Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation

Consultation Paper
CP18/28***

October 2018
How to respond

We are asking for comments on this Consultation Paper (CP) by 7 December.

You can send them to us using the form on our website at: https://www.fca.org.uk/cp18-28-response-form

Or in writing to:
Handbook Review Team
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Telephone:
+ 44 207 066 1000

Email:
cp18-28@fca.org.uk

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1 Summary

1.1 On 29 March 2019, the UK will leave the EU. In March 2018, the UK and the EU agreed the terms of an implementation period, which will start on 29 March 2019 and last until 31 December 2020. During this period, common rules will continue to apply and access to each other’s markets will continue on current terms.

1.2 However, the implementation period is part of the withdrawal agreement which is subject to further negotiations between the UK and the EU. Both sides must agree the final terms of the withdrawal agreement and, to take effect, it must be ratified by the UK and the EU. In order to be ready for all scenarios, we have worked to put the necessary arrangements in place for us to continue to meet our statutory objectives and reduce harm should the withdrawal agreement not come into effect.

1.3 As part of its Brexit preparations, Parliament has passed the European Union (Withdrawal) Act 2018 (EUWA). The EUWA will repeal the European Communities Act 1972, preserve existing UK laws which implement EU obligations and convert existing directly applicable EU law at the point of exit into UK law. It gives ministers powers to make secondary legislation amending this body of law to ensure it functions effectively when the UK leaves the EU. Our Handbook also needs to be amended so that it is consistent with wider UK legislation and the UK’s new position outside of the EU.

1.4 HM Treasury (The Treasury) has laid a Statutory Instrument (SI) under the EUWA giving us, the Prudential Regulation Authority (PRA), the Bank of England and the Payment Systems Regulator (PSR) responsibility for amending and maintaining EU-derived provisions in our Handbook and existing EU Binding Technical Standards (BTS) which will be incorporated into UK law by the EUWA, so that they function effectively after exit day. BTS are EU legislation but they do not set overall policy direction. They sit underneath Level 1 EU legislation and give technical detail on the overall legislative requirements. The regulators’ powers are subject to the constraints in the EUWA – they are limited to addressing deficiencies and dealing with any failure of UK law to operate effectively after exit, and the power is time-limited.

1.5 This is the first Consultation Paper (CP) setting out proposed changes to the Handbook and to BTS as a result of Brexit. This CP principally addresses amendments to the Handbook and BTS which relate to those SIs made under the EUWA which have been published by the Government. A list of those SIs can be found in Annex 2 to this paper. The CP also explains our proposed approach to European non-legislative material, which we have set out in draft non-Handbook guidance. Our proposals aim solely to correct ‘deficiencies’ arising from Brexit and do not revisit policy decisions, in accordance with the powers in the EUWA.

1.6 We intend to publish a second CP later in the Autumn covering the BTS and parts of the Handbook affected by SIs which are due to be published later. We may also need to...
1.7 As set out in our statement of 27 June 2018, and following the announcement on 8 October, the Treasury has communicated that it will bring forward measures that will give the regulators some flexibility to phase in changes to firms’ regulatory requirements under the EUWA. We are willing to use these powers to waive or modify some requirements to allow for a smooth transition to the post-exit regulatory regime. This means we do not expect firms, regulated entities providing services within the UK’s regulatory remit and other stakeholders to prepare now to implement the changes from exit day. At the same time, we would be interested in views from stakeholders regarding any aspects of the proposed changes to firms’ regulatory requirements which might cause implementation challenges if the changes were to come into effect on exit day. We address this in Chapter 2.

1.8 If the UK and the EU agree on the terms of the withdrawal agreement, and there is an implementation period, the amendments consulted on in this CP will not come into effect on 29 March 2019. The changes we make to the Handbook and to BTS after the implementation period will depend on the outcome of the negotiations on the future relationship between the UK and EU.

What we cover in this CP

1.9 In April 2018, the Treasury began publishing its draft SIs to make the changes needed to the UK’s legal and regulatory framework as part of preparations for Brexit. The SIs are designed to accommodate a scenario where there is no withdrawal agreement and no implementation period in place once the UK leaves the EU and where the UK would treat the EEA as a third country.

1.10 As noted above, this CP covers proposed changes to the Handbook and BTS and sets out our approach to EU non-legislative material. These proposals make sure that the regulatory framework still functions and remains in line with the EUWA and the published draft SIs from the Treasury and other ministries.

1.11 We have structured this CP as follows:

- Chapter 2 sets out our approach to reviewing our Handbook and BTS. In it, we explain the legal basis for making the proposed amendments and our approach to the proposed changes. We also ask for feedback on the implementation challenges the industry may face from the changes.

- Chapter 3 discusses a range of cross-cutting issues that we have identified which span the Handbook and BTS. The chapter sets out our proposed approach to each of these.

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4 https://www.fca.org.uk/news/statements/fca-role-preparing-for-brexit
Chapter 4 explains the Handbook proposals covered in this CP and the type of changes we propose to make by sector. The sections of this chapter include an explanation of the more significant changes we propose:

- Section 4.1 includes a table of amendments with an overview of which sourcebooks and chapters are covered in this CP and which stakeholders we think will be most interested in these proposals.

- Section 4.2 covers our proposals to amend the Prudential Standards sourcebooks. These include changes to prudential rules for solo-regulated firms prudentially regulated by us and to conduct rules with prudential aspects for insurers and friendly societies.

- Section 4.3 covers our proposals to amend parts of the Conduct of Business sourcebook. These proposals include changes to conduct rules that apply to insurers and friendly societies and the territorial application of the sourcebook.

- Section 4.4 covers changes affecting the fund management sector, principally, amendments to both the Investment Funds sourcebook and the Collective Investment Schemes sourcebook.

- Section 4.5 covers a brief overview of MiFID-related Handbook changes.

Chapter 5 outlines the changes we propose to make to BTS. This includes an explanation of our approach to BTS and where we propose to make amendments.

Chapter 6 explains how we intend to treat EU non-legislative material, such as Guidelines and ‘Questions & Answers’ documents issued by the European Supervisory Authorities (ESAs) or their predecessor bodies (Level 3). Within this chapter, we cover specific changes we propose making to chapters 19A and 19D of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC), as it refers to European Banking Authority (EBA) Guidelines on remuneration.

Why we are consulting

1.12 Our Handbook implements and refers to EU legislation and to UK law which relates to or refers to the EU. It also refers to EU institutions and concepts and to the European Economic Area (EEA). Leaving the EU, and the amendments to legislation made under the EUWA, requires us to update our Handbook to reflect the UK’s new legal and regulatory framework after exit day so that it remains functional.

1.13 Amendments are also needed to BTS so that they function effectively on exit day including ensuring that they are consistent with the changes the Government is making to Level 1 EU legislation using its powers under the EUWA. More detail on our proposals to amend BTS can be found in Chapter 5.
Who this applies to

1.14 Given the breadth of changes we propose in this CP, we expect this consultation to affect all our stakeholders. To help readers navigate this CP, we set out in Chapter 4 a list of interested stakeholders by Handbook sourcebook covered in this CP.

1.15 In addition, we expect our proposed changes to BTS to be particularly relevant to:

- Credit rating agencies
- Trade repositories
- All firms which trade derivatives (whether they are financial or non-financial firms)
- Financial market infrastructure firms
- Trading venues
- Central counterparties
- Stakeholders involved in the fund management sector
- All persons within MiFID scope and MiFID optional exemption firms
- Consumers
- Trade associations

The outcome we are seeking

1.16 We seek to ensure that our Handbook and BTS continue to work effectively as we leave the EU. This is to ensure the UK has a clear and coherent legal and regulatory framework.

1.17 Most of the proposed changes are consequential in nature and follow the amendments the Government is proposing to make under the EUWA. Our approach has not been to revisit previous policy decisions or use this as an opportunity to refine our Handbook provisions or amend BTS for purposes unconnected to Brexit. We have only made changes to our Handbook to address deficiencies arising from Brexit, in line with the approach the Treasury has adopted within the various SIs. We set out the approach we have taken in more detail in Chapter 2.

1.18 We also seek to ensure through this CP that a clear approach to the treatment after Brexit of Level 3 material is established.

How it links to our objectives

1.19 Our Business Plan 2018/19 highlights Brexit preparations as one of the priorities for the coming year given its impact both on those we regulate and our broader stakeholders.
1.20 As part of our strategic objective of ensuring that the relevant markets function well, we have been working to put in place contingencies for the UK leaving the EU without a withdrawal agreement. The proposals in this CP are part of the work we have been undertaking to ensure that there is a functioning regulatory framework in place in the event the UK leaves the EU without an agreed implementation period after March 2019.

1.21 The proposals in this CP are intended to advance our operational objectives of consumer protection, market integrity and promoting competition in the interests of consumers. We have also had due regard to our Mission and used our discretion to ensure harm or potential for harm is reduced.

**Measuring success**

1.22 We will consider our changes successful if the Handbook and BTS function effectively on exit day and if firms, consumers and our broader stakeholders are clear about what the proposed changes to the Handbook, BTS and the new guidance about EU Level 3 materials mean for them.

**Next steps**

1.23 We want to know what you think of our proposals. Please send us your comments by 7 December. Use the online response form [https://www.fca.org.uk/cp18-28-response-form](https://www.fca.org.uk/cp18-28-response-form) on our website or write to us at the address on page 2.

1.24 The consultation period for this CP is eight weeks. This is to ensure we have sufficient time to incorporate comments from stakeholders ahead of 29 March 2019. We intend to give feedback on this CP in early 2019 and publish final versions of these materials shortly before exit day. We may also publish further amendments to material consulted on in this CP in our later CP.
2 How we have reviewed the Handbook and BTS

2.1 As explained in our Business Plan 2018/19 and our statement of 27 June 2018, a major part of our Brexit work so far has been to ensure there is a functioning legal and regulatory framework in place when the UK leaves the EU.

2.2 We have undertaken this work collaboratively with relevant Government departments, particularly the Treasury. This is because many of the amendments needed to our Handbook and to BTS flow from the provisions of the EUWA or the changes the Government is proposing to make to UK law in SIs. These SIs are being made under the EUWA and amend:

- existing UK law, where it implements or relates to EU legislation or otherwise relates to the EU/EEA
- EU law that is incorporated into UK law under the EUWA

2.3 The process of incorporating EU law into UK law and amending it so it functions when the UK is no longer a member of the EU is referred to by the Treasury, and in this CP, as ‘onshoring’. Amendments are being made via a series of SIs under the EUWA. The SIs are subject to parliamentary processes.

2.4 The proposals in this CP should be read alongside the EUWA, the SIs and the Treasury’s accompanying policy statements so that stakeholders can understand how the overall regulatory framework will change because of Brexit.

2.5 The proposals may reflect the content of SIs which have not been made at the time of publication and are therefore only available in draft form. More detail on how this impacts on our proposed Handbook amendments is available in paragraph 2.21. Our proposed changes to BTS in Chapter 5 have also been written to reflect the changes set out in the draft SIs.

Legal basis for the proposed amendments

2.6 On 16 July 2018, the Treasury laid in Parliament its SI on Financial Regulators’ Powers. This SI, if approved by Parliament, will delegate to regulators, including the FCA, powers to correct deficiencies arising from Brexit in the Handbook and in BTS.

2.7 The FCA will be subject to a number of constraints in using this power. For example, a ‘deficiency’ is explicitly defined in the EUWA, which limits the nature of the
amendments that can be made. All amendments under the power must also be approved by the Treasury before the FCA can make them. The Treasury may only grant approval if they consider the amendments to be within the scope of the power in the SI.

2.8 Using the powers conferred by the SI means that FSMA obligations to publicly consult and conduct Cost Benefit Analysis (CBA) do not apply. However, we have chosen to consult stakeholders, and will continue to do so as far as possible, to help inform the amendments to our Handbook and to BTS.

2.9 Most of the changes in our instruments are consequential upon the provisions of the EUWA or amendments the Government is proposing to make to legislation under the EUWA. In some instances, though, several options were viably open to us for how to fix deficiencies arising from Brexit. Where this was the case, we have explained the rationale for our proposal against other potential solutions. However, we have not included CBA for any of the proposals set out in this CP.

2.10 In amending our Handbook and issuing non-Handbook guidance, we are using our general power in section 139A FSMA (power of the FCA to give guidance).

**Underlying assumptions**

2.11 In reviewing our Handbook and BTS we have applied the test set out in the Financial Regulators’ Powers SI. Hence, we only propose changes to the Handbook and BTS which will deal with deficiencies arising from the UK leaving the EU. We have not sought to introduce broader policy changes unrelated to Brexit.

2.12 The Treasury has made clear that in amending legislation under the EUWA it will work on the basis that, if there is no withdrawal agreement, the UK cannot rely on any new specific arrangements being in place between the UK and the EU. The Treasury therefore would, in general, treat the EU and its member states in the same way as it treats non-EU or third countries after exit day (the baseline approach). This is consistent with the fact that, in the absence of agreeing a new arrangement, the UK would be outside of the EU framework for financial services and would be a third country to the EU and its member states.

2.13 However, the Treasury has made clear that there are instances where it will diverge from this approach where it is necessary. This is to ensure that there is a functioning regime in place on exit day to enable firms and regulators to be ready for exit, to protect the existing rights of UK consumers or to ensure financial stability. To ensure consistency across the wider legislative framework we are taking the same approach. Where relevant, this baseline approach also applies to the EEA and its members.

2.14 Departures from this approach have been considered where:

- we judge it is needed to ensure a sound, functional regulatory regime on exit day
- we wish to avoid significant disruption to firms, investors and/or consumers

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10 These can be found in HM Treasury’s approach to financial services legislation under the European Union Withdrawal Act (27 June) under the Treasury’s approach to fixing deficiencies https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/720298/HM_Treasury_s_approach_to_financial_services_legislation_under_the_European_Union__Withdrawal__Act.pdf
2.15 Where we propose to depart from the baseline third-country approach, we have set out our reasons. We also ask for feedback on whether there are cases where we should consider departing from the baseline approach, either on the basis set out above, or for other reasons.

Our approach to the proposed changes

2.16 As set out above, the majority of individual changes we are proposing in this CP are consequential upon the provisions of the EUWA or the changes the Treasury is proposing to make to legislation under the EUWA. These amendments do not involve a choice on our part, but reflect important effects the EUWA and proposed legislative changes will have – for example if they relate to the ability to conduct business on a cross-border basis.

2.17 For these changes, our focus has been on ensuring they are correctly expressed in the Handbook and BTS and we are seeking views from stakeholders on whether we have done that successfully. The changes are set out in draft instruments in Appendices 1 and 2, but we have generally not provided further detail on these changes in this CP.

2.18 Many of the consequential changes we have identified through our review of the Handbook affect several chapters or sourcebooks. We term them ‘cross-cutting’. We outline cross-cutting changes in Chapter 3.

2.19 In addition, in this CP we provide more detail on changes to the Handbook and BTS where:

- there are different potential approaches to correcting a deficiency, which covers a small number of the changes in the CP. For these changes, we have explained the policy decisions underlying the amendments.

- we consider that an explanation is appropriate to make clear the rationale for following, or departing from, the baseline approach explained in paragraphs 2.11 to 2.15.

2.20 For all these amendments, we have sought to maintain the existing policy intent behind the provisions.

The relevant version of the Handbook, and future consultations

2.21 This CP is based on the version of the Handbook in effect on 1 July 2018. This is to ensure that the proposals in this CP relate to a stable set of Handbook provisions. We may need to consult further on the chapters and sourcebooks covered in this CP. This may be because:

- The proposals in this CP reflect the content of SIs which have been published in draft but have not yet passed through Parliament. The final SIs may differ from the draft versions. In addition, further SIs may be published that affect our proposals.

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11 The 1 July version of the Handbook can be found here: https://www.handbook.fca.org.uk/handbook?date=01-07-2018&timeline=True
or provisions in material covered by this CP\(^{12}\). We cannot prejudge the outcome of Parliament scrutinising the draft SIs but we will address as soon as we can any modifications needed to the proposals in this CP.

- Interdependencies with chapters and sourcebooks addressed in later CPs may affect chapters and sourcebooks included in this CP\(^{13}\). As our work progresses, we may identify the need for changes in one part of the Handbook that have knock-on implications for the chapters and sourcebook on which we consult here.

- Our proposals may be affected by cross-cutting issues other than those addressed in Chapter 3 of this CP, which will be discussed in our subsequent CP. We set out in Chapter 3 the cross-cutting issues on which we are still conducting analysis.

- Between 1 July 2018 and 29 March 2019 developments unrelated to our Brexit work may affect these proposals. The publication of final Handbook provisions regarding our Senior Managers and Certification Regime is an example of an initiative that may give rise to additional amendments to parts of the Handbook covered in this CP.

2.22 Stakeholders should further note that we are consulting in this CP on changes to the Handbook glossary. Changes to glossary terms may affect the scope, application or meaning of Handbook chapters or sourcebooks covered by this CP. Stakeholders should have regard to these proposed changes when reviewing the amendments we propose. Further changes may be made to glossary terms included in this CP resulting from further analysis of the Handbook or the publication of later SIs. Our next CP will also include further proposals for glossary changes that may be of relevance to Handbook chapters and sourcebooks covered in this CP.

2.23 We are not consulting in this CP on forms that are related to these chapters or sourcebooks. We will set out in due course our intentions on making changes to forms to ensure that they are fit for purpose after Brexit.

**Implementation challenges**

2.24 In the event that the UK and the EU are unable to agree on the terms of the withdrawal agreement and the UK leaves the EU without an implementation period, firms and other regulated persons will have a limited amount of time to act on changes to requirements before exit day.

