on behalf of clients* and/or carry out *portfolio management* in relation to MiFID financial instruments.

BIPRU firms are also not permitted to hold client money and securities belonging to their clients and are not authorised to provide the ancillary service (1) referred to in Section B of Annex I to MiFID, which is safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management.

Where you hold client money for purposes unconnected with providing investment advice or receiving and transmitting orders in relation to MiFID financial instruments, in our view you can still be a *BIPRU firm*. This might

include, for instance, when you hold money or securities for clients to whom you only provide services that do not constitute *investment services* and therefore fall outside the scope of MiFID.

There is a discretion in article 95(2) of the *EU CRR* which the FCA has exercised to keep *BIPRU firms* on the recast CAD and Banking Consolidation Directive, as they stood under national law (i.e. BIPRU and GENPRU) on 31 December 2013 before CRD IV enters into force. Consequently, if you are a *BIPRU firm*, you are subject to base capital resources requirement of euros 50,000 (see *GENPRU* 2.1.48R) and for the calculation of the variable capital requirement for a *BIPRU firm* see *GENPRU* 2.1.45R.

Q59. If we are subject to the Insurance Mediation Directive, does this make any difference to the requirements which apply?

Yes. If the only *investment services* that you are authorised to provide are investment advice or receiving and transmitting orders or both, without holding client money or securities, you can still be an *exempt CAD firm*. However, you are subject to different base capital requirements. Broadly speaking, article 8 ~~recast CAD~~ 31(2) CRD requires you to have professional indemnity insurance of euro 1,000,000 for any one claim and euro 1,500,000 in aggregate (this is the *IMD* requirement), plus coverage in one of the following forms:

- base capital of euro 25,000; or
- professional indemnity insurance of euro 500,000 for any one claim and euro 750,000 in aggregate; or
- a combination of base capital and professional indemnity insurance resulting in an equivalent level of coverage to the options above.

For the rules transposing these requirements and supporting guidance, see the final paragraph of the answer to Q58.

As mentioned in Q58, when you hold client money or securities for purposes unconnected with providing investment advice or receiving and transmitting orders in relation to MiFID financial instruments, in our view you can still be an *exempt CAD firm*. This might include, for instance, when you hold client money for those to whom you provide insurance mediation services.

You should also bear in mind that if you are a firm to whom article 2 or article 3 MiFID applies (see *PERG* 13.5), you are not subject to the ~~recast CAD~~ CRD.

Q60. Are we ~~a BIPRU~~ an IFPRU 50K firm?

This category may be relevant to you if you are not an *exempt CAD firm* or a *BIPRU firm* and have one or more of the following permissions in relation to MiFID financial instruments:

- *arranging (bringing about) deals in investments;*
- *dealing investments as agent;* or
- *managing investments,*

provided that you are not authorised to:

- hold client money or securities in relation to MiFID business or *safeguard and administer (without arranging)* MiFID financial investments; or
- deal on own account in, or underwrite on a firm commitment basis, issues of MiFID financial instruments (if you have a *dealing in investments as principal* permission in relation to MiFID financial instruments, you need a limitation or requirement on your permission to this effect).

Q61. Are we ~~a BIPRU~~ an IFPRU 125K firm?

This category may be relevant to you if you would have been ~~a BIPRU~~ an IFPRU 50K firm but for the fact that you are entitled to hold client money or securities in relation to MiFID business or hold MiFID financial instruments.

You may also be ~~a BIPRU~~ an IFPRU 125K firm if you meet the conditions of article ~~5.2 recast~~ CAD 29(2) of CRD. Broadly speaking, this applies to investment firms which execute investors' orders and hold financial instruments for their own account provided that:

- such positions arise only as a result of the firm's failure to match investors' orders precisely;
- the total market value of all such positions is subject to a ceiling of 15% of the firm's initial capital;
- the firm meets the requirements laid down in articles ~~18, 20 and 28 recast~~ CAD 92 to 95 of the EU CRR and Part Four of the EU CRR (including own funds requirements in respect of position risk, settlement and counterparty credit risk and large exposures); and
- such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

If you meet the conditions of article ~~5.2 recast~~ CAD 29(2) of CRD and are not authorised to hold client money or securities in relation to MiFID business or *safeguard and administer (without arranging)* MiFID financial instruments, you will be ~~a BIPRU~~ an IFPRU 50K firm.

Q62. Are we ~~a BIPRU~~ an IFPRU 730K firm?

If you are ~~a CAD~~ an IFPRU investment firm and you are neither ~~a BIPRU~~ an IFPRU 50K firm nor ~~a BIPRU~~ an IFPRU 125K firm nor a UCITS investment firm (see Q63), you will be ~~a BIPRU~~ an IFPRU 730K firm.