2.25 The Treasury announced on 27 June and confirmed on 8 October\(^{14}\) that it will bring forward legislation to allow regulators to phase in changes to firms’ regulatory requirements. The Treasury has said that these powers will be available to phase in changes to requirements which the regulators supervise and which have been amended under the EUWA. The powers will cover changes to requirements in

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\(^{12}\) For example, material covered in this CP refers to incoming ECA providers and regulatory information services. As the relevant SI which relates to these provisions has not yet been published, we will cover any changes required to these provisions in a later CP.

\(^{13}\) For example, while MAR chapters are consulted on in this CP, provisions in GEN 2 which are referred to in these chapters are not covered in this CP. Should any amendments be made to those GEN 2 provisions in a subsequent CP, we will consider whether any further changes are required to the relevant MAR provisions.

\(^{14}\) Proposal for a temporary transitional power to be exercised by UK regulators

FCA rules, as well as to changes in requirements in retained EU regulations and UK domestic legislation made by the Treasury through SIs. The powers will not be available where specific transitional measures are already contained in an SI.

2.26 We expect to use these powers in a proportionate manner, bearing in mind our statutory objectives and the implementation challenges faced by firms.

2.27 Firms will not be expected to make individual applications to benefit from the transitional powers that the Treasury is giving the regulators. We are keen to get feedback in this CP on whether compliance with changes to regulatory requirements by exit day would be a particular challenge for firms. We are interested in stakeholders’ views on the challenges associated with implementing changes that have been proposed in this CP, as well as changes set out in relevant SIs that have been laid or published in draft by the Treasury15.

2.28 We welcome feedback on:

- Any situations in which compliance with new requirements may prove challenging and, in particular where compliance with pre-exit requirements would no longer be possible post-exit.
- Any systems that may need to be developed or amended, including the expected time needed to build these changes.
- Any external dependencies that may affect firms’ ability to comply with new requirements in time for exit day.

2.29 We expect feedback on compliance challenges to provide evidence of reasons why full compliance would be at risk, including relevant data where possible. This will allow us to understand any challenges and consider proportionate adjustments to allow for transition where necessary. In addition to providing feedback through this CP, firms should discuss specific concerns that they may have with their usual supervisory contact.

Q1: Do you think any of the proposed changes in this CP or in relevant SIs represent a significant risk to compliance for your firm in time for exit day? If yes, please specify which and explain why this is the case, including projected time needed to comply with requirements were they to come into effect on exit day.

15 You can find the SIs that have been published by the Government [https://www.gov.uk/government/collections/financial-services-legislation-under-the-eu-withdrawal-act#published-draft-statutory-instruments]
3 How we will resolve cross-cutting issues

Introduction

3.1 In this chapter we explain how a no-deal Brexit would give rise to a range of issues, each of which would affect multiple parts of our Handbook and BTS. We term these ‘cross-cutting issues’. We explain what impact they have and how they arise.

3.2 We have adopted a consistent approach across the Handbook and BTS to resolving cross-cutting issues, unless there are specific reasons not to. We outline below our proposed approach to each cross-cutting issue, and the Handbook sourcebooks and BTS affected. However, stakeholders should also note that these issues appear in glossary terms.

3.3 We set out later in this CP where we propose to deviate from the general approaches proposed below. This might be for a reason specific to a given Handbook sourcebook or BTS.

3.4 In our next CP, we will aim to consult on further cross-cutting issues as we finalise our proposals to address them. These will include (but may not be limited to):

- further amendments to our Handbook that are consequential to changes the PRA makes to its Rulebook
- how the EUWA will affect our ability to exercise our existing waiver and modification powers in relation to rules which transpose EU directive requirements

3.5 These issues may be relevant to material we consult on in this CP. However, as noted in Chapter 2, we will aim to consult on any further changes to the sourcebooks and BTS addressed by this CP if they are impacted by our approach to these additional cross-cutting issues.

3.6 Importantly, the changes we propose in this CP do not relate to any transitional provisions or long-term relationship that may be agreed between the UK and the EU. As noted in paragraph 1.8, we will consider in due course whether our proposed Handbook and BTS changes need to be re-considered to accommodate the outcome of negotiations.

The position of EU law and how it relates to our Handbook

Affected Handbook sourcebooks

BIPRU, COBS, COLL, CONRED, FINMAR, FUND, GEN, GENPRU, IFPRU, IPRU(FSOC), IPRU(INV), MAR, MIPRU, M2G, PRIN, RCB, SYSC, SUP
3.7 EU law has supremacy over domestic law among member states of the EU. EU law that takes the form of directives needs transposition into domestic law of EU member states. In the UK, EU Directives have been incorporated into the Handbook or UK legislation.

3.8 By contrast, EU Regulations are directly applicable. This means they do not need to be transposed into the Handbook or UK legislation.

3.9 When the UK leaves the EU, directly-applicable EU Regulations will (in the absence of a transitional arrangement) no longer apply, leaving a legislative gap. To compensate for that, the EUWA incorporates EU Regulations into UK law. They will be amended to make them work effectively by a series of SIs. Similarly, the Government is proposing in a series of SIs equivalent amendments to UK laws that:

- relate to previously transposed directives
- reflect the UK’s current membership of the EU or, where applicable, the EEA
- otherwise refer to the EU or EEA concepts

3.10 Where appropriate, we will amend the Handbook to reflect these changes. This includes proposing amendments so that:

- the Handbook (including glossary terms) refers to the new or revised UK legislation (or specific provisions of that legislation), rather than the EU equivalents
- passages of EU law, or UK law now being amended, that have been replicated in the Handbook are updated to reflect the new provisions
- where relevant, references are kept to EU law to explain how the Handbook or BTS implemented EU law in the past (rather than ‘implements’ them)

3.11 These changes affect many sourcebooks in the Handbook reflecting the significance of EU law in the financial services sector. A further amendment related to EU law concerns references to the Treaty on the Functioning of the European Union (the Treaty). The Treaty sets out the organisational and functional arrangements of the EU and, along with the Treaty on European Union, establishes the basis of EU law.

3.12 As the UK will no longer be a member of the EU, references to the Treaty in our Handbook will no longer be appropriate. This includes where such a reference is part of a specific term – for example ‘Treaty firm’ to refer to a firm exercising passporting rights under the Treaty. We propose to remove these references, including relevant glossary terms such as appropriate UK regulator or authorised person (please refer to the Glossary Instrument in Appendix 1).

3.13 There are some exceptions to this approach, where we have found good reasons to retain a reference to EU legislation. Where so, we will keep the existing wording\textsuperscript{16}.

\textsuperscript{16} For example, in COLL we are retaining references to EU Capital Requirements Regulation (‘CRR’) in addition to UK CRR and there is a new glossary definition for EU CRR
The loss of passporting rights

3.14 Under section 31 of FSMA, the definition of an authorised person includes firms which exercise their rights to offer cross-border services into the UK or to set up a branch (to passport).

3.15 In this way, FSMA gives effect to the provisions of EU law for cross-border financial services and activities to be carried on (to be passported).

3.16 As we leave the EU’s single market, passporting rights into the UK will cease to exist. FSMA is being amended so that EEA firms, Treaty firms, operators and depositaries of Undertakings for Collective Investment in Transferable Securities (UCITS) and Alternative Investment Fund Managers (AIFM) qualifiers will no longer qualify as authorised persons.

3.17 This means they will not have an automatic right to carry on regulated activities in the UK. The Government also intends to remove provisions related to passporting from relevant legislation.

3.18 Reflecting these changes in the Handbook mainly involves removing the provisions related to passporting. This includes deleting references to the roles and responsibilities of ‘home’ and ‘host’ regulators that relate to passported activities. It also means amending or deleting some glossary terms such as consent notice, passported activity or passport right (please refer to the Glossary Instrument in Appendix 1).

3.19 These changes are distinct from the proposals in our consultation about temporary permissions for incoming EEA firms, Treaty firms and UCITS/AIFM qualifiers.17

3.20 We also plan to address in our next CP the implications of Brexit for Handbook provisions which relate to the E-Commerce Directive and the Distance Marketing Directive.

References to EU institutions

3.21 As the UK will no longer be a member of the EU, European institutions such as ESMA and the European Commission will not have powers or obligations under UK law.

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17 The terms UCITS qualifier and AIFM qualifier refer to UCITS management companies and AIFMs respectively that are exercising their marketing passport rights in relation to a UCITS or an AIF, without also exercising their management or services passport rights.

18 You can find the list of covered BTS in Annex 3.
In most instances, the Government will replace a named EU institution with a UK equivalent.

### 3.22
We propose to remove or replace references in our Handbook and BTS to the European institutions to ensure it is aligned with UK law, unless there is a specific reason not to do so.

#### References to ‘other member/EEA states’ and ‘other competent authorities’

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<th>Affected Handbook sourcebooks and Binding Technical Standards</th>
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### 3.23
As the UK is currently a member state of the EU/EEA, there are references in our Handbook and BTS to ‘other member/EEA states’, ‘another member/EEA state’ or variants thereof. When the UK leaves the EU, it will no longer be appropriate for our Handbook and BTS to refer to EU or EEA member states as if the UK were still one. If we need to keep these references in some form, we propose to amend them to ‘EU member states’ or ‘EEA member states’, as appropriate. We propose equivalent amendments for references to ‘other competent authorities’ or ‘another competent authority’ (or variants) where currently these refer to EU or EEA authorities.

#### References to information sharing with the European Supervisory Authorities or ‘other competent authorities’

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<tr>
<th>Affected Handbook sourcebooks and Binding Technical Standards</th>
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<tr>
<td>FINMAR, MAR, MIFID BTS 2017/1943, 2016/824, SSR BTS 826/2012, 827/2012</td>
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### 3.24
Within the European regulatory framework, we are obliged to share information or data with the ESAs in many situations. After exit day, this obligation will fall away. While we may continue to share information and seek to cooperate with the ESAs, we will no longer be required to do so and therefore propose to remove the references to compulsory sharing of information with the ESAs.

**Q2:** Do you agree that we have correctly identified all relevant amendments in our draft Handbook and BTS text related to the cross-cutting issues set out above? Do you have any other points you wish to raise regarding our approach to these cross-cutting issues?
4 Changes to the Handbook

Section 4.1 Introduction

4.1 This chapter provides an overview of the Handbook sourcebooks and chapters that are within the scope of this CP. It summarises the changes that we are proposing to make to ensure our Handbook remains fit for purpose after Brexit.

4.2 Some sections of the Handbook chapters mentioned below are not within the scope of this CP. In some instances, relevant SIs that will affect them have not yet been published. In other cases, some rules within a chapter are unaffected by EU withdrawal. Annex 2 provides a list of the SIs published that are relevant to the material covered in this CP.

4.3 Appendix 1 contains the draft instruments setting out detailed proposed amendments to various sourcebooks, chapters and the glossary. Stakeholders should read this appendix to gain a full understanding of all the changes proposed.

4.4 The table below gives an overview of the sourcebooks and chapters we have reviewed for this CP and potential interested stakeholders by sourcebook. We expect all stakeholders to have an interest in our proposed changes to the glossary.

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<tr>
<th>Sourcebook</th>
<th>Specific Chapters</th>
<th>Interested stakeholders</th>
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<tr>
<td>Senior Management Arrangements, Systems and Controls (SYSC)</td>
<td>1, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 18, 19, 20, 21, TP2, TP3, Schedule 2</td>
<td>All authorised persons, employees, consumers</td>
</tr>
<tr>
<td>Financial Stability and Market Confidence (FINMAR)</td>
<td>All</td>
<td>Stakeholders involved in the buying, selling and trading of financial instruments, market makers and authorised primary dealers</td>
</tr>
<tr>
<td>General Provisions (GEN)</td>
<td>2, 6 and TP1</td>
<td>Firms, Lloyds, managing agents, members agents</td>
</tr>
<tr>
<td>General Prudential sourcebook (GENPRU)</td>
<td>1, 2, Schedules</td>
<td>Investment firms (and groups containing such entities)</td>
</tr>
<tr>
<td>Prudential Sourcebook for Banks, Building Societies and Investment firms (BIPRU)</td>
<td>All</td>
<td>Investment firms (and groups containing such entities)</td>
</tr>
<tr>
<td>Prudential Sourcebook for Investment firms (IFPRU)</td>
<td>All (except 11)</td>
<td>Investment firms (and groups containing such entities)</td>
</tr>
<tr>
<td>Prudential Sourcebook for Insurers (INSPRU)</td>
<td>All</td>
<td>Insurers and friendly societies (and groups containing such entities)</td>
</tr>
<tr>
<td>Prudential Sourcebook for Mortgage and Home Finance firms, and Insurance Intermediaries (MIPRU)</td>
<td>4</td>
<td>Mortgage and home finance firms, insurance intermediaries (and groups containing such entities)</td>
</tr>
<tr>
<td>Interim Prudential Sourcebook for Friendly Societies (IFPRU-FSOC)</td>
<td>All</td>
<td>Friendly societies</td>
</tr>
</tbody>
</table>
Most changes we are proposing are cross-cutting in nature and consequential upon the Treasury’s approach to drafting its SIs. An overview of these types of change can be found in Chapter 3, and the detailed amendments are in the draft instruments.

We include dedicated sections below with explanations of proposals where there are different approaches we could have adopted to correcting a deficiency. Specifically, we have done this where we deviate from the baseline approach explained in paragraphs 2.11 to 2.15 or we consider that an explanation is helpful to make clear the rationale for following the baseline approach.

We have also reviewed the following Handbook Guides for the purposes of this CP:

- the Energy Market Participants Guide (EMPS)
- the Oil Markets Participants Guide (OMPS)
- the Service Companies Guide (SERV)
4.8 The respective market participants will be interested in our proposed approach to each of these guides. We are not proposing any changes to the text of SERV, but service companies will be interested in the changes we are proposing to the glossary. As noted in paragraph 2.22, changes to glossary terms may affect the scope, application or meaning of Handbook provisions covered by this CP, including those sourcebooks where we have proposed no textual amendments. Stakeholders should have regard to these proposed changes set out in the glossary instrument in Appendix 1 when reviewing the amendments we propose.

Q3: Are there any proposed changes reflected in the instruments in Appendix 1 that are not cross-cutting in nature (see Chapter 3) or discussed in this chapter where you think we should re-consider our approach? If so, why?

Q4: Are there any proposed changes where you think we should not follow the baseline approach of treating the EEA as a third country? If so, why?

Section 4.2 Changes to Prudential Standards

Prudential requirements for solo-regulated firms

Prudential treatment of EU 27 exposures

4.9 BIPRU sets out preferential capital treatment for certain types of exposures originating from EU member states, reflecting the approach in the Capital Requirements Regulation (CRR). Our baseline approach of treating EU member states as third countries means that the UK version of the CRR\(^\text{19}\) will remove this preferential treatment. We propose to amend BIPRU to reflect the fact that the preferential capital treatment for certain types of exposures originating from EU member states would cease to apply after exit day. We are considering temporary transitional arrangements in this area.

Conduct rules with prudential aspects for insurers and friendly societies

4.10 In addition to the cross-cutting changes to INSPRU, IPRU-INS and IPRU-FSOC\(^\text{20}\), we have identified two changes where we have considered different approaches to correcting the deficiencies identified. These involve the treatment of:

- non-UK regulated markets
- stock-lending transactions where the counterparty is authorised in an EEA state

Non-UK regulated markets

4.11 The term ‘regulated market’ in INSPRU means a market that is outside the EEA (and, therefore, outside of MiFID scope) and:

- that meets comparable requirements to those for MiFID regulated markets
- whose financial instruments dealt in are of comparable quality to those in a regulated market in the UK

\(^{19}\) For more information on Treasury’s proposed changes please refer to the Draft Capital Requirements (Amendment) (EU Exit) Regulations 2018 [https://www.gov.uk/government/publications/draft-capital-requirements-amendment-eu-exit-regulations-2018]

\(^{20}\) For more information on proposals to COBS 21, which also contains rules applying to insurers that have a prudential aspect, please refer to the COBS chapter.
4.12 INSPRU uses the term regulated market in two places:\(^{21}\):

- in placing restrictions on investments in derivatives or quasi-derivatives
- in placing restrictions on assets held by pure reinsurers

4.13 We propose to amend the definition as it relates to INSPRU, to refer to markets ‘outside the UK’ (rather than the current ‘outside the EEA’) and require the market to have comparable requirements to the UK market (rather than the current reference to MiFID). This would mean that UK insurers could continue to hold their assets traded on EEA regulated markets in the same way as they do now where those markets meet the tests of being comparable to UK markets and trading instruments of comparable quality to those on UK markets.

4.14 We consider this is unlikely to cause any market disruption in the immediate term as EEA markets will meet the tests of comparability and quality. This is because they are subject to the same EU-derived requirements that currently apply in the UK.

**Q5:** Do you agree with our proposal to amend the term ‘regulated market’ as it applies in INSPRU?

**Stock-lending transactions where the counterparty is authorised in an EEA state – INSPRU 3**

4.15 INSPRU 3.2.36R, INSPRU 3.2.36A R and INSPRU 3.2.37G set conditions under which stock-lending transactions are approved (including in relation to permitted links). The rules limit stock-lending to transactions where the counterparty is either authorised in the UK or another EEA state, or is a person authorised by certain authorities in the USA.

4.16 The rules also exempt firms that make transactions through Euroclear Bank SA/NV’s Securities Lending and Borrowing Programme from having to obtain collateral from the counterparty.

4.17 We considered options to:

- amend the rules to prevent exposure to stock-lending transactions where the counterparty is authorised in an EEA state
- continue the current position and allow exposure to stock-lending transactions where the counterparty is authorised in an EEA state

4.18 The baseline approach of treating EEA states as third countries would result in limiting stock-lending transactions to those with UK or certain USA-authorised counterparties. We consider that this approach could cause significant market disruption. This could lead to firms having to redesign their investment strategies, potentially unwinding existing transactions. This would potentially result in worse outcomes for customers.

4.19 We therefore propose to continue to permit exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as the current rules.

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21 This term is used more widely in our Handbook. Outside of INSPRU, it applies to all uses of the term regulated market within the Handbook, and is derived from the Markets in Financial Instruments Directive (MiFID II).
Q6: Do you agree we should continue to permit exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as under the current rules in INSPRU 3.2?

Section 4.3 Changes to the Conduct of Business Sourcebook

Exposure of insurance policy returns to stock-lending transactions – COBS 21

4.20 The rules in COBS 21.3.11R and COBS 21.3.12R set out the conditions under which long-term insurance policy returns can be linked to stock-lending transactions. As with INSPRU 3, the rules:

- limit stock-lending to transactions where the counterparty is either authorised in the UK or another EEA state, or is a person authorised in the USA.

- exempt firms that make transactions made through Euroclear Bank SA/NV’s Securities Lending and Borrowing Programme from having to obtain collateral from the counterparty.

4.21 As with INSPRU 3, we are proposing to continue to allow exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as the current rules to avoid the risk of significant market upheaval. It is also in line with the approach we propose to adopt for UCITS (see paragraphs 4.46-4.48), where we propose to allow ongoing investment in EEA assets.

4.22 The rules allow exposure to loans or deposits made with an approved financial institution. The definition of this term refers to a list of approved institutions, such as central banks including the European Central Bank and the central banks of EEA states. For the same reasons set out above, we recommend continuing to allow such exposures. The proposal does not lead to a change for firms.

Q7: Do you agree we should continue to allow exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as under the current rules in COBS 21.3?

Q8: Do you agree we should continue to allow exposure to loans or deposits made with an approved financial institution on the same basis as under the current rules in COBS 21.3?

Territorial application and other changes to COBS

4.23 This section addresses amendments to a broad range of chapters in COBS: 1, 2, 3, 6, 9, 10, and 22.

4.24 In our proposals to amend these chapters, we considered maintaining preferential treatment for the EEA (e.g. in terms of protections provided to EEA consumers). However, given our baseline approach of treating EEA member states the same as any other third country (and the expectation EEA member states will do the same with respect to the UK), we propose to amend the provisions in COBS accordingly. We consider this to be consistent with the Treasury’s approach to corresponding
legislation and that it would ensure that appropriate levels of protection continued to be provided to UK consumers (as explained further in relation to COBS 6, 9 and 22 below).

4.25 In line with this approach, we propose to amend COBS 1, which sets out the territorial application of COBS. At present, UK conduct rules will generally only apply to an EEA firm when it carries on business from an establishment (branch) in the UK. Incoming EEA firms providing services on a cross-border passported basis are generally subject to Home State conduct rules. After exit, if an EEA firm were to obtain authorisation from us or the PRA, then COBS would apply to it in the same way as any other UK-authorised third-country firm.

Agent as client and reliance on others – COBS 2

4.26 COBS 2.4 contains rules and guidance relating to when a firm can treat an agent as its client and when a firm is entitled to rely on information from another investment firm. COBS 2.4.4R sets out that such reliance can be placed when the latter is, among other things, an investment firm authorised in an EEA state. As the guidance in COBS 4.5G explains, this means that a firm can rely on a suitability or appropriateness assessment performed by another investment firm if that firm is subject to ‘equivalent requirements in another EEA State.’

4.27 Proceeding on the basis that passporting rights will come to an end, we propose to restrict the application of COBS 2.4.4R so that, in the context of MiFID or equivalent third-country business, reliance can be placed only on UK authorised investment firms subject to MiFID or equivalent requirements.

4.28 In parallel, we propose that the references in COBS 2.4.5G to equivalent requirements in other EEA States be deleted. This change would have the effect of limiting this guidance to scenarios involving reliance being placed on suitability and appropriateness assessments undertaken by firms in compliance with the requirements in COBS 9A and COBS 10A.2 respectively.

Client categorisation – COBS 3

4.29 COBS 3.5.3BR through to COBS 3.5.3ER set out the circumstances in which a firm may categorise a local public authority or municipality as an elective professional client, rather than a retail client. A firm must make an assessment, both qualitative and quantitative, of the client before re-categorising it.

4.30 With respect to MiFID business, MiFID II allows member states to set additional or alternative quantitative criteria for firms to use to assess whether a local public authority or municipality can be re-categorised. COBS 3.5.3ER states the relevant quantitative test that we have chosen to adopt for firms categorising non-UK clients of this type. The test makes a distinction between EEA and non-EEA local public authorities and we propose to remove this distinction. This means EEA local public authorities or municipalities will be treated under COBS 3 in the same way as local authority clients based in third countries. When re-categorising EEA local public authorities, therefore, firms will need to follow the same quantitative test that is applied in relation to MiFID or equivalent third-country business generally under COBS 3.5.3R (2).

Appropriateness – COBS 10

4.31 COBS 10 specifies when a firm that is carrying on non-MiFID business must determine whether a particular type of non-advised transaction is appropriate for a client.
4.32 COBS 10.4.1R sets out that a firm need not carry out an appropriateness assessment where the firm is providing an execution-only service relating to particular types of financial instrument specified in COBS 10.4.1R (2) or other ‘non-complex financial instruments.’ The criteria for determining whether a financial instrument is non-complex includes a reference to the financial instrument being capable of being realised at market prices or prices made available, or validated, by valuation systems ‘independent of the issuer’.

4.33 In COBS 10.5.5G we give guidance that sets out our views on when a valuation system will be regarded as being ‘independent of the issuer’. The guidance provision currently provides that ‘…valuation systems will be independent of the issuer…where they are overseen by a depositary that is regulated as a provider of depositary services in a EEA state.’

4.34 To ensure that the guidance continues to apply as intended we propose to replace references to a depositary in ‘another EEA State’ to in ‘the UK’. As such, a valuation system which is overseen by a depositary that is regulated within the EEA will fall outside the scope of this guidance provision in the future.

4.35 The COBS instrument in Appendix 1 also addresses changes to the appropriateness rules in COBS 10A, which relate to non-advised services in respect of MiFID and insurance-based investment products. The instrument does not include changes with regard to circumstances when a firm is not required to ask its client to provide information or assess appropriateness (COBS 10A.4.1R). We will propose amendments to this rule in a subsequent consultation.

Disclosure of charges, remuneration and commission – COBS 6, Suitability and basic advice (non-MiFID provisions) – COBS 9, Restriction on the distribution of certain regulatory capital instruments – COBS 22

4.36 COBS 6.4 sets out the disclosure requirements that apply to a firm selling or arranging the sale of a packaged product to a retail client, where the selling or arranging does not relate to giving a personal recommendation. It requires a firm to disclose any commission unless the retail client ‘…is not present in the EEA at the time of the transaction’.

4.37 COBS 9.4 specifies that a suitability report does not need to be provided ‘…if the client is habitually resident outside the EEA and is not present in the United Kingdom at the time of acknowledging consent to the proposal form, to which the personal recommendation relates.’

4.38 COBS 22.2 sets out ‘Restrictions on the retail distribution of mutual society shares’ and COBS 22.3 sets out ‘Restrictions on the retail distribution of contingent convertible instruments and CoCo funds’. In both chapters, the restrictions currently apply to firms dealing with retail clients in the EEA.

4.39 We propose to amend the scope of these provisions so that they refer only to clients in the UK. In the case of application provisions (COBS 22), this will mean that relevant protections will no longer apply when firms deal with clients in the EEA. The scope of exemptions (COBS 6.4 and 9.4) will be expanded as they will dis-apply requirements for firms when dealing with clients in the EEA.

4.40 The UK-only approach maintains the current investor protections for UK retail clients, but removes the existing protection for retail clients in the EEA provided by our rules.
As passporting rights will fall away, UK firms conducting business in the EEA may be subject to the EEA member states’ own local laws instead.

Q9: Do you agree with our proposed changes to COBS 2, 3, 6, 9, 10 and 22?

Section 4.4 Changes to fund management rules

4.41 In this section, we summarise the key changes we propose to the legal and regulatory framework for fund management. This does not cover COLLG – the Collective Investment Scheme Information Guide. We have decided not to review COLLG as it needs a broader set of updates, beyond those related to Brexit. We will review it in due course and therefore stakeholders should refer to the amendments to the Investment Funds (FUND) and Collective Investment Schemes (COLL) sourcebooks for the relevant regulatory framework post-Brexit.

Investment Funds sourcebook (FUND)

4.42 The Alternative Investment Fund Managers Directive (AIFMD) sets out a harmonised regulatory framework for AIFMs. The AIFMD rules are largely set out in FUND. The changes we propose relate to the loss of single market passporting rights given by the Directive and reflect changes proposed by the Treasury. They cover:

• the creation of an equivalent UK AIFM regime for existing alternative investment funds (AIFs) managed by UK AIFMs and for AIFMs who may wish to launch new funds.

• continued cross-border management by AIFMs, whereby EEA AIFMs managing unauthorised UK AIFs without carrying on a regulated activity in the UK will be subject to the same rules as third-country AIFMs (it will no longer be possible for an EEA AIFM to manage an authorised UK AIF if that AIFM is outside of the Temporary Permissions Regime (TPR)).

• the continued cross-border marketing of EEA AIFs whereby, in order to access the UK market, EEA AIFs will be subject to the National Private Placement Regime (NPPR) unless they have already notified the FCA to begin marketing before exit day and have applied to enter the TPR.

Collective Investment Schemes sourcebook (COLL)

4.43 The UCITS Directive sets out a framework for authorising and supervising EEA collective investment schemes (funds) that can be marketed to retail investors. Management companies of UCITS funds are also authorised and regulated under the Directive.

4.44 The rules for how UCITS funds should be managed are largely set out in the Collective Investment Schemes sourcebook (COLL). The changes we propose to make to COLL

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reflect the loss of single market authorisation and passporting rights and mostly relate to:

- the creation of an equivalent UK retail fund regime for the existing UK UCITS schemes, and for UK management companies who may wish to launch new funds of this kind in the UK (outside of the TPR EEA management companies will no longer be able to manage UK UCITS).

- continued cross-border marketing of UCITS, whereby EEA UCITS wishing to continue to market in the UK will be treated as third-country funds and will need to apply for individual recognition by the FCA under s.272 FSMA (although passporting funds already recognised under s.264 FSMA before exit day will be able to apply to enter the TPR).

- cross-border mergers involving a UK UCITS scheme and a scheme based in the EEA, which will no longer be possible using the procedure in the Directive.

- provisions for master-feeder arrangements, which will still apply to a UK feeder UCITS when it invests in units of an EEA master UCITS. We do not expect that EEA UCITS feeder funds will be allowed to invest in a UK UCITS master fund after exit day.

4.45 We are not consulting on changes to section 5.9 of COLL, concerning money market funds, because that section was removed by the Money Market Funds Regulation Instrument 2018 (FCA 2018/37) on 20 July 2018.

**UCITS investment powers**

4.46 The UCITS rules describe the classes of eligible assets in which funds may invest and the borrowing and leverage arrangements they may enter into. In some cases, the UCITS regime makes a distinction between investments in EEA assets and investments in the rest of the world. Treating EEA states as third countries could cause significant disruption for some funds, resulting in them breaching risk-spreading rules and having to sell their current holdings. For existing investors who chose a fund expecting it to invest in EEA-based assets, this approach could interrupt their investment plans and it could limit the availability of alternative options for both existing and new investors. We therefore propose to allow UK UCITS schemes to retain the same freedom to invest in EEA assets as they do now.

4.47 Accordingly, we propose that references in COLL 5.2 to ‘EEA’ be amended to ‘EEA and UK’ as needed to ensure that the current investment powers are kept.

4.48 We considered widening the range of eligible investments to treat assets from the rest of the world the same as EEA-based assets. However, we consider this would potentially change the risk profile of funds by allowing greater investment in less well-regulated markets or less liquid assets. As a result, we do not judge this to be the right change to make to our Handbook.

**Q10: Do you agree that UK UCITS schemes should have the same freedom to invest in EEA (non-UK) assets as they do now?**

Depositaries of UK authorised funds (relevant for AIFs and UCITS)

4.49 UK funds must have a depositary that is ‘established’ in the UK, which can include the UK branch of an incoming EEA firm if that branch has a ‘top-up’ Part 4A permission to act as a depositary. After Brexit, the concept of being established in the UK will, for UK authorised funds, be limited to an entity incorporated in the UK. Depositaries of authorised funds that currently use the UK branch model will have a transitional period in which to restructure their operations. It will still be possible for branches of EEA firms to hold a Part 4A permission to act as depositary for unauthorised AIFs.

4.50 We propose to amend FUND and COLL to remove references to a depositary of an authorised fund that is a UK branch of an EEA firm.

Q11: Do you agree with our proposal to amend FUND and COLL to remove references to a depositary of an authorised fund that is a UK branch of an EEA firm?

Section 4.5 An overview of MiFID-related changes

4.51 MiFID II is being incorporated into UK law through a mixture of legislative provisions, Handbook changes and conversion of Binding Technical Standards into UK legal instruments. The draft Treasury legislation amends the legislative provisions it used to transpose MiFID II plus other relevant legislative provisions, and amends the UK versions of MiFIR and the Commission delegated acts. In this CP we are consulting on the Handbook changes and the Binding Technical Standards. For more information on MiFID BTS changes please refer to Chapter 5.

4.52 In the changes we made to give effect to MiFID II, we included in certain parts of the Handbook (most notably in SYSC and COBS) text copied out from Commission delegated regulations, principally what we referred to as the MiFID Org regulation, which is being incorporated into UK law by the Treasury. We are retaining the copied out text of the Commission delegated regulations in the Handbook and have only proposed amendments to reflect the changes the Treasury has made in that process.

4.53 MiFID II includes a category of firms, so-called ‘Article 3’ firms, which are not required to be authorised as investment firms under the Directive but are subject to some of the same obligations as MiFID investment firms. Article 3 firms are restricted in the activities they can carry out and include some financial advisors, corporate finance boutique firms and venture capital firms. Within the EU, unlike MiFID investment firms, Article 3 firms are not allowed to passport their investment services. Brexit means that for UK firms the MiFID II passport will no longer be available. However, we are not proposing for this reason to do away with the distinction between Article 3 firms and MiFID investment firms as we do not think this constitutes a deficiency to be dealt with under the EUWA.

4.54 In terms of deficiencies to be corrected in the incorporation of MiFID 2 into UK law, the most significant relate to the transparency regime, transaction reporting and the ancillary activities exemption for commercial firms trading commodities derivatives. These are dealt with essentially through the Treasury’s draft legislation and the UK versions of BTS. Onshoring the MiFID II provisions in the Handbook mainly involves consequential changes to references to legislation, definitions or EU institutions. In
this CP we consult on changes to the MiFID 2 Guide. Some of the remaining changes to our Handbook arising from the onshoring of MiFID will be consulted upon in a later CP.

4.55 As for proposed amendments to GEN in the case of applying onshored EU regulations to UK branches of third-country investment firms (now expanded to include EEA firms), these should be read in conjunction with the amendments to the same module relating to incoming EEA firms with temporary permissions (please refer to Chapter 4 of the TPR CP)\textsuperscript{24}.

\textsuperscript{24} The Temporary Permissions Regime Consultation Paper
5 Binding Technical Standards

Our approach to Binding Technical Standards (BTS)

5.1 This consultation sets out our proposals to correct provisions in BTS\(^\text{25}\) that would no longer operate effectively once the UK has left the EU. These changes will ensure that there is a functioning legal framework for UK financial regulation on the day that the UK leaves the EU.

5.2 This consultation does not cover all of the BTS. A further consultation will follow later in the Autumn, alongside our consultation on other parts of the Handbook. In this paper, we are consulting on changes to BTS in respect of:

- Credit Rating Agencies
- Fund Management
- EMIR (only BTS related to registration and application of Trade Repositories)
- MIFID/MIFIR
- Short Selling
- Capital Requirements

5.3 As set out earlier in the paper, the Government has signalled its intention to delegate powers to the Bank of England, PRA, FCA and PSR to correct deficiencies within BTS. On 16 July 2018\(^\text{26}\), the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 was laid before Parliament. It is under these powers that we are proposing to make changes to the Binding Technical Standards. All changes made under the delegated power will be subject to approval by the Treasury before the relevant instruments are made.

5.4 Some BTS within CRD, CRR, and MiFID are relevant to firms and persons supervised by us, the Bank of England and the PRA. The draft SI giving us the power to correct BTS designates a regulator for each BTS and in some cases this is shared between two of the regulators. The approach we, the Bank and the PRA are taking, in preparation for exit day, is that one authority will take the lead in making corrections, based on which authority’s remit and objectives are most relevant. Where this is the case, we have collaborated with the other designated regulator, and we will be sharing consultation responses with one another.

5.5 On exit day, we and the PRA will be able to make our own changes to the BTS in line with our respective statutory objectives and in respect of the entities we regulate. Any

\(^{25}\) Please see full list of BTS covered in this CP in Annex 3

\(^{26}\) The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

future changes to the BTS, by either regulator, would be undertaken in consultation with each other.

5.6 The Schedule of the Financial Regulators’ Powers SI includes the list of EU Regulations for which we are the appropriate regulator. It also includes this for EU Regulations we share with the PRA and the Bank.

5.7 In correcting BTS, we have followed the approach envisaged by Government in its published secondary legislation under the EUWA and so, most of our changes are consequential. These proposed changes are not described in detail in this consultation but all draft instruments showing the changes can be found in Appendix 2.

5.8 We give more detail and reasoning where our proposals depart from the general approach taken by Government or where we consider a different approach to correcting the relevant deficiency is appropriate.

5.9 All changes to BTS should also be read alongside the amendments made to the Level 1 legislation. You may also find it useful to refer to the amendments to our Handbook.