Q63. We are a UCITS investment firm. How will the ~~recast~~ CAD CRD apply to us?

UCITS investment firms (*UCITS management companies* that are authorised to perform the additional services of portfolio management, investment advice and safeguarding and administration of units) are subject to the ~~recast~~ CAD CRD in parallel with the capital requirements in the *UCITS Directive*.

If you are a *UCITS investment firm*, your base ~~capital~~ own funds requirement is contained in ~~GENPRU 2.1.48R~~ IFPRU 3.1.9R (which refers to *UPRU 2.1.2R(1)*) and in summary is:

- a minimum base capital requirement of euro 125,000; and
- an additional amount of own funds equal to 0.02% of the amount by which the value of the portfolios under management exceeds euro 250,000,000 (subject to an overall maximum base capital requirement of euro 10,000,000).

In our view, a *UCITS investment firm* should be a *limited licence firm*, as the *UCITS Directive* prevents it from dealing on own account outside its scheme management activities. As a result, where a *UCITS investment firm* has a *dealing in investments as principal* permission, this should be limited to box management activities where MiFID financial instruments are concerned. In our view, a *UCITS investment firm* which has this limitation and complies with it will not be dealing on own account for the purposes of the MiFID and the ~~repealed~~ CAD CRD.

Q64. Are we a limited licence firm?

A *limited licence firm* is one that is not authorised to:

- deal on own account (see Q16); and
- underwrite and/or place financial instruments on a firm commitment basis (see Q22).

You can be a *limited licence firm* if you are either:

- ~~a BIPRU~~ an IFPRU 50K firm (see Q60); or
- ~~a BIPRU~~ an IFPRU 125K firm (see Q61).

Generally, you cannot be a *limited licence firm* if you are ~~a BIPRU~~ an IFPRU 730K firm. However, you may be a *limited licence firm* if you operate a multilateral trading facility (and therefore are ~~a BIPRU~~ an IFPRU 730K firm) and do not have a *dealing in investments as principal* permission enabling you to deal on own account or to underwrite or place financial instruments on a firm commitment basis.

For calculation of the variable capital requirement for ~~a BIPRU~~ an IFPRU *limited licence firm* (including a *UCITS investment firm*) see ~~GENPRU 2.1.45R~~ article 95 of the EU CRR.

Q65. Are we a limited activity firm?

A *limited activity firm* is ~~a BIPRU~~ an IFPRU 730K firm that deals on own account only for the purpose of:

- fulfilling or executing a client order; or
- gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order.

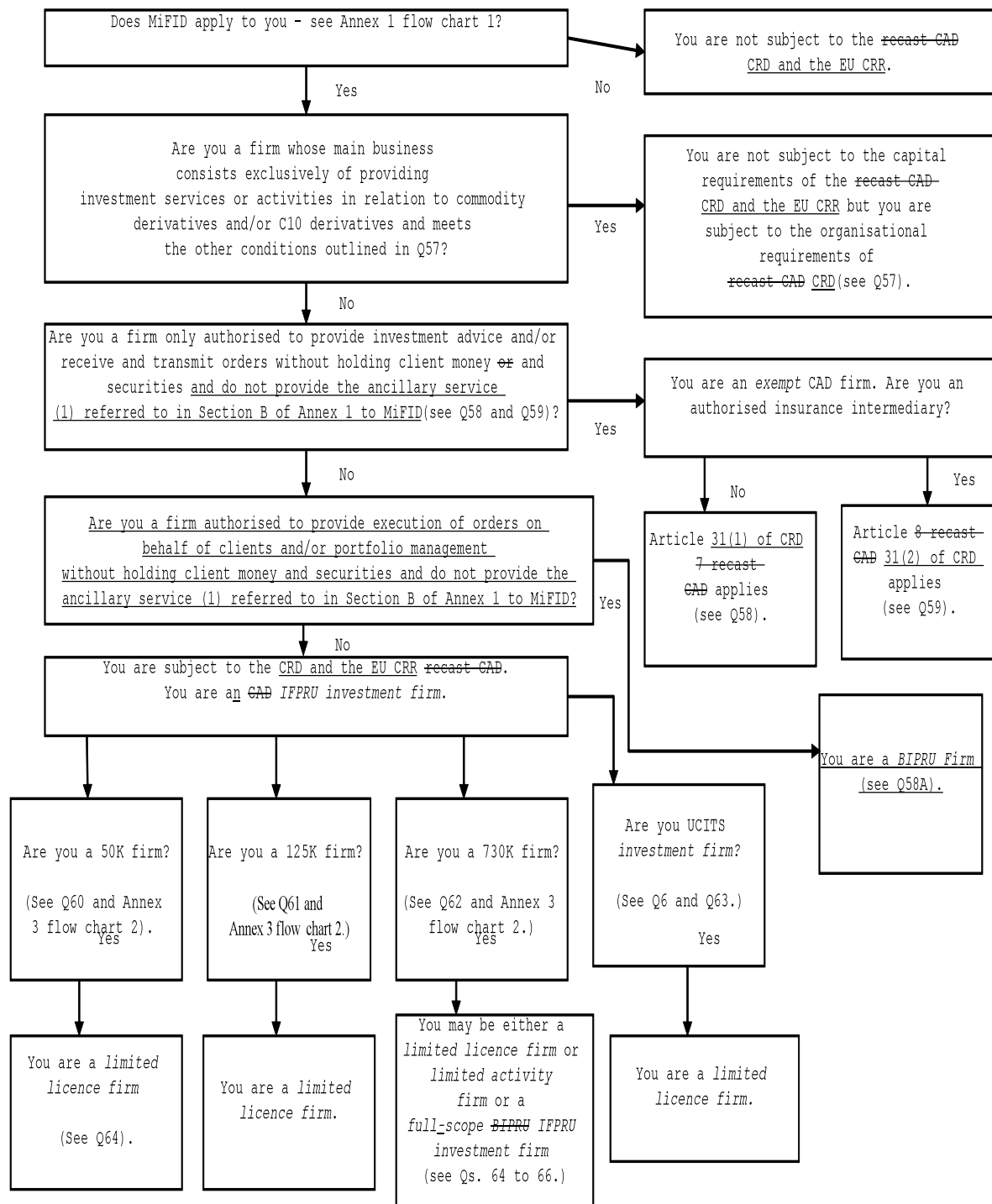
If you wish to be a *limited activity firm*, you should apply for a limitation on your *dealing in investments as principal* permission reflecting these conditions.