Sectoral changes

5.10 Most of the changes that we are proposing to make to BTS are to fix gaps that are cross-cutting in nature and are reflected within the cross-cutting chapter of this consultation. We have specified below where changes are specific to certain BTS.

The Credit Rating Agencies Regulation associated BTS

5.11 Credit rating agencies (CRAs) in the EU are regulated under the Credit Rating Agencies Regulation (CRAR) and supervised by ESMA. The CRAR will be incorporated into UK law under the EUWA. This legislation will make us the supervisor responsible for CRAs. CRAs should have regard to HMT proposals relating to registration regimes and the standards that will apply to firms seeking to provide business in the UK.

5.12 The CRAR has several BTS associated with it. We will make appropriate amendments to some of these and others will cease to be applicable. We propose to make amendments to the following BTS:

- Commission Delegated Regulation (EU) No 447/2012 regarding the assessment of compliance of credit rating methodologies
- Commission Delegated Regulation (EU) No 449/2012 regarding the information for registration and certification of credit rating agencies
- Commission Delegated Regulation (EU) No 2015/1 regarding the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority
- Commission Delegated Regulation (EU) No 2015/2 regarding the presentation of the information that credit rating agencies make available to the European Securities and Markets Authority
5.13 Most of the changes are cross-cutting and as such, explanation for such approach can be found in the cross-cutting chapter of this CP (Chapter 3). But some changes are consequential to the approach communicated in the Treasury’s Policy note on the Credit Rating Agencies (Amendments etc.) (EU Exit) Regulations 2018. These changes include, for example, replacing references to the European Rating Platform, in Commission Delegated Regulation (EU) No 2015/2, with references to a public rating database.

5.14 We have also had to consider more substantial changes. Commission Delegated Regulation (EU) No 2015/2 required CRAs to give information to ESMA on all ratings issued and not withdrawn when it came into force. Firms were required to submit this information within 6 months from the Delegated Regulation entering into force.

5.15 We propose that CRAs that are currently registered with ESMA and that wish to register with us will need to send us this information by exit day. We will work closely with CRAs to test our systems in preparation to receive the information they will need to report to us. We expect CRAs to be familiar with the reporting requirements as they are consistent with those in place under CRAR.

5.16 We are also working closely with stakeholders so that we can receive data in a similar way to ESMA.

5.17 Finally, we will remove Commission Delegated Regulation (EU) 2015/3. This BTS sets out disclosure requirements for structured finance instruments under Article 8b of CRAR. Article 8b will be removed by Article 40 of the Securitisation Regulation (2017/2402) which will come into force on 1 January 2019.

**Fund Management associated BTS**

5.18 This section covers changes associated with AIFMD and the UCITS Directive. It does not cover changes to BTS associated with the Regulations for Money Market Funds, European Social Entrepreneurship Funds (EuSEF), European Venture Capital Funds (EuVECA) or European Long-term Investment Funds (ELTIF) but we anticipate being able to consult on those BTS later this year.

5.19 The BTS associated with AIFMD, Commission Delegated Regulation (EU) No 2014/694, defines when AIFs should be considered open-ended or closed-ended. We have not identified any deficiencies with this BTS, except a cross-reference to an article of AIFMD in Article 5 that needs to be replaced by its implementing measure in the UK, and will not make any further changes to it.

5.20 Finally, we will remove the following Commission Delegated Regulation which will not be applicable under the onshored legislation proposed by the Treasury as it relates to reporting requirements which will cease as we exit the EU:

- UCITS: Commission Implementing Regulation (EU) No 2016/1212 prescribes the process for reporting sanctions to ESMA under article 99e.
The European Markets and Infrastructure Regulation (EMIR)—only BTS related to registration and application of Trade Repositories

5.21 EMIR imposes requirements on entities that enter into derivative contracts. It also establishes common organisational, conduct of business and prudential standards for central counterparties (CCPs) and trade repositories (TRs).

5.22 In this CP we are consulting on proposed changes to the two BTS associated with registration and application of Trade Repositories (TRs) for which we are the lead authority. The changes are all consequential and derive from the SI on Trade Repositories. They are:

- Commission Implementing Regulation (EU) No 1248/2012, regarding the format of applications for registration of trade repositories
- Commission Delegated Regulation (EU) No 150/2013 regarding the details of the application for registration as a trade repository

5.23 We intend to consult on RTS 151/2013 on data to be published and made available by trade repositories when the Treasury publishes relevant material relating to the treatment of EMIR.

The Markets in Financial Instruments associated BTS

5.24 The Markets in Financial Instruments Directive and the accompanying Markets in Financial Instruments Regulation (collectively ‘MiFID II’) offer a framework for regulating the buying, selling and trading of financial instruments (including shares, bonds, units in collective investment schemes and derivatives) in the EU.

5.25 There are 44 BTS associated with MiFID II. This consultation paper does not cover, to use the original numbering of the European Securities and Markets Authority, RTS 1 and 2, 3 and 11 dealing with pre- and post-trade transparency. We will communicate on the approach to these BTS in due course.

5.26 In some cases, responsibility for the BTS associated with MiFID II is shared between the FCA and the Bank or the PRA as set out earlier in this Chapter.

5.27 In order to make the MiFID/MiFIR BTS more ‘user friendly’ we have included a specific provision within each technical standard to define its scope and application – based on the scope provisions in the Level 1 of MiFID II together with a discrete provision setting out definitions used in the BTS.

5.28 Our review of the MiFID II/MiFIR BTS did not find any significant deficiencies, beyond those identified in the associated Level 1 text such as the scope of definitions, except for minor amendments. Most of them are non-material in nature and included within the cross-cutting chapter (Chapter 3). The list of BTS that only included cross-cutting or minor amendments can be found in the table below.

---

28 Draft Trade Repositories (Amendment and Transitional Provision) (EU exit) Regulations 2018
5.29 However, in RTS 23 Commission Delegated Regulation (EU) No 2017/585, we are not proposing to follow the general onshoring approach of replacing references to Central European Time (CET) with references to Greenwich Mean Time (GMT) and British Summer Time (BST). Firms must still report reference data based on CET because we recognise changing this deadline would otherwise effectively reduce the time we have for processing the data and may have cost and system implications for firms. We are however proposing to keep the data time format for data to be reported to Universal Time Coordinated (UTC) to ensure consistency across order data, instrument reference data and transaction reporting.

5.30 More generally, in the case of transaction reporting, RTS 22 maintains the application of reporting requirements to the same categories of UK firms. Whilst the amendments to RTS 22 and 23 are technical in nature, UK firms should note that these changes have the following effects:

- UK trading venues will have to report transactions on their venue by EEA firms as they will become third-country firms and will not have an obligation to report to the FCA. They should not, however, report for UK branches of EEA firms as after exit day these should be reporting to the FCA. Trading venues will therefore need to distinguish trading by the UK branch from elsewhere where the branch is not executing.

- A UK firm will no longer be able to meet the conditions for transmission if they transmit orders to an EEA firm. They will therefore have to either report transactions themselves or ensure their transmission arrangements are with firms that have obligations to report to the FCA.

- The FCA will publish consolidated data on instruments traded on UK trading venues and systematic internalisers and may publish other reference data.

5.31 These changes tie in with the scope of the onshored transaction reporting regime in MiFIR. For EEA firms, see commentary in Chapter 4 of this CP (an overview of MiFID-related changes) relating to the application of GEN 2.2.22AR and the TPR CP on requirements applying to temporary permission firms; if an EEA firm executes transactions in financial instruments from a UK branch, it will need to report these to the FCA’s Market Data Processor (MDP) from exit day, either itself or using an approved reporting mechanism, and have made the necessary arrangements to do so before then.

5.32 To inform our operational onshoring programme, we seek feedback on the following areas, in addition to the general questions set out in Chapter 2:

Q12: Do you foresee any specific challenges in implementing the changes described above?
Q13: How long do you anticipate it will take to implement the changes? Please describe which changes you are referring to.

Q14: Are there any other impacts that you have identified?

Finally, we will remove these MiFID II/MIFIR BTS as they will not be applicable under the onshored legislation as they relate to obligations which will cease as we exit the EU:

- RTS 3A Delegated Regulation (EU) No 2017/1018 specifying information to be notified by investment firms, market operators and credit institutions
- ITS 1 Implementing Regulation (EU) No 2017/988 on standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State
- ITS 4A Implementing Regulation on standard forms, templates and procedures for the transmission of information under the freedom to provide services, or the freedom of establishment
- ITS 6 Implementing Regulation (EU) No 2017/980 on standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities
- ITS 7 Implementing Regulation (EU) No 2017/981 on standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation
- ITS 8 Implementing Regulation (EU) No 2017/1111 on procedures and forms for submitting information on sanctions and measures
- Commission Implementing Regulation (EU) No 2017/2382 regarding standard forms, templates and procedures for the transmission of information
- Commission Delegated Regulation (EU) No 2017/586 regarding the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations
- Commission Implementing Regulation (EU) No 2017/1944 regarding standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm

As discussed above these BTS, covering transparency requirements and tick sizes, are still subject to ongoing discussions. We will consult on these in due course.

- RTS 1 Commission Delegated Regulation (EU) No 2017/587 regarding transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser
• RTS 2 Commission Delegated Regulation (EU) No 2017/583, regarding transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives. Commission Delegated Regulation (EU) No 2017/2194 is an amendment to RTS 2 and will therefore also be consolidated with RTS 2 in due course

• RTS 3 Commission Delegated Regulation (EU) No 2017/577, regarding the volume cap mechanism and the provision of information for the purposes of transparency and other calculations

• RTS 11 Commission Delegated Regulation (EU) No 2017/588 regarding the tick size regime for shares, depositary receipts and exchange traded funds

The Short Selling Regulation associated BTS

5.35 We propose to make changes to the 3 BTS associated with the Short Selling Regulation, namely:

• Commission Delegated Regulation (EU) No 826/2012 – this BTS relates to notification and disclosure requirements regarding net short positions as well as the details of the information to be provided to ESMA in relation to net short positions, and the method for calculating turnover to determine exempted shares

• Commission Implementing Regulation (EU) No 827/2012 – this BTS relates to the means for public disclosure of net position in shares, the format of the information to be provided to ESMA in relation to the net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share

• Commission Delegated Regulation (EU) No 919/2012 – this BTS relates to the method of calculation of the fall in value for liquid shares and other financial instruments

5.36 Most of the changes are cross-cutting, and as such, can be found in the chapter on cross-cutting issues. But some changes to these BTS are consequential to the approach adopted in the Statutory Instrument by the Treasury.

5.37 These changes are relatively minor, and by way of example, include:

• References to ESMA’s publishing obligation in the Commission Delegated Regulation (EU) 827/2012, where ESMA is required to publish a list of shares which are traded on EU venues but which are exempt from the EU Short Selling Regulation as they are principally traded on venues outside of the Union, will be transferred to us. We will publish a list of shares principally traded outside of the UK.

• References in the Commission Delegated Regulation (EU) No 919/2012 to financial instruments in Section C of Annex 1 to Directive 2004/39/EC (MiFID) will be updated to refer to the category of derivatives listed in the Regulated Activities Order, in line with the Treasury’s changes.
5.38 Capital Requirements associated BTS

With reference to the BTS adopted under CRD IV and CRR, we share responsibilities with the PRA for a proportion of these BTS, as set out in the Financial Regulators’ Powers SI (see para 5.6). For this dossier, we have agreed with the PRA to split each onshored BTS at exit day using the power under Regulation 4 of the Financial Regulators’ Powers (Technical Standards) (EU Exit) Regulations 2018. We intend to make the same onshoring changes as the PRA at exit and the outcome would be to have separate but identical onshored BTS applying to PRA-authorised and FCA-authorised firms.

5.39 While we are conducting our own consultation through this paper on the onshoring amendments to our portion of each split BTS, FCA-authorised firms should have regard to the PRA consultation that will be published shortly to view the detail of the proposed amendments. Any responses to our consultation should be provided either directly to us or to the PRA, but we encourage firms to respond to the PRA where possible.

5.40 Certain CRR BTS contain reporting and disclosure templates used by both PRA-authorised and FCA-authorised firms. The PRA and we are proposing not to make line by line changes to these templates or instructions at exit. This is due to the volume of reporting and disclosure templates and instructions, the costs to firms of changing reporting templates, and seeking to minimise/reduce the frequency of changes to reporting requirements. We both plan to issue interpretative guidance on the approach we expect firms to take after EU withdrawal in cases where reporting and disclosure fields or definitions are based on concepts related to the EU.

5.41 In relation to all the changes we have discussed in this chapter:

Q15: Do you agree that we have correctly identified all relevant amendments in our draft BTS text related to the cross-cutting issues set out in Chapter 3? Are there any proposed changes in the instruments in Appendix 2 or discussed in Chapter 5 where you think we should reconsider our approach?
6 European Level 3 materials

Our proposed general approach to Level 3

6.1 Under the EUWA, the broad range of non-legislative material produced by the European Supervisory Authorities (ESAs) or their predecessor bodies (for example, CESR) will not be incorporated into UK law.

6.2 This non-legislative material includes Guidelines and Recommendations on the application of EU law, and Opinions, and is known collectively as Level 3 material. We have also included ‘Questions and Answers’ under this umbrella.

6.3 The ESAs currently have powers under the ESA Regulations to issue Guidelines and Recommendations which are subject to a ‘comply or explain’ requirement. Under the provisions of the EUWA, the ESA Regulations will become part of UK law. However, the Government has proposed revoking the ESA Regulations, which will mean the comply and explain requirement no longer applies.

6.4 Because of these changes, we propose to issue FCA non-Handbook guidance on our approach after exit day to existing Level 3 material. The proposed non-Handbook guidance can be found at Appendix 3 to this CP. In summary, it sets out that:

- we recognise the value of existing Level 3 material within the current regulatory structure and consider that this material will continue to be relevant after exit day to us, financial institutions and other market participants
- we expect financial institutions and other market participants to continue to apply ESA Guidelines and recommendations as they did before exit day
- we consider that references to other pre-exit EU non-legislative material (such as Commission Q&A’s and ESA Opinions) may continue to be relevant and that we will continue to have regard to these as appropriate
- we expect to continue to apply pre-exit ESA Guidelines and recommendations which relate to our functions, to the extent we currently comply with them

6.5 We will not carry out a detailed, line-by-line review of all existing Level 3 materials to identify and resolve provisions which no longer have their intended effect (for example, references to legislation that may have been amended as part of the withdrawal process and may therefore no longer be correct). Instead, we expect financial institutions and other market participants to interpret all EU Level 3 material sensibly and purposively, taking into account the UK’s withdrawal from the EU, the provisions of the EUWA and amendments made to relevant legislation in the withdrawal process.

Q16: Do you have any comments on the proposed guidance on our approach to EU Level 3 materials set out at Appendix 3 to this CP?
Q17: Have you identified any specific provision in EU non-legislative material which should be specifically reviewed and amended because you think that the interpretive approach proposed will not be enough to ensure the regulatory framework remains fit for purpose? If so, please explain why you think this is the case.

Remuneration requirements in SYSC 19

6.6 There is one area where we propose to change how we refer to EBA Guidelines. Our IFPRU Remuneration Code and dual-regulated firms Remuneration Code allows firms to apply a notional discount rate to the total variable remuneration awarded to material risk takers (MRTs) to calculate the bonus cap. This lets firms account for the time value of awards, considering factors such as inflation, interest rates and deferral periods while continuing to meet the requirement to award variable remuneration only up to a maximum of 100% or 200% of the value of their fixed remuneration.

6.7 The Handbook requires firms wishing to apply the discount rate to apply the methodology set out in the EBA Guidelines on Applicable Notional Discount Rate for variable remuneration, as published on 27 March 201429.

6.8 An issue arises in this case because compliance with these Guidelines is mandatory, and the formula for calculation relies on inflation and interest rates produced by Eurostat. These figures may not continue to be produced for the UK following exit day.

6.9 To deal with this, we propose to remove from our rule the requirement to discount variable remuneration in the way specified in the Guidelines and replace this with a Handbook note reference.

6.10 By pointing firms to the relevant Guidelines and to our approach that firms should make every effort to comply, we would ensure they apply the same consistent method across Europe should Eurostat figures continue to be produced (as our UK equivalent statistics may differ from those of Eurostat). Should Eurostat figures not be available post-exit, firms would be expected to demonstrate that this data is not available in their efforts to comply and explain the rationale for the use of appropriate alternative figures which can then be verified by us.

Other non-Handbook guidance

6.11 There are various pieces of guidance that the FCA has published which sit outside of our Handbook. This guidance may refer to FCA Handbook provisions which we propose to change as a result of Brexit, EU legislation or otherwise refer to the EU/EU concepts. As such, this guidance may be impacted by Brexit.

6.12 We intend to publish our proposed approach to such guidance in our next consultation paper.

29 These provisions are set out in SYSC 19A.3.44ER and SYSC 19D.3.53R.
Annex 1

Questions in this paper

Q1: Do you think any of the proposed changes in this CP or in relevant SIs represent a significant risk to compliance for your firm in time for exit day? If yes, please specify which and explain why this is the case, including projected time needed to comply with requirements were they to come into effect on exit day.

Q2: Do you agree that we have correctly identified all relevant amendments in our draft Handbook and BTS text related to the cross-cutting issues set out above? Do you have any other points you wish to raise regarding our approach to these cross-cutting issues?

Q3: Are there any proposed changes reflected in the instruments in Appendix 1 that are not cross-cutting in nature (see Chapter 3) or discussed in this chapter where you think we should re-consider our approach? If so, why?

Q4: Are there any proposed changes where you think we should not follow the baseline approach of treating the EEA as a third country? If so, why?