There is also a category for certain firms which, among other things, do not hold client money or securities and have no external customers. ~~We do not think that any UK regulated firms are likely to fall within this third category of limited activity firm.~~

Q66. What is the effect of being a ~~CAD~~ an IFPRU investment firm subject to the CRD and the EU CRR which is neither a limited licence firm nor a limited activity firm?

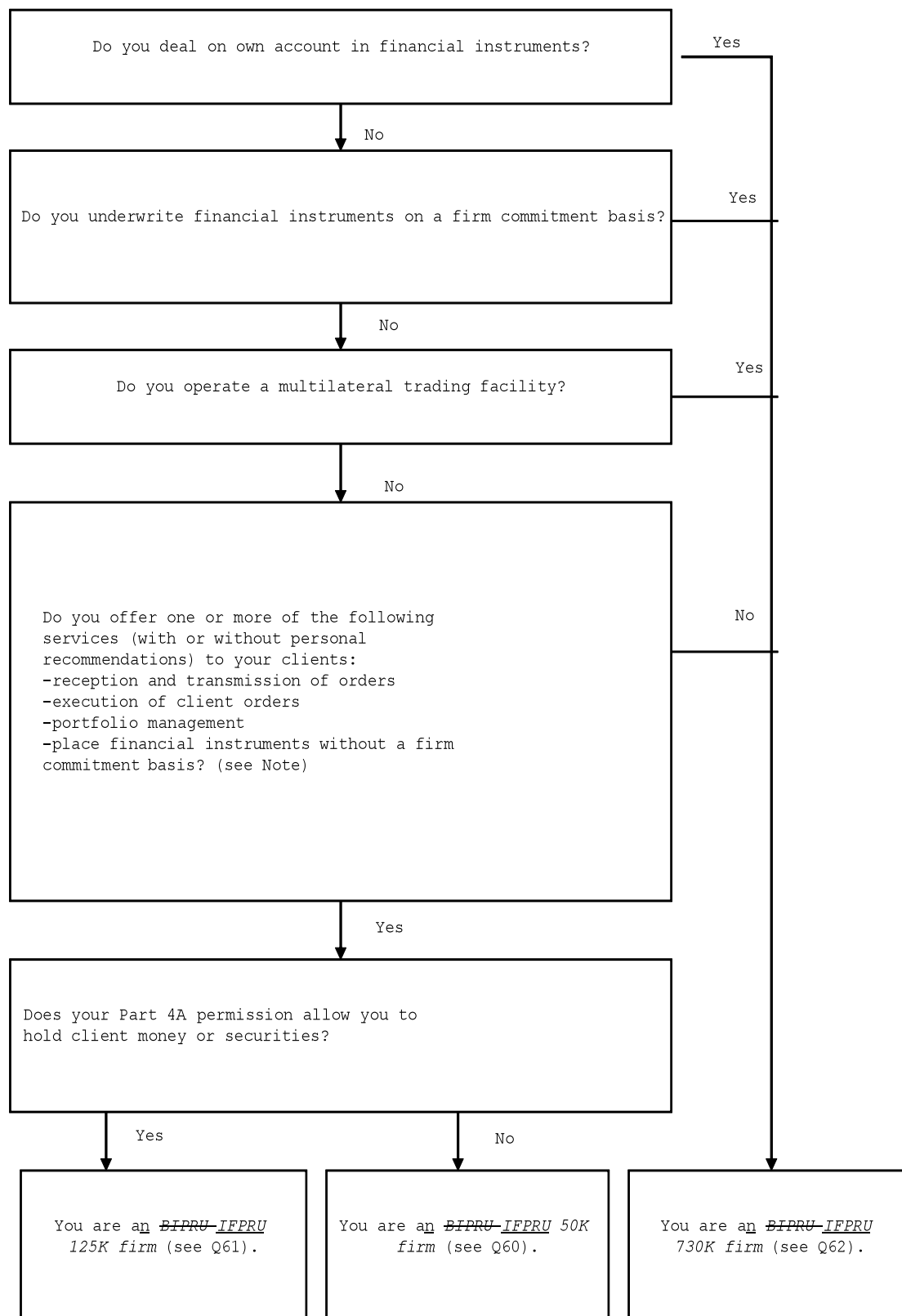
You will be a *full-scope ~~BIPRU~~ IFPRU investment firm*, subject to the full range of ~~recast CAD~~ CRD and EU CRR risk requirements.