Q5: Do you agree with our proposal to amend the term ‘regulated market’ as it applies in INSINU?

Q6: Do you agree we should continue to permit exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as under the current rules in INSINU 3.2?

Q7: Do you agree we should continue to allow exposure to stock-lending transactions with EEA-authorised counterparties on the same basis as under the current rules in COBS 21.3?

Q8: Do you agree we should continue to allow exposure to loans or deposits made with an approved financial institution on the same basis as under the current rules in COBS 21.3?

Q9: Do you agree with our proposed changes to COBS 2, 3, 6, 9, 10 and 22?

Q10: Do you agree that UK UCITS schemes should have the same freedom to invest in EEA (non-UK) assets as they do now?
Q11: Do you agree with our proposal to amend FUND and COLL to remove references to a depositary of an authorised fund that is a UK branch of an EEA firm?

Q12: Do you foresee any specific challenges in implementing the changes described above?

Q13: How long do you anticipate it will take to implement the changes? Please describe which changes you are referring to.

Q14: Are there any other impacts that you have identified?

Q15: Do you agree that we have correctly identified all relevant amendments in our draft BTS text related to the cross-cutting issues set out in Chapter 3? Are there any proposed changes in the instruments in Appendix 2 or discussed in Chapter 5 where you think we should reconsider our approach?

Q16: Do you have any comments on the proposed guidance on our approach to EU Level 3 materials set out at Appendix 3 to this CP?

Q17: Have you identified any specific provision in EU non-legislative material which should be specifically reviewed and amended because you think that the interpretive approach proposed will not be enough to ensure the regulatory framework remains fit for purpose? If so, please explain why you think this is the case.
Annex 2
List of relevant Statutory Instruments

The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

Short Selling (Amendment) (EU Exit) Regulations 2018

Consumer Credit (Amendment) (EU Exit) Regulations 2018

Building Societies (Amendment) (EU Exit) Regulations 2018

Friendly Societies (Amendment) (EU Exit) Regulations 2018

EEA Passport Rights (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

Collective Investment Schemes (Amendment) (EU Exit) Regulations 2018

Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018

The Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018

Capital Requirements (Amendment) (EU Exit) Regulations 2018

Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018

Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018

Solvency 2 and Insurance (Amendment) (EU Exit) Regulations 2018

Payments and electronic money (Amendment) (EU Exit) Regulations 2018: draft statutory instrument

The Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018: draft statutory instrument
Annex 3
List of relevant Binding Technical Standards

List of BTSs consulted on in this CP where the FCA is the sole regulator

**AIFMD**


**Credit Rating Agencies Regulation**


**EMIR (Trade Repositories)**


- Commission Implementing Regulation (EU) 1248/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of applications

**MiFID**


financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions.


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


• Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators.


• Commission Implementing Regulation (EU) 2017/988 of 6 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State.
MiFIR


- Commission Delegated Regulation (EU) 2016/2022 of 14 July 2016 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third-country firms and the format of information to be provided to the clients.


transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internalise.


**Short Selling Regulation**

- Commission Delegated Regulation (EU) 826/2012 of 29 June 2012 supplementing Regulation (EU) 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares.


- Commission Implementing Regulation (EU) 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps.

**UCITS Directive**


List of BTSs that are shared with the Bank of England or the PRA, where the FCA is the lead authority

**MiFID**

*FCA Lead, shared with the PRA*


**MiFIR**

*FCA Lead, shared with the Bank of England*


Annex 4
Compatibility statement

This annex records the FCA’s compliance with legislation relevant to the proposals in this consultation.

The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018

The FCA considers that all changes in this CP are appropriate to prevent, remedy or mitigate any failure of the relevant FCA Handbook provisions or BTS to operate effectively, or any other deficiency in the relevant FCA Handbook provisions or BTS, arising from the withdrawal of the United Kingdom from the EU.

The proposals do not impose or increase taxation or fees; make retrospective provision; create a criminal offence which is capable of leading to imprisonment of more than two years; establish a public authority; implement the Article 50 Withdrawal Agreement; result in the transfer of a function of an EU authority to a UK authority; confer any power to legislate by means of orders, rules, regulations or any other subordinate instrument; or amend any legislation other than the relevant FCA Handbook provisions and BTS.

Equality and diversity

We are required under the Equality Act 2010 (the Act) in exercising our functions to ‘have due regard’ to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not.

As explained in paragraph 2.16 the cross-cutting and sector-specific technical changes proposed in chapter 3 have not involved a choice being made on our part.

By contrast, some of the changes proposed do involve a choice being made. We have therefore focused on these changes in assessing the risk of people with protected characteristics being adversely impacted.

Overall, we do not consider it likely that the proposed discretionary changes would adversely impact people with protected characteristics. This is because the majority of changes in question impact directly on financial institutions rather than on individual products, which is where they would be more likely to affect individuals. Where individual products are directly affected (e.g. amending the territorial scope of COBS 22), we do not expect these changes to have a material impact on people with protected characteristics. We would, however, welcome stakeholders’ input on this assessment.
Legislative and Regulatory Reform Act

We are required under the LRRA to have regard to the principles in the LRRA and to the Regulator’s Compliance Code when determining general policies and principles and giving general guidance (but this duty does not apply to regulatory functions exercisable through our rules).

We have had regard to the principles in the LRRA for the parts of the proposals that consist of general policies, principles or guidance. We believe that our proposals will be effective in helping firms and others subject to Handbook requirements understand and meet regulatory requirements more easily. We also believe that our proposals are a proportionate response to the need to amend the Handbook to take account of Brexit and to explain the approach to EU level 3 materials after Brexit.

We have also had regard to the Regulators’ Compliance Code for the parts of the proposals that consist of general policies, principles or guidance.

Treasury recommendations about economic policy

In the remit letter published by the Chancellor of the Exchequer on 8 March 2017, the Chancellor affirms our role in ensuring that stability in financial services can create the right conditions for access to finance. This is part of the Government’s economic objective to create strong, sustainable and balanced growth. We have regard to this letter and the recommendations within. As set out in this CP, our proposals ensure that there is a functioning, legally sound Handbook should the UK leave the EU without a transitional arrangement.
### Annexe 5

**Abbreviations in this document**

<table>
<thead>
<tr>
<th>Abbreviation</th>
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<tr>
<td>AIFM</td>
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<td>BIPRU</td>
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We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response 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 Rights Tribunal.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.
Appendix 1
Draft Handbook text
Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of:

(1) regulation 3 of the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018; and

(2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

B. This instrument comes into force on [29 March 2019 at 11 p.m].

Amendments to the FCA Handbook

C. 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.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Management Arrangements, Systems and Controls sourcebook (SYSC)</td>
<td>Annex A</td>
</tr>
<tr>
<td>Financial Stability and Market Confidence sourcebook (FINMAR)</td>
<td>Annex B</td>
</tr>
<tr>
<td>General Provisions (GEN)</td>
<td>Annex C</td>
</tr>
</tbody>
</table>

Citation

D. This instrument may be cited as the Exiting the European Union: High Level Standards (Amendments) Instrument 201[X].

By order of the Board
[\textit{date}]
Editor’s notes

(1) The amendments proposed in this instrument relate to the statutory instruments set out in Annex 2 of the accompanying paper and other matters arising from the UK’s withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.

(2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 2 of the consultation paper.

(3) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day, rather than the text of the Handbook in force on 1 July 2018.

(4) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.
Annex A

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 Application and purpose

1.1A Application

... 

1.1A.2 The provisions in SYSC should be read in conjunction with GEN 2.2.23R to GEN 2.2.25G. In particular:

(1) [deleted]

(2) Provisions made by the FCA, and by the PRA in the PRA Rulebook, may be applied by both regulators to PRA-authorised persons. Such provisions are applied by each regulator to the extent of its powers and regulatory responsibilities.

(3) For Solvency II firms, the FCA considers that the requirements and guidance in Chapters 2, 3, 12 to 18, 21 and 22 of SYSC are not inconsistent with:

(a) the parts of the PRA Rulebook implementing which implemented the governance provisions in the Solvency II Directive (articles 40 to 49);

(b) the Solvency II Regulation (EU) 2015/35 of 10 October 2014 (articles 258 to 275), or

(c) EIOPA guidelines on systems of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN).

In most cases, there is no direct overlap with those provisions because the SYSC requirements are directed at FCA conduct requirements not expressly covered by or under provisions which implemented or supplemented the Solvency II Directive. Where there is a direct overlap with SYSC rules and guidance, the FCA will take requirements and guidelines which implemented or supplemented the Solvency II Directive derived requirements and guidelines into account and will interpret the SYSC rules and guidance in a way that avoids inconsistency. The definition of Solvency II firm includes (for SYSC) large non-directive insurers because the PRA have applied certain Solvency II derived requirements to those firms. Where SYSC refers to the PRA Rulebook applicable to Solvency II firms, large non-directive
insurers should read those references as if they were references to the corresponding part of the PRA Rulebook applicable to large non-directive insurers.

... 

<table>
<thead>
<tr>
<th>1 Annex</th>
<th>Detailed application of SYSC 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 1</td>
<td>Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Society</td>
</tr>
<tr>
<td>Who?</td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>R</td>
</tr>
<tr>
<td>(1)</td>
<td>for an incoming EEA firm or an incoming Treaty firm:</td>
</tr>
<tr>
<td>(a)</td>
<td>SYSC 2.1.1R and SYSC 2.1.2G do not apply;</td>
</tr>
<tr>
<td>(b)</td>
<td>SYSC 2.1.3R to SYSC 2.2.3G apply, but only in relation to allocation of the function in SYSC 2.1.3R(2) and 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; and</td>
</tr>
<tr>
<td>(c)</td>
<td>SYSC 3 applies, but 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; [deleted]</td>
</tr>
<tr>
<td>(2)</td>
<td>for an incoming EEA firm which has permission only for cross border services and which does not carry on regulated activities in the United Kingdom, SYSC 2 and SYSC 3 do not apply; [deleted]</td>
</tr>
<tr>
<td>(3)</td>
<td>for an incoming Treaty firm which has permission only for cross border services and which does not carry on regulated activities in the United Kingdom, SYSC 3.2.6AR to SYSC 3.2.6JG do not apply; [deleted]</td>
</tr>
<tr>
<td>(4)</td>
<td>...</td>
</tr>
<tr>
<td>(5)</td>
<td>SYSC 2 and SYSC 3 do not apply to an incoming ECA provider acting as such; [deleted]</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

1.2 G (I) Question 12 in SYSC 2.1.6G contains guidance on SYSC 1 Annex 1.1.1R(1)(b) and SYSC 1 Annex 1.1.1R(1)(c).
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(2)</td>
<td>SYSC 1 Annex 1.1.8R further restricts the territorial application of SYSC 2 and SYSC 3 for an incoming EEA firm or an incoming Treaty firm.</td>
</tr>
<tr>
<td>(3)</td>
<td>SYSC 1 Annex 1.1.1R(3) puts an incoming EEA firm on an equal footing with unauthorised overseas persons who utilise the overseas persons exclusions in article 72 of the Regulated Activities Order.</td>
</tr>
<tr>
<td>(4)</td>
<td>Further guidance on which matters are reserved to a firm’s Home State regulator can be found at SUP 13A Annex 2. [deleted]</td>
</tr>
<tr>
<td>1.4 R</td>
<td>SYSC 3.2.6AR to SYSC 3.2.6JG do not apply:</td>
</tr>
<tr>
<td></td>
<td>(1) …</td>
</tr>
<tr>
<td></td>
<td>(2) in relation to the following <strong>regulated activities</strong>:</td>
</tr>
<tr>
<td></td>
<td>…</td>
</tr>
<tr>
<td></td>
<td>(c) <em>long-term insurance business</em> which is outside the scope of the Solvency II Directive (unless it is otherwise one of the regulated activities specified in this rule);</td>
</tr>
<tr>
<td>1.10 R</td>
<td>(1) SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, also applies in a prudential context to an overseas firm (other than an incoming EEA firm or an incoming Treaty firm) with respect to activities wherever they are carried on.</td>
</tr>
<tr>
<td></td>
<td>…</td>
</tr>
</tbody>
</table>

**Part 2**

<table>
<thead>
<tr>
<th>Application of the common platform requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Who?</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>2.2 R</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
(2) the common platform requirements 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;

(3) for an incoming EEA firm which has permission only for cross-border services and which does not carry on regulated activities in the United Kingdom, the common platform requirements do not apply;

(4) for an incoming Treaty firm which has permission only for cross-border services and which does not carry on regulated activities in the United Kingdom, the common platform requirements on financial crime do not apply. [deleted]

2.6A R The common platform requirements do not apply to a firm (including an incoming EEA firm) in relation to its carrying on of auction regulation bidding, except for:

(1) SYSC 6.1.1R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the firm (including its managers, employees and appointed representatives) might be used to further financial crime;

(2) SYSC 6.3 (Financial crime).

2.6F R The common platform requirements do not apply to an incoming EEA AIFM branch in respect of its management of a UK AIF, except for:

(1) those common platform requirements which are AIFMD host state requirements;

(2) SYSC 6.1.1R which only applies to the extent that it relates to the obligation to establish, implement and maintain adequate policies and procedures for countering the risk that the firm (including its managers and employees) might be used to further financial crime;

(3) SYSC 6.3. [deleted]

2.7 G EEA MiFID investment firms are reminded in particular that they must comply with the common platform record-keeping requirements in relation to a branch in the United Kingdom. [deleted]
EEA UCITS management companies are also reminded that they must comply with:

1. the common platform requirements indicated in Column A+ (Application to a management company) in Table A in Part 3 of this Annex;
2. the common platform record-keeping requirements; and
3. the common platform requirements on financial crime;

in relation to activities carried on from a branch in the United Kingdom. Where the common platform requirement addresses matters within the scope of article 12 of the UCITS Directive, an EEA UCITS management company should note that those matters may also be subject to the rules of its Home State regulator. [deleted]

[Note: articles 12(1)(b), 14(1)(c), 14(1)(d), 17(4), 18(3) and 19(1) of the UCITS Directive and articles 4(1)(e), 10(1), 10(2) and 10(3) of the UCITS implementing Directive]

What?

2.8A R

Subject to (2) and (3), articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation (including any relevant definitions in MiFID the Glossary, MiFIR and the MiFID Org Regulation) apply as if they were rules or guidance in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a firm’s carrying on of the business set out in SYSC 1 Annex 1 2.8R which is not MiFID business or a structured deposits regulated activity.

Subject to (2) and (3), articles 33 to 35 of the MiFID Org Regulation of the MiFID Org Regulation (including any relevant definitions in MiFID the Glossary, MiFIR and the MiFID Org Regulation) apply as if they were rules or guidance in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a firm’s carrying on of the business set out in SYSC 10.1.1R which is not MiFID business or a structured deposits regulated activity.

References in Column (1) to a word or phrase used in the MiFID Org Regulation for the purpose of (1) have the meaning indicated in Column (2) of the table below:

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>“ancillary services”</td>
<td>ancillary services or ancillary activities associated with the firm’s regulated activities</td>
</tr>
<tr>
<td>“client” and “potential client”</td>
<td>client</td>
</tr>
<tr>
<td>“competent authority”</td>
<td>FCA</td>
</tr>
<tr>
<td>“investment firm” and “firm”</td>
<td>firm</td>
</tr>
<tr>
<td>“investment service” and “investment services and activities”</td>
<td>designated investment business</td>
</tr>
<tr>
<td>“portfolio management” and “portfolio management service”</td>
<td>managing investments</td>
</tr>
<tr>
<td>“Directive 2014/65/EU”; “Regulation (EU) No 600/2014”; “Directive 2014/57/EU” and “Regulation (EU) No 596/2014” and their implementing measures</td>
<td>regulatory system, except where the reference is to a specific provision of a Directive or Regulation in Column (1) in which case the reference must be read as referring to such specific provision</td>
</tr>
<tr>
<td>“shall”</td>
<td>must</td>
</tr>
</tbody>
</table>

(3) Any references within the MiFID Org Regulation for the purpose of (1) to other provisions of EU law must be interpreted in light of this rule. [deleted]

(4) This rule does not apply to a collective portfolio management investment firm in relation to the firm’s business other than its MiFID business.

[Note: The MiFID Org Regulation can be found at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN.]

2.16 R The common platform requirements, except the common platform requirements on financial crime and the common platform record-keeping requirements, apply to a firm that is not a UK UCITS management
| 2.16A | R | (1) **The common platform requirements** referred to in Column A+ in Table A of Part 3 (below) apply to a **UK UCITS management company** in relation to passported activities carried on by it from a **branch** in another **EEA State**. [deleted] |
|       |   | (2) **Any other common platform requirement** applies to a **UK UCITS management company** in relation to passported activities carried on by it from a **branch** in another **EEA State** to the extent that the requirement addresses matters within the scope of article 12 of the **UCITS Directive**. [deleted] |
| 2.16B | G | The matters referred to in paragraph 2.16AR of this Annex may also be subject to the rules of the **UK UCITS management company’s Host State regulator**. [deleted] |
|       |   | … |
| 2.16D | R | **The common platform requirements**, except those which are **AIFMD host state requirements**, apply to a **full-scope UK AIFM** in respect of its management of an **EEA AIF** from a **branch** in another **EEA State**. [deleted] |
|       |   | … |
| 2.16F | R | **The common platform requirements**, except the **common platform requirements on financial crime** and the **common platform record-keeping requirements**, apply to an **AIFM investment firm** in respect of its **MiFID business** where carried on from a **branch** in another **EEA State**. [deleted] |
|       |   | … |
| 2.18  | R | **The common platform organisational requirements**, except the **common platform requirements on financial crime**, also apply in a prudential context to a **UK domestic firm** and to an **overseas firm (other than an incoming EEA firm or an Incoming Treaty firm)** with respect to activities wherever they are carried on. However, **SYSC 4.5 (Management responsibilities maps for UK relevant authorised persons)**, **SYSC 4.6 (Management responsibilities maps for non-UK relevant authorised persons)**, **SYSC 4.8 (Senior management responsibilities for third country relevant authorised persons: allocation of responsibilities)**, **SYSC 4.7 (Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities)**, **SYSC 4.9 (Handover procedures and material)** and **SYSC 5.2 (Certification regime)** apply in accordance with the **rules** in those sections. |
|       |   | … |
Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

<table>
<thead>
<tr>
<th>Provision SYSC 4</th>
<th>COLUMN A Application to a common platform firm other than to a UCITS investment firm</th>
<th>COLUMN A+ Application to a UCITS management company</th>
<th>COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF</th>
<th>COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 4.3.1R</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Not applicable</td>
<td>Rule (but not applicable to incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</td>
</tr>
<tr>
<td>SYSC 4.3.2R</td>
<td>Not applicable</td>
<td>Rule</td>
<td>Not applicable</td>
<td>Guidance (but not applicable to incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</td>
</tr>
<tr>
<td>SYSC 4.3.2AG</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Guidance (but not applicable to incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</td>
</tr>
<tr>
<td>Provision</td>
<td>SYSC 5</td>
<td>Guidance</td>
<td>SYSC 4.4.1</td>
<td>Guidance</td>
</tr>
<tr>
<td>-----------</td>
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<td>----------</td>
<td>------------</td>
<td>----------</td>
</tr>
<tr>
<td><strong>COLUMN A</strong></td>
<td>Application to a common platform firm other than a UCITS</td>
<td>Not applicable: SYSC</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>COLUMN A+</strong></td>
<td>Application to a full-scope platform firm</td>
<td>Rule applies this section only to: (2A) a credit firm which holds a limited permission (other than a not-for-profit debt advice body) with respect to the relevant credit activity (as defined in paragraph 2G of Schedule 6 to the Act) for which it has limited permission; and (3) an incoming Treaty firm, an incoming EEA firm and a UCITS qualifier, (but only SYSC 4.4.5R(2) applies for these firms).</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>COLUMN A++</strong></td>
<td>Application to all other firms apart from insurers, UK AIFM, ISPVs, managing</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

PROVISION

**SYSC 5**

**SYSC 4.4.1**

**SYSC 4.3.3**
| SYSC 5.1.5AAR | Rule | Not applicable save in relation to a UCITS investment firm and its MiFID business | Not applicable | Rule applicable to the branch of an incoming EEA firm in relation to its MiFID business

Other firms:
Not applicable |
| SYSC 5.1.5ABR | Rule | Not applicable save in relation to a UCITS investment firm and its MiFID business | Not applicable | Rule applicable to the branch of an incoming EEA firm in relation to its MiFID business

Other firms:
Not applicable |
| SYSC 5.1.5ACG | Guidance | Not applicable save in relation to a UCITS investment firm and its MiFID business | Not applicable | Guidance applicable to the branch of an incoming EEA firm in relation to its MiFID business

Other firms:
Not applicable |
| SYSC 5.1.5ADG | Guidance | Not applicable save in relation to a | Not applicable | Guidance applicable to the branch of an incoming EEA firm in relation to its MiFID business

Other firms:
Not applicable |
<table>
<thead>
<tr>
<th>SYSC 5.1.5AEG</th>
<th>Guidance</th>
<th>Not applicable save in relation to a UCITS investment firm and its MiFID business</th>
<th>Not applicable</th>
<th>Guidance applicable to the branch of an incoming EEA firm in relation to its MiFID business Other firms: Not applicable [deleted]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provision SYSC 9</td>
<td>COLUMN A Application to a common platform firm other than to a UCITS investment firm</td>
<td>COLUMN A+ Application to a UCITS management company</td>
<td>COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF</td>
<td>COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms</td>
</tr>
<tr>
<td>SYSC 9.2 G</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Applicable to credit institutions only, not including incoming EEA firms which have permission for cross-border</td>
</tr>
</tbody>
</table>
Table C:

Part 1: Application of the requirements in articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation to MiFID optional exemption firms and third country firms

<table>
<thead>
<tr>
<th>Provision MiFID Org Regulation</th>
<th>Text of the MiFID Org Regulation as of:</th>
<th>MiFID optional exemption firm</th>
<th>Third country firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 1 – Subject-matter and scope (2)</td>
<td>31/3/2017</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Article 21 – General organisational requirements (1)</td>
<td>31/3/2017</td>
<td>Rule</td>
<td>(a), (b) and (g): Guidance; (c), (d), (e), (f) and final paragraph: Rule</td>
</tr>
<tr>
<td>Article 22 – Compliance (1)</td>
<td>31/3/2017</td>
<td>Guidance</td>
<td>Guidance</td>
</tr>
<tr>
<td>Article 23 – Risk management</td>
<td>31/3/2017</td>
<td>Guidance</td>
<td>Guidance</td>
</tr>
<tr>
<td>Article 24 – Internal audit</td>
<td>31/3/2017</td>
<td>Guidance</td>
<td>Guidance</td>
</tr>
</tbody>
</table>
Part 2: Articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation

<table>
<thead>
<tr>
<th>Article 1 - Subject-matter and scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements (so far as relevant) in Chapters II to IV of this Regulation, referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under this Regulation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 21 - General organisational requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment firms shall comply with the following organisational requirements:</td>
</tr>
<tr>
<td>(a) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;</td>
</tr>
<tr>
<td>(b) ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;</td>
</tr>
</tbody>
</table>
(c) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment firm;

(d) employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;

(e) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the investment firm;

(f) maintain adequate and orderly records of their business and internal organisation;

(g) ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.

When complying with the requirements set out in this paragraph, investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

2 Investment firms shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

3 Investment firms shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities.

4 Investment firms shall establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

5 Investment firms shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and
Investment firms shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under Directive 2014/65/EU (UK law on markets in financial instruments (“UK obligations”)), as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive.

Investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

**Article 22 - Compliance**

1. Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

   a. to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with the first subparagraph of paragraph 1, and the actions taken to address any deficiencies in the firm’s compliance with its obligations;

   b. to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's obligations under Directive 2014/65/EU (UK obligations);

   c. to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken;

   d. to monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities.

In order to comply with points (a) and (b) of this paragraph, the compliance function shall conduct an assessment on the basis of which it shall establish a risk-based monitoring programme that takes into consideration all areas of the investment firm’s investment services, activities and any relevant ancillary...
services, including relevant information gathered in relation to the monitoring of complaints handling. The monitoring programme shall establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.

<table>
<thead>
<tr>
<th>3</th>
<th>In order to enable the compliance function referred to in paragraph 2 to discharge its responsibilities properly and independently, investment firms shall ensure that the following conditions are satisfied:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>the compliance function has the necessary authority, resources, expertise and access to all relevant information;</td>
</tr>
<tr>
<td>(b)</td>
<td>a compliance officer is appointed and replaced by the management body and is responsible for the compliance function and for any reporting as to compliance required by Directive 2014/65/EU in relation to its UK obligations and by Article 25(2) of this Regulation;</td>
</tr>
<tr>
<td>(c)</td>
<td>the compliance function reports on an ad-hoc basis directly to the management body where it detects a significant risk of failure by the firm to comply with its obligations under Directive 2014/65/EU UK obligations;</td>
</tr>
<tr>
<td>(d)</td>
<td>the relevant persons involved in the compliance function are not involved in the performance of services or activities they monitor;</td>
</tr>
<tr>
<td>(e)</td>
<td>the method of determining the remuneration of the relevant persons involved in the compliance function does not compromise their objectivity and is not likely to do so.</td>
</tr>
</tbody>
</table>

| 4 | An investment firm shall not be required to comply with point (d) or point (e) of paragraph 3 where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities, the requirements under point (d) or (e) are not proportionate and that its compliance function continues to be effective. In that case, the investment firm shall assess whether the effectiveness of the compliance function is compromised. The assessment shall be reviewed on a regular basis. |

---

**Article 23 - Risk management**

<table>
<thead>
<tr>
<th>1</th>
<th>Investment firms shall take the following actions relating to risk management:</th>
</tr>
</thead>
</table>
| (a) | establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities,
processes and systems, and where appropriate, set the level of risk tolerated by the firm;

(b) adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems, in light of that level of risk tolerance;

(c) monitor the following:

(i) the adequacy and effectiveness of the investment firm's risk management policies and procedures;

(ii) the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b);

(iii) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such policies and procedures.

2 Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:

(a) implementation of the policy and procedures referred to in paragraph 1;

(b) provision of reports and advice to senior management in accordance with Article 25(2).

Where an investment firm does not establish and maintain a risk management function under the first sub-paragraph, it shall be able to demonstrate upon request that the policies and procedures which it has adopted in accordance with paragraph 1 satisfy the requirements therein.

<table>
<thead>
<tr>
<th>EU UK</th>
<th>Article 24 - Internal audit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and</td>
</tr>
</tbody>
</table>
maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm and which has the following responsibilities:

- (a) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm's systems, internal control mechanisms and arrangements;
- (b) issue recommendations based on the result of work carried out in accordance with point (a) and verify compliance with those recommendations;
- (c) report in relation to internal audit matters in accordance with Article 25(2).

<table>
<thead>
<tr>
<th>EU</th>
<th>Article 25 - Responsibility of senior management</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Investment firms shall, when allocating functions internally, ensure that senior management, and, where applicable, the supervisory function, are responsible for ensuring that the firm complies with its obligations under Directive 2014/65/EU (UK law on markets in financial instruments (“UK obligations”)). In particular, senior management and, where applicable, the supervisory function shall be required to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under Directive 2014/65/EU (UK obligations) and to take appropriate measures to address any deficiencies. The allocation of significant functions among senior managers shall clearly establish who is responsible for overseeing and maintaining the firm’s organisational requirements. Records of the allocation of significant functions shall be kept up-to-date.</td>
</tr>
<tr>
<td>2</td>
<td>Investment firms shall ensure that their senior management receive on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23 and 24 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.</td>
</tr>
<tr>
<td>3</td>
<td>Investment firms shall ensure that where there is a supervisory function, it receives written reports on the matters covered by Articles 22, 23 and 24 on a regular basis.</td>
</tr>
<tr>
<td>4</td>
<td>For the purposes of this Article, the supervisory function shall be the function within an investment firm responsible for the supervision of its senior management.</td>
</tr>
</tbody>
</table>
### Article 30 - Scope of critical and important operational functions

1. For the purposes of the first subparagraph of Article 16(5) of Directive 2014/65/EU [SYSC 8.1.1R] and rule 2.1 of the Outsourcing Part of the PRA Rulebook, an operational function shall be regarded as critical or important where a defect or failure in its performance would materially impair the continuing compliance of an investment firm with the conditions and obligations of its authorisation or its other obligations under Directive 2014/65/EU UK law on markets in financial instruments, or its financial performance, or the soundness or the continuity of its investment services and activities.

2. Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of paragraph 1:

   a. the provision to the firm of advisory services, and other services which do not form part of the investment business of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;

   b. the purchase of standardised services, including market information services and the provision of price feeds.

### Article 31 - Outsourcing critical or important operational functions

1. Investment firms outsourcing critical or important operational functions shall remain fully responsible for discharging all of their obligations under Directive 2014/65/EU UK law on markets in financial instruments and shall comply with the following conditions:

   a. the outsourcing does not result in the delegation by senior management of its responsibility;

   b. the relationship and obligations of the investment firm towards its clients under the terms of Directive 2014/65/EU UK law on markets in financial instruments is not altered;

   c. the conditions with which the investment firm must comply in order to be authorised in accordance with Article 5 of Directive 2014/65/EU have permission under Part 4A of FSMA to carry on a regulated activity which is any of the investment services and activities (within
the meaning of regulation 2(1) of the Markets in Financial Instruments Regulations 2017), and to remain so, are not undermined;

(d) none of the other conditions subject to which the firm's authorisation was granted is removed or modified.

<table>
<thead>
<tr>
<th>2</th>
<th>Investment firms shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions and shall take the necessary steps to ensure that the following conditions are satisfied:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>the service provider has the ability, capacity, sufficient resources, appropriate organisational structure supporting the performance of the outsourced functions, and any authorisation required by law to perform the outsourced functions, reliably and professionally;</td>
</tr>
<tr>
<td>(b)</td>
<td>the service provider carries out the outsourced services effectively and in compliance with applicable law and regulatory requirements, and to this end the firm has established methods and procedures for assessing the standard of performance of the service provider and for reviewing on an ongoing basis the services provided by the service provider;</td>
</tr>
<tr>
<td>(c)</td>
<td>the service provider properly supervises the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;</td>
</tr>
<tr>
<td>(d)</td>
<td>appropriate action is taken where it appears that the service provider may not be carrying out the functions effectively or in compliance with applicable laws and regulatory requirements;</td>
</tr>
<tr>
<td>(e)</td>
<td>the investment firm effectively supervises the outsourced functions or services and manage the risks associated with the outsourcing and to this end the firm retains the necessary expertise and resources to supervise the outsourced functions effectively and manage those risks;</td>
</tr>
<tr>
<td>(f)</td>
<td>the service provider has disclosed to the investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;</td>
</tr>
<tr>
<td>(g)</td>
<td>the investment firm is able to terminate the arrangement for outsourcing where necessary, with immediate effect when this is in the interests of its clients, without detriment to the continuity and quality of its provision of services to clients;</td>
</tr>
</tbody>
</table>
(h) the service provider cooperates with the competent authorities of the investment firm in connection with the outsourced functions;

(i) the investment firm, its auditors and the relevant competent authorities have effective access to data related to the outsourced functions, as well as to the relevant business premises of the service provider, where necessary for the purpose of effective oversight in accordance with this article, and the competent authorities are able to exercise those rights of access;

(j) the service provider protects any confidential information relating to the investment firm and its clients;

(k) the investment firm and the service provider have established, implemented and maintained a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;

(l) the investment firm has ensured that the continuity and quality of the outsourced functions or services are maintained also in the event of termination of the outsourcing either by transferring the outsourced functions or services to another third party or by performing them itself.

3 The respective rights and obligations of the investment firms and of the service provider shall be clearly allocated and set out in a written agreement. In particular, the investment firm shall keep its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall ensure that outsourcing by the service provider only takes place with the consent, in writing, of the investment firm.

4 Where the investment firm and the service provider are members of the same group, the investment firm may, for the purposes of complying with this Article and Article 32, take into account the extent to which the firm controls the service provider or has the ability to influence its actions.

5 Investment firms shall make available on request to the competent authority all information necessary to enable the authority to supervise the compliance of the performance of the outsourced functions with the requirements of Directive 2014/65/EU and its implementing measures UK law on markets in financial instruments.
### Article 32 - Service providers located in third countries

1. In addition to the requirements set out in Article 31, where an investment firm outsources functions related to the investment service of portfolio management provided to clients to a service provider located in a third country, that investment firm ensures that the following conditions are satisfied:

   (a) the service provider is authorised or registered in its home country to provide that service and is effectively supervised by a competent authority in that third country;

   (b) there is an appropriate cooperation agreement between the competent authority of the investment firm and the supervisory authority of the service provider.

2. The cooperation agreement referred to in point (b) of paragraph 1 shall ensure that the competent authorities of the investment firm are able, at least, to:

   (a) obtain on request the information necessary to carry out their supervisory tasks pursuant to Directive 2014/65/EU UK law on markets in financial instruments and Regulation (EU) No 600/2014;

   (b) obtain access to the documents relevant for the performance of their supervisory duties maintained in the third country;

   (c) receive information from the supervisory authority in the third country as soon as possible for the purpose of investigating apparent breaches of the requirements of Directive 2014/65/EU and its implementing measures UK law on markets in financial instruments and Regulation (EU) No 600/2014;

   (d) cooperate with regard to enforcement, in accordance with the national and international law applicable to the supervisory authority of the third country and the competent authorities in the Union United Kingdom in cases of breach of the requirements of Directive 2014/65/EU and its implementing measures and relevant national law UK law on markets in financial instruments.

3. Competent authorities shall publish on their website a list of the supervisory authorities in third countries with which they have a cooperation agreement referred to in point (b) of paragraph 1.
Competent authorities shall update cooperation agreements concluded before the date of entry into application of this Regulation within six months from that date.

**Article 72 - Retention of records**

1. The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that the following conditions are met:

   - the competent authority is able to access them readily and to reconstitute each key stage of the processing of each transaction;
   - it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
   - it is not possible for the records otherwise to be manipulated or altered;
   - it allows IT or any other efficient exploitation when the analysis of the data cannot be easily carried out due to the volume and the nature of the data; and
   - the firm’s arrangements comply with the record keeping requirements irrespective of the technology used.

2. Investment firms shall keep at least the records identified in Annex I to this Regulation depending upon the nature of their activities.

   The list of records identified in Annex I to this Regulation is without prejudice to any other record-keeping obligations arising from other legislation.

Competent authorities may require investment firms to keep additional records to the list identified in Annex I to this Regulation.

3 Systems and Controls

...  

3.2 Areas covered by systems and controls

...  

3.2.18 G It is possible that firms’ remuneration policies will from time to time lead to tensions between the ability of the firm to meet the requirements and standards under the regulatory system and the personal advantage of those who act for it. Where tensions exist, these should be appropriately managed. See also Solvency II Regulation (EU) 2015/35 of 10 October 2014 (Article 275) and EIOPA Guidelines on system of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN) (Guidelines 9 and 10).

...  

4 General organisational requirements

4.1 General requirements

...  

4.1.1D R A UK UCITS management company must comply with the UCITS Remuneration Code if it:

(1) manages a UCITS scheme; or

(2) manages an EEA UCITS scheme.

[Note: article 14a(1) of the UCITS Directive]

4.1.1E R A UK UCITS management company must have appropriate procedures for its employees to report potential or actual breaches of national provisions transposing UK provisions which implemented the UCITS Directive internally through a specific, independent and autonomous channel.

[Note: article 99d(5) of the UCITS Directive]

...  

4.1.2B R For a management company or a full-scope UK AIFM, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R and SYSC 4.1.1AR must also take account of the UCITS schemes and EEA UCITS schemes managed by the management company or the AIFs managed by the full-scope UK AIFM.
[Note: article 12(1) second paragraph of the UCITS Directive and article 18(1) second paragraph of AIFMD]

Resources for management companies and AIFMs

| 4.1.2C | R | A management company, and a full-scope UK AIFM and an incoming EEA AIFM branch must have, and employ effectively, the resources and procedures that are necessary for the proper performance of its business activities. |

[Note: articles 12(1)(a) and 14(1)(c) of the UCITS Directive and article 12(1)(c) of AIFMD]

... Subordinate measures relating to provisions implementing article 12(1) of AIFMD

| 4.1.2E | G | Articles 16 to 29 of the AIFMD level 2 regulation provide detailed rules supplementing the provisions of UK provisions which implemented article 12(1) of AIFMD, and articles 57 to 66 of the AIFMD level 2 regulation provide detailed rules supplementing the UK provisions which implemented articles 12 and 18 of AIFMD. |

... 4.2 Persons who effectively direct the business

General requirement

| 4.2.1 | R | The senior personnel of a common platform firm, a management company, a full-scope UK AIFM, or of the UK branch of a non-EEA non-UK bank must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the firm. |

[Note: article 9(1)(4) of MiFID, article 7(1)(b) of the UCITS Directive, article 8(1)(c) of AIFMD and article 91(1) of CRD]

... Composition of management

| 4.2.2 | R | A common platform firm, a management company, a full-scope UK AIFM and the UK branch of a non-EEA bank non-UK bank must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1R and: |

|   |   | (a) for a full-scope UK AIFM, SYSC 4.2.7R; or |
|   |   | (b) for a common platform firm, SYSC 4.3A.3R. |
### 4.3A Management body and nomination committee

<table>
<thead>
<tr>
<th>4.3A.7</th>
<th>R</th>
<th>For the purposes of SYSC 4.3A.5R and SYSC 4.3A.6R:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2)</td>
<td></td>
<td>the following shall count as a single directorship:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td></td>
<td>executive or non-executive directorships held within:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i)</td>
<td></td>
<td>firms that are members of the same institutional protection scheme provided that the conditions set out in article 113(7) of the EU CRR are fulfilled; or [deleted]</td>
</tr>
<tr>
<td>(ii)</td>
<td></td>
<td>undertakings (including non-financial entities) in which the firm holds a qualifying holding.</td>
</tr>
</tbody>
</table>

### 5 Employees, agents and other relevant persons

#### 5.1 Skills, knowledge and expertise

| 5.1.5AD | G | ESMA has issued guidelines specifying The ESMA “Guidelines for the assessment of knowledge and competence”, 3 January 2017 (ESMA71-1154262120-153), specify the criteria for the assessment of knowledge and competence for the purposes of SYSC 5.1.5ABR. The ESMA guidelines can be found at https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence. |

### 6 Compliance, internal audit and financial crime

#### 6.1 Compliance

...
### Adequate policy and procedures

#### 6.1.1 R

| A firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime. |

**[Note: article 16(2) of MiFID and article 12(1)(a) of the UCITS Directive]**

#### 6.1.2 R

| A management company must, taking into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under the regulatory system, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the FCA to exercise its powers effectively under the regulatory system and to enable any other competent authority to exercise its powers effectively under the UCITS Directive. |

**[Note:16 article 10(1) of the UCITS implementing Directive]**

#### 6.1.7 R

| (1) This rule applies to a common platform firm conducting investment services and activities from a branch in another EEA State. |

| (2) References to the regulatory system in SYSC 6.1.1R, SYSC 6.1.2R and SYSC 6.1.3R apply in respect of a firm’s branch as if regulatory system includes a Host State’s requirements under MiFID and the MiFID Org Regulation which are applicable to the investment services and activities conducted from the firm’s branch. [deleted] |

**[Note: article 16 of MiFID]**

### 7 Risk control

#### 7.1 Risk control

#### 7.1.2B G

| A management company should be aware that COLL 6.11 contains requirements implementing article 12 of the UCITS implementing Directive in relation to risk control and internal reporting that will apply to it. |
8 Outsourcing

8.1 General outsourcing requirements

8.1.11 A firm (other than a common platform firm) must make available on request to the FCA and any other relevant competent authority all information necessary to enable the FCA and any other relevant competent authority to supervise the compliance of the performance of the outsourced activities with the requirements of the regulatory system.

9 Record-keeping

9.1 General rules on record-keeping

General requirements

9.1.1 A firm (other than a common platform firm) must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the FCA or any other relevant competent authority under the UCITS Directive to monitor the firm’s compliance with the requirements under the regulatory system, and in particular to ascertain that the firm has complied with all obligations with respect to clients.

[Note: article 12(1)(a) of the UCITS Directive and article 4(1)(e) of the UCITS implementing Directive]

9.2 Credit institutions providing account information services or payment initiation services

9.2.1 A credit institution must keep records of any account information services and payment initiation services it provides in the UK.

9.2.2 A UK firm must keep the records required by SYSC 9.2.1 R in respect of account information services and payment initiation services provided anywhere in the EEA. The records must make clear in which EEA State those services were provided. [deleted]

9.2.3 An EEA firm must keep the records required by SYSC 9.2.1 R in respect of account information services and payment initiation services provided in the UK. [deleted]
10 Conflicts of interest

10.1 Application

General application

10.1.1 R …

(2) This section also applies to a management company UK UCITS management company.

…

10.1.1A R This section also applies to:

(1) a full-scope UK AIFM of:

(a) a UK AIF; and

(b) an EEA AIF managed or marketed from an establishment in the UK; and [deleted]

(c) a non-EEA AIF non-UK AIF; and

(2) an incoming EEA AIFM branch which manages or markets a UK AIF. [deleted]

…

Additional requirements for a management company

10.1.17 R A management company UK UCITS management company, when identifying the types of conflict of interests for the purposes of SYSC 10.1.4R, must take into account:

(1) the interests of the firm, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the firm towards the UCITS scheme or EEA UCITS scheme it manages; and

(2) where it manages two or more UCITS schemes or EEA UCITS schemes, the interests of all of them.

…

10.1.18 G For a management company UK UCITS management company, references to client in SYSC 10.1.4R and in the other rules in this section should be construed as referring to any UCITS scheme or EEA UCITS scheme
managed by that firm or which it intends to manage, and with or for the benefit of which the relevant activity is to be carried on.

Structure and organisation of a management company

10.1.19 R A management company, UK UCITS management company must be structured and organised in such a way as to minimise the risk of a UCITS scheme’s, EEA UCITS scheme’s or client’s interests being prejudiced by conflicts of interest between the management company, UK UCITS management company and its clients, between two of its clients, between one of its clients and a UCITS scheme or an EEA UCITS scheme, or between two such schemes.

…

Avoidance of conflicts of interest for a management company

10.1.20 R A management company, UK UCITS management company must try to avoid conflicts of interest and, when they cannot be avoided, ensure that the UCITS schemes and EEA UCITS schemes it manages are fairly treated.

…

Disclosure of conflicts of interest for a management company

10.1.21 R (1) Where the organisational or administrative arrangements made by a management company, UK UCITS management company for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the UCITS scheme or EEA UCITS scheme it manages or of its Unitholders will be prevented, the senior personnel or other competent internal body of the firm must be promptly informed in order for them to take any necessary decision to ensure that in all cases the firm acts in the best interests of the scheme and of its Unitholders.

(2) A management company, UK UCITS management company must report situations referred to in (1) to the Unitholders of the UCITS scheme or EEA UCITS scheme it manages by any appropriate durable medium and give reasons for its decision.

…

13 Operational risk: systems and controls for insurers

13.1 Application

13.1.1 G SYSC 13 applies to an insurer unless it is:

(4) a non-directive friendly society,
(2) an incoming EEA firm; or
(3) an incoming Treaty firm.

13.1.2 G SYSC 13 applies to:

(1) an EEA deposit insurer; and
(2) a Swiss general insurer;

only in respect of the activities of the firm carried on from a branch in the United Kingdom.

13.9 Outsourcing

13.9.9 G …

(4) EIOPA guidelines on system of governance dated 28 January 2015 (EIOPA-BoS-14/253 EN) include guidelines on, or relating to, outsourcing.

14 Risk management and associated systems and controls for insurers

14.1 Application

14.1.1 R This section applies to an insurer unless it is:

(1) a non-directive friendly society; or
(2) an incoming EEA firm; or
(3) an incoming Treaty firm.

14.1.2 G This section applies to:

(1) an EEA deposit insurer; and
(2) a Swiss general insurer;

only in respect of the activities of the firm carried on from a branch in the United Kingdom.
18 Whistleblowing

18.1 Application and purpose

... Purpose

18.1.2 G (1) The purposes of this chapter are to:

... (ca) set out the requirements which implemented the whistleblowing obligation under article 73(2) of MiFID, which require MiFID investment firms (except collective portfolio management firms) to have in place appropriate procedures for their employees to report potential or actual infringements of the MiFID and MiFIR regime (SYSC 18.6);

... 18.3 Internal arrangements

... Reporting of concerns by employees to regulators

... 18.3.6A G For the purposes of SYSC 18.3.6R(1) the possibility for P’s employees to disclose reportable concerns to the PRA or to the FCA does not override any obligation of P or its employees to report breaches to P’s Home State regulator of matters reserved by an EU instrument to that regulator. [deleted]

... 18.6 Whistleblowing obligations under the MiFID regime and other EU sectoral legislation

Whistleblowing obligations under the MiFID regime

18.6.1 R (1) A UK MiFID investment firm (except a collective portfolio management investment firm) must have appropriate procedures in place for its employees to report a potential or actual breach of:

(a) any rule implementing which implemented MiFID; or
(b) a requirement imposed by MiFIR or any onshored regulation which was previously an EU regulation adopted under MiFID or MiFIR.

18.6.2 R SYSC 18.6.1R applies to a third country investment firm as if it were a UK MiFID investment firm (unless it is a collective portfolio management investment firm) when the following conditions are met:

…

18.6.3 G When considering what procedures may be appropriate for the purposes of SYSC 18.6.1R(1), a MIFID investment firm or a third country investment firm may wish to consider the arrangements in SYSC 18.3.1R(2).

Whistleblowing obligations under other sectoral legislation

18.6.4 G In addition to obligations under the MiFID regime, similar whistleblowing obligations apply to miscellaneous persons subject to regulation by the FCA under the following non-exhaustive list of EU legislation:

(1) article 32(3) of the Market Abuse Regulation, as implemented in section 131AA of the Act;

(2) the UK provisions which implemented article 71(3) of the CRD (see IFPRU 2.4.1R in respect of IFPRU investment firms);

(3) the UK provisions which implemented article 99d(5) of the UCITS Directive (see SYSC 4.1.1ER in respect of UK UCITS management companies, and COLL 6.6B.30R in respect of depositaries); and

(4) article 24(3) of the securities financing transactions regulation.

…

19A IFPRU Remuneration Code

19A.1 General application and purpose

Who? What? Where?

19A.1.1 R (1) The Remuneration Code applies to:

…

(d) an overseas firm that-

(i) is not an EEA firm;

(ii) has its head office outside the EEA; and

(iii) …
19A.1.2 G Part 2 of SYSC 1 Annex 1 provides for the application of SYSC 4.1.1R (General Requirements). In particular, and subject to the provisions on group risk systems and controls requirements in SYSC 12, this means that:

... in relation to where the Remuneration Code applies, it applies in relation to:

(2) a firm’s UK activities; and

(b) a firm’s passported activities carried on from a branch in another EEA State; and [deleted]

...

Purpose

19A.1.6 G ...

(2) The Remuneration Code implements the main provisions of the CRD which relate to remuneration. In applying the Remuneration Code, firms should comply with the EBA “Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013”, 21 December 2015 (EBA/GL/2015/22). Guidelines published by the EBA on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the CRD and on disclosures under article 450 of the EU CRR. The Guidelines can be found at:

(3) [deleted]

19A.3 Remuneration principles for IFPRU investment firms

Application: groups

19A.3.1 R (1) A firm must apply the requirements of this section at group, parent undertaking and subsidiary undertaking levels, including those subsidiaries established in a country or territory which is not an EEA State outside the UK.
(2) Paragraph (1) does not limit SYSC 12.1.13R(2)(dA) (which relates to the application of the Remuneration Code within UK consolidation groups and non-EEA non-UK sub-groups).

[Note: article 92(1) of CRD]

19A.3.2 G SYSC 12.1.13R(2)(dA) requires the firm to ensure that the risk management processes and internal control mechanisms at the level of any UK consolidation group or non-EEA non-UK sub-group of which a firm is a member comply with the obligations set out in this section on a consolidated (or sub-consolidated) basis. In the FCA’s view, the application of this section at group, parent undertaking and subsidiary undertaking levels in SYSC 19A.3.1R(1) is in line with article 109(2) of CRD on the application of systems and controls requirements to groups (as in SYSC 12.1.13R).

…

19A.3.4 R (1) Remuneration Code staff comprises:

(a) an employee of an IFPRU investment firm whose professional activities have a material impact on the firm’s risk profile, including any employee who is deemed to have a material impact on the firm’s risk profile in accordance with Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers) the Material Risk Takers Regulation; or

(b) subject to (2) and (3), an employee of an overseas firm in SYSC 19A.1.1.1R(1)(d) (i.e., an overseas firm that would have been an IFPRU investment firm if it had been a UK domestic firm) whose professional activities have a material impact on the firm’s risk profile, including any employee who would meet any of the criteria set out in articles 3 or 4(1) of Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers) the Material Risk Takers Regulation if it had applied to him.

(2) An overseas firm in SYSC 19A.1.1.1R(1)(d) (i.e., an overseas firm that would have been an IFPRU investment firm if it had been a UK domestic firm) may deem an employee not to be Remuneration Code staff where:

(a) the employee:

(i) would meet the criteria in article 4(1) of Regulation (EU) No 604/2014 of 4 March 2014 the Material Risk Takers Regulation;
(ii) would not meet any of the criteria in article 3 of Regulation (EU) No 604/2014 of 4 March 2014 the Material Risk Takers Regulation; and

(iii) was awarded total remuneration of less than €750,000 in the previous year; and

(b) the overseas firm determines that the professional activities of the employee do not have a material impact on its risk profile on the grounds described in article 4(2) of Regulation (EU) No 604/2014 of 4 March 2014 the Material Risk Takers Regulation.

(3) Where the overseas firm deems an employee not to be Remuneration Code staff as set out in (2), it must notify the FCA, applying the approach described in article 4(4) of Regulation (EU) No 604/2014 of 4 March 2014 the Material Risk Takers Regulation.

[Note: article 92(2) of CRD and articles 3 and 4 of Regulation (EU) No 604/2014 of 4 March 2014 the Material Risk Takers Regulation.]

... Remuneration Principle 11: Non-compliance with the Remuneration Code

19A.3.32 R A firm must ensure that variable remuneration is not paid through vehicles or methods that facilitate non-compliance with the Remuneration Code, the EU CRR UK CRR or the UK legislation that implemented the CRD.

[Note: article 94(1)(q) of CRD]

...

19A.3.44 R B A firm must ensure that any approval by the its shareholders or owners or members for the purposes of SYSC 19A.3.44AR is carried out in accordance with the following procedure:

...

(3) the firm must:

...

(b) demonstrate to the FCA that the proposed higher ratio does not conflict with its obligations under the UK legislation that implemented the CRD and the EU CRR UK CRR, having particular regard to the firm’s own funds obligations;

...
19A.3.44 A firm may apply a discount rate to a maximum of 25% of an employee’s total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.

[Note: article 94(1)(g)(iii) of CRD]

[Note: on 27 March 2014, the EBA published “Guidelines on the applicable notional discount rate for variable remuneration”, 27 March 2014 (EBA/GL/2014/01).]

19A.3.44 In applying the discount rate in SYSC 19A.3.44DR, a firm must apply the EBA Guidelines on the applicable notional discount rate for variable remuneration published on 27 March 2014. [deleted]

[Note: the EBA Guidelines on the applicable notional discount rate for variable remuneration can be found at: http://www.eba.europa.eu/d...]

19B AIFM REMUNERATION CODE

19B.1 Application

19B.1.1 The AIFM Remuneration Code applies to a full-scope UK AIFM of:

(1) a UK AIF; and

(2) an EEA AIF a non-UK AIF; and

(3) a non-EEA AIF. [deleted]

19B.1.1 Full-scope UK AIFMs are advised that ESMA published Guidelines on sound remuneration policies under the AIFMD on 3 July 2013 (Guidelines on sound remuneration policies under the AIFMD, 03.07.2013[ESMA/2013/232]), 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) …

19C BIPRU Remuneration Code

19C.1 General application and purpose

…
19C.1.2 Part 2 of SYSC 1 Annex 1 provides for the application of SYSC 4.1.1R and SYSC 4.1.1CR (General Requirements). In particular, and subject to the provisions on group risk systems and controls requirements in SYSC 12, this means that:

…

(2) where the BIPRU Remuneration Code applies, it applies to:

(a) a firm’s UK activities; and

(b) a firm’s passported activities carried on from a branch in another EEA State; and [deleted]

…

19C.3 Remuneration principles

Application: groups

19C.3.1 A firm must apply the requirements of this section at group, parent undertaking and subsidiary undertaking levels, including those subsidiaries established in a country or territory which is not an EEA State outside the UK.

(2) Paragraph (1) does not limit SYSC 12.1.13R and SYSC 12.1.15R (which relate to the application of the BIPRU Remuneration Code within UK consolidation groups and non-EEA non-UK sub-groups).

19C.3.2 The effect of SYSC 12.1.13R (2)(dA) and SYSC 12.1.15R is that the firm is required to ensure that the risk management processes and internal control mechanisms at the level of any consolidation group or non-EEA non-UK sub-group of which a firm is a member comply with the obligations set out in this section on a consolidated (or sub-consolidated) basis.

…

19D Dual-regulated firms Remuneration Code

19D.1 Application and purpose

Who? What? Where?

19D.1.1 The dual-regulated firms Remuneration Code applies to:

…

(d) an overseas firm that—

(‡) is not an EEA firm;
(ii) has its head office outside the EEA; and

(iii) would be a firm in (a), (b) or (c) if it had been a UK domestic firm, had carried on all of its business in the United Kingdom and had obtained whatever authorisations for doing so as are required under the Act.

(2) For a firm which falls under (1)(a), (1)(b) or (1)(c), the dual-regulated firms Remuneration Code applies in relation to:

(a) its UK activities; and

(b) its passported activities carried on from a branch in another EEA State; and [deleted]

... 

... 

Purpose

19D.1.6 G ...

(2) The dual-regulated firms Remuneration Code implements the main provisions of the CRD which relate to remuneration. In applying the rules in the dual-regulated firms Remuneration Code, firms should comply with the EBA “Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and disclosures under Article 450 of Regulation (EU) No 575/2013”, 21 December 2015 (EBA/GL/2015/22). Guidelines published by the EBA on 21 December 2015 on sound remuneration policies under articles 74(3) and 75(2) of the CRD and on disclosures under article 450 of the EU CRR. The Guidelines can be found at: http://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-5a0064b1946b

...

19D.3 Remuneration principles

Application: groups

19D.3.1 R (1) A firm must apply the requirements of this section at group, parent undertaking and subsidiary undertaking levels, including those subsidiaries established in a country or territory which is not an EEA State outside the UK.
(2) Paragraph (1) does not limit SYSC 12.1.13R(2)(dA) (which relates to the application of the dual-regulated firms Remuneration Code within UK consolidation groups and non-EEA non-UK sub-groups).

[Note: article 92(1) of CRD]

19D.3.2 G SYSC 12.1.13R(2)(dA) requires the firm to ensure that the risk management processes and internal control mechanisms at the level of any UK consolidation group or non-EEA non-UK sub-group of which a firm is a member, comply with the obligations in this section on a consolidated basis (or sub-consolidated basis). In the FCA’s view, the application of this section at group, parent undertaking and subsidiary undertaking levels in SYSC 19D.3.1R(1) is in line with article 109(2) of the CRD on the application of systems and controls requirements to groups (as in SYSC 12.1.13R).

…

19D.3.4 R (1) Dual-regulated firms Remuneration Code staff comprises:

(a) an employee of a dual-regulated firm whose professional activities have a material impact on the firm’s risk profile, including any employee who is deemed to have a material impact on the firm’s risk profile in accordance with Regulation (EU) 604/2014 of 4 March 2014 (Regulatory technical standards to identify staff who are material risk takers) the Material Risk Takers Regulation; or

(b) subject to (2) and (3), an employee of an overseas firm in SYSC 19D.1.1R(1)(d) (i.e., an overseas firm that would have been a UK bank, building society or UK designated investment firm if it had been a UK domestic firm) whose professional activities have a material impact on the firm’s risk profile, including any employee who would meet any of the criteria set out in articles 3 or 4(1) of Regulation (EU) No 604/2014 of 4 March 2014 the Material Risk Takers Regulation if it had applied to him.

(2) An overseas firm in SYSC 19D1.1.R(1)(d) (i.e., an overseas firm that would have been a dual-regulated firm if it had been a UK domestic firm) may deem an employee not to be a dual-regulated firm Remuneration Code staff where:

(a) the employee:

(i) would meet the criteria in article 4(1) of Regulation (EU) No 604/2014 of 4 March 2014 the Material Risk Takers Regulation;

(ii) would not meet any of the criteria in article 3 of Regulation (EU) No 604/2014 of 4 March 2014 the Material Risk Takers Regulation; and
(iii) was awarded total remuneration of less than €750,000 in the previous year; and

(b) the overseas firm determines that the professional activities of the employee do not have a material impact on its risk profile on the grounds described in article 4(2) of Regulation (EU) 604/2014 of 4 March 2014 the Material Risk Takers Regulation.

(3) Where the overseas firm deems an employee not to be dual-regulated firms Remuneration Code staff as set out in (2), it must notify the FCA, applying the approach described in article 4(4) of Regulation (EU) 604/2014 of 4 March 2014 the Material Risk Takers Regulation.

[Note: article 92(2) of CRD and articles 3 and 4 of Regulation (EU) No 604/2014 of 4 March 2014.]

19D.3.5 G Where an overseas firm in SYSC 19D1.1R(1)(d) (i.e., an overseas firm that would have been a dual-regulated firm if it had been a UK domestic firm) wishes to deem an employee who earns more than €750,000 not to be dual-regulated firms Remuneration Code staff, the overseas firm may apply for a waiver of the requirement in SYSC 19D.3.4R in respect of that employee.

…

Remuneration Principle 11: Non-compliance with the Remuneration Code

19D.3.34 R A firm must ensure that variable remuneration is not paid through vehicles or methods that facilitate non-compliance with the Remuneration Code, the EU CRR UK CRR or the UK legislation that implemented the CRD.

[Note: article 94(1)(q) of CRD]

…

19D.3.50 R A firm must ensure that any approval by the its shareholders or owners or members, for the purposes of SYSC 19D.3.49R, is carried out in accordance with the following procedure:

…

(3) the firm must:

…

(b) demonstrate to the FCA that the proposed higher ratio does not conflict with its obligations under the UK legislation that implemented the CRD and the EU CRR UK CRR, having particular regard to the firm’s own funds obligations;

…
A firm may apply a discount rate to a maximum of 25% of an employee’s total variable remuneration provided it is paid in instruments that are deferred for a period of not less than five years.

[Note: article 94(1)(g)(iii) of CRD]

[Note: on 27 March 2014, the EBA published “Guidelines on the applicable notional discount rate for variable remuneration”, 27 March 2014 (EBA/GL/2014/01).]

In applying the discount rate in SYSC 19D.3.52 R, a firm must apply the EBA Guidelines on the applicable notional discount rate for variable remuneration published on 27 March 2014. [deleted]

[Note: the EBA Guidelines on the applicable notional discount rate for variable remuneration can be found at: http://www.eba.europa.eu/documents/10180/643987/EBA-GL-2014-01+%28Final+Guidelines+on+the+discount+rate+for+remuneration%29-pdfs/e8b3b3f6-6258-439d-a2d0-633e6e5de5e9]

---

19E UCITS Remuneration Code

19E.1 Application

19E.1.1 R (1) The UCITS Remuneration Code applies to a UK UCITS management company that:

(a) manages a UCITS scheme; or

(b) manages an EEA UCITS scheme.

(2) This section does not apply to an EEA UCITS management company that manages a UCITS scheme. [deleted]

(3) In this section, a firm under (1)(a) or (1)(b) above, is referred to as a management company.

---

19F Remuneration and performance management of sales staff

19F.1 MiFID remuneration incentives

Application

19F.1.1 R (1) SYSC 19F.1 applies to:

...
(c) … and

(d) a UK branch of an EEA MiFID investment firm, unless it is a UCITS investment firm or an AIFM investment firm. [deleted]

...

20 Reverse stress testing

20.1 Application and purpose

Application

20.1.1A R …

(3) Subject to (4), where all of the BIPRU firms within the same UK consolidation group or the non-EEA sub-group non-UK sub-group, taken together, as if they were one firm, meet any of the criteria in (2), SYSC 20 applies to each of those BIPRU firms as if it individually met the criteria in (2).

...

20.2 Reverse stress testing requirements

...

20.2.2 R Where the firm is a member of:

...

(2) a UK consolidation group; or

(3) a non-EEA sub-group non-UK sub-group;

it must conduct the reverse stress test on a solo basis as well as on a consolidated basis in relation to the UK consolidation group or the non-EEA sub-group non-UK sub-group, as the case may be.

Annex B

Amendments to the Financial Stability and Market Confidence sourcebook (FINMAR)

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

2 Short selling
2.5 Measures to prohibit, restrict or limit transactions in short selling

2.5.5 Where the FCA imposes measures under article 23 of the short selling regulation it will normally specify that the measures will not apply to natural or legal persons who have satisfied the criteria to use the market maker exemption or the authorised primary dealer exemption and who are included on the list maintained and published by ESMA the FCA pursuant to article 17(13) of the short selling regulation.

Exchange rate calculations

2.5.6 (1) For the purposes of article 23(1)(b) of Commission Delegated Regulation (EU) No 918/2012 the SSR Delegated Regulation 2 the FCA will convert the figure of EUR 0.50 into pounds sterling using the daily spot foreign exchange rate of Sterling to Euro of the Bank of England applicable at the end of the first business day of October 2012 rounded up to the nearest £0.01. The FCA will state this figure (the 'sterling figure') on its public website.

2.5.7 The FCA will treat the FTSE 100 index as the main national equity index of the Member State United Kingdom for the purposes of article 6(4) of Commission Implementing Regulation (EU) No 827/2012 the SSR Implementing Regulation and article 4 of Commission Delegated Regulation (EU) No 826/2012 and article 23(1) of Commission Delegated Regulation (EU) No 918/2012, the SSR Delegated Regulation 2 all subject to approval by European Parliament and Council.
Editor’s note: the text in this Annex takes account of the proposed definition ‘TP firm’ suggested by CP18/29 ‘Temporary permissions regime for inbound firms and funds’ (October 2018) as if it was made.

Annex C

Amendments to the General Provisions (GEN)

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

2.2 Interpreting the Handbook

...EU Onshored Regulations and third country firms

2.2.22A R (1) Unless exempted in (2) and subject to (3), MiFIR, and any EU regulation onshored regulations adopted as at 3 January 2018 under previously deriving from MiFIR or MiFID, apply to a third country investment firm as if it were a UK MiFID investment firm when the following conditions are met:

... (4) GEN 2.2.22AR(1) is subject to articles 2A to 2E of MiFIR and article 1(3) to (5) of the MiFID Org Regulation.

(5) In relation to TP firms GEN 2.2.22AR(1) does not apply requirements imposed by and under MiFIR or by the MiFID Org Regulation in addition to those referred to in articles 2A to 2E MiFIR and article 1(3) to (5) of the MiFID Org Regulation.

2.2.22B G (1) The purpose of GEN 2.2.22AR is to ensure consistency with the principle referred to in recital 109 to MiFID that a third country investment firm should not be treated in a more favourable way than an EEA firm a UK firm. A third country investment firm does not, however, benefit from passporting rights in the manner envisaged for EEA firms and its authorisation requires consideration of other issues.
including the nature and extent of regulation provided by its Home State regulator.

(2) …
EXITING THE EUROPEAN UNION: PRUDENTIAL SOURCEBOOKS (AMENDMENTS) INSTRUMENT 201[X]

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of:

(1) regulation 3 of the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018; and

(2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

B. This instrument comes into force on [29 March 2019 at 11 p.m].

Amendments to the FCA Handbook

C. 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.

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Citation

D. This instrument may be cited as the Exiting the European Union: Prudential Sourcebooks (Amendments) Instrument 201[X].

By order of the Board
[date]
Editor’s notes

(1) The amendments proposed in this instrument relate to the statutory instruments set out in Annex 2 of the accompanying paper and other matters arising from the UK’s withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.

(2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 2 of the consultation paper.

(3) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day, rather than the text of the Handbook in force on 1 July 2018.

(4) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.
Annex A

Amendments to the General Prudential sourcebook (GENPRU)

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

1 Application

...  

1.2 Adequacy of financial resources

...  

Purpose

...

1.2.14 G In the case of a BIPRU firm this section implements the third paragraph of article 95(2) of the EU UK CRR applying requirements that correspond to Article 34 of the Capital Adequacy Directive so far as that Article applies Article 123 of the Banking Consolidation Directive.

...

Application of this section on a solo and consolidated basis: Processes and tests

1.2.46 R ...  

(2) apply on a sub-consolidated basis under BIPRU 8.3.1R (Basic consolidation rule for a non-EEA sub-group non-UK sub-group).

...

1.2.48 R ...  

(3) (if BIPRU 8.3.1R (Basic consolidation rule for a non-EEA sub-group non-UK sub-group) applies) the non-EEA sub-group non-UK sub-group of which the firm is a member.

1.2.49 R ...  

(2) For the purpose of this rule the relevant group is the group referred to in GENPRU 1.2.48R and the members of that group are those undertakings that are included in the scope of consolidation with respect to the UK consolidation group or, as the case may be, non-EEA sub-group non-UK sub-group in question.

...
Group risk (BIPRU firm only)

1.2.88 R A firm should include in the written record referred to in GENPRU 1.2.60R a description of the broad business strategy of the UK consolidation group or the non-EEA sub-group non-UK sub-group of which it is a member, the group’s view of its principal risks and its approach to measuring, managing and controlling the risks. This description should include the role of stress testing, scenario analysis and contingency planning in managing risk at the solo and consolidated level.

1.2.89 R A firm should satisfy itself that the systems (including IT) of the UK consolidation group or the non-EEA sub-group non-UK sub-group of which it is a member are sufficiently sound to support the effective management and, where applicable, the quantification of the risks that could affect the UK consolidation group or the non-EEA sub-group non-UK sub-group, as the case may be.

1.3 Valuation

1.3.3 G (1) In the case of a BIPRU firm, this section corresponds to implements Articles 64(4) and 64(5) of the Banking Consolidation Directive (Own funds) and Article 33 and Part B of Annex VII of the Capital Adequacy Directive.

2 Capital

2.1 Calculation of capital resources requirements

Application

2.1.2 G The scope of application of this section is not restricted to firms that are subject to the relevant EU Directives. [deleted]

Purpose

2.1.8 G (2) This section also implements the third paragraph of article 95(2) of the EU UK CRR applying requirements that correspond to the provisions of the Capital Adequacy Directive and Banking
Consolidation Directive concerning the level of capital resources which a BIPRU firm is required to hold. In particular it implements corresponds (in part) to article 75 of the Banking Consolidation Directive and Articles 5, 9, 10 and 18 of the Capital Adequacy Directive.

Definition of BIPRU firm

2.1.49 G The Capital Adequacy Directive sets out various categories of investment firms subject to differing levels of initial capital. For the purpose of the third paragraph of article 95(2) of the EU CRR, a BIPRU firm falls into the category in article 5(3) of the Capital Adequacy Directive. In summary, a BIPRU firm:

... 

Capital resources

2.2 Purpose

... 

2.2.4 G This section also implements minimum EC standards for the composition of capital resources required to be held by a BIPRU firm. In particular it implements pursuant to the third paragraph of article 95(2) of the EU UK CRR, applying requirements that correspond to Articles 56 – 61, Articles 63 – 64, Article 66 and Articles 120 – 122 of the Banking Consolidation Directive (2006/48/EC) and Articles 12 – 16, Article 17 (in part), Article 22(1)(c) (in part) and paragraphs 13 - 15 of Part B of Annex VII of the Capital Adequacy Directive (2006/49/EC).

Notification of issuance of capital instruments

... 

2.2.61H G Details of the notification to be provided by a BIPRU firm in relation to capital instruments issued by another undertaking in its group for inclusion in its capital resources or the consolidated capital resources of its UK consolidation group or non-EEA sub-group non-UK sub-group are set out in BIPRU 8.6.1AR to BIPRU 8.6.1FR.
2 Annex 6 Capital resources table for a BIPRU firm with a waiver from consolidated supervision

...
Annex B

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.

1 Application

1.1 Application

... Purpose

1.1.4 BIPRU 1.1 implements in part the third paragraph of article 95(2) of the EU UK CRR that permits the FCA to apply certain requirements that correspond to the Banking Consolidation Directive and the Capital Adequacy Directive.

The definition of a BIPRU firm

1.1.7 None of the following is a BIPRU firm:

(1) an incoming EEA firm; [deleted]
(2) an incoming Treaty firm; [deleted]
(3) any other an overseas firm;
(4) an ELMI; [deleted]
(5) an insurer; and
(6) an ICVC.

...

1.1.10 Except in exceptional circumstances, it is the appropriate regulator’s policy that it will not give an overseas applicant a Part 4A permission unless the appropriate regulator is satisfied that the applicant will be subject to prudential regulation by its home state regulatory body that is broadly equivalent to that provided for in the Handbook and the applicable EEA UK prudential sectoral legislation. The appropriate regulator will take into account not only the requirements to which the firm is subject but how they are enforced. The appropriate regulator will also take into account the laws, regulations and administrative provisions to which it is subject in its home state. The reasons for that policy include:
Meaning of dealing on own account

1.1.23  R  (1)  *Dealing on own account* means (for the purpose of *GENPRU* and *BIPRU*) the service of dealing in any *financial instruments* for own account as referred to in point 3 of Section A of Annex I to *MiFID* paragraphs 3 of Part 3 of Schedule 2 to the *Regulated Activities Order*, subject to (2) and (3).

(2)  In accordance with article 5(2) of the *Capital Adequacy Directive* (Definition of dealing on own account), a *CAD* investment firm that executes investors’ orders for *financial instruments* and holds such *financial instruments* for its own account does not for that reason *deal on own account* if all of the following conditions are met:

…

(d)  (in the case of a *CAD* investment firm that is an *EEA* firm) it complies