13 In flow chart 1 substitute ‘CAD’ for ‘CRD’.
Annex 1

13 Annex 3 Flow chart 1 – Are you subject to the CRD and EU CRR ~~recast CAD~~?

13 Annex 3 Flow chart 2 – ~~CAD~~ IFPRU investment firms (excluding UCITS investment firms)

Are we an ~~BIPRU~~ IFPRU 50K firm, an ~~BIPRU~~ IFPRU 125K firm or an ~~BIPRU~~ IFPRU 730K firm?

**Note**

It is possible, in principle, that a ~~CAD~~ an IFPRU investment firm may only provide the *investment service* of investment advice and hold client funds or securities, in which case the starting point is generally that it is a

~~BIPRU~~ an IFPRU 730K firm. In practice, if such a firm wishes to benefit from a lower capital treatment (for example euro 125,000), it may wish to add an *arranging (bringing about) deals in investments* element to its permission to enable it to receive and transmit orders in relation to MiFID instruments.

15 Guidance on the scope of the Payment Services Regulations 2009

...

15.2 General

Q1. Why does it matter whether or not we fall within the scope of the PSD regulations?

Broadly, when you provide payment services, by way of business, in the UK and these services do not fall within an exclusion or exemption, you must be:

...

- (d) a credit institution (either one with a Part 4A permission to accept deposits or an EEA credit institution where it is exercising passport rights under paragraph 4 of Annex 1 to the ~~Banking Consolidation directive~~ CRD); or

...

Q7. We are a credit institution. Do the PSD regulations apply to us?

...

An EEA credit institution wishing to provide payment services through a UK branch must exercise its passport rights under paragraph 4 of the Annex to the ~~Banking Consolidation directive (BCD)~~ CRD. Similarly, a UK credit institution which wishes to provide payment services in other Member States may exercise its ~~BCD~~ CRD passport rights to do so.

Q10. We are a “financial institution” under the ~~Banking Consolidation Directive (BCD)~~ CRD. How does PSD apply to us?

...

A “financial institution” for the purposes of the PSD regulations, as for the ~~BCD~~ CRD, is an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of Annex 1 to the ~~BCD~~ CRD (see *SUP* App 3.9.4G). It may include, for example, an authorised person under the *Act* which is neither a credit institution nor an e-money issuer.

...

15.6 Territorial Scope

Q45. We are a UK payment institution - when will we need to make a passport notification?

...

As regards the provision of payment services in other EEA States and passport notification, in our view the Commission Interpretative Communication (Freedom to provide services and the interest of the general good in the Second Banking Directive (97C 209/04)) provides a useful starting point, in particular because payment services form part of the ~~BCD~~ CRD passport. ...

...

16 Scope of the Alternative Investment Fund Managers Directive

...

16.2 G What types of funds and businesses are caught?

...

Question 2.58: Is a bank or insurer caught?

An undertaking authorised under the *Insurance Directives* or the ~~*Banking Consolidative Directive*~~ CRD will not be an *AIF*.

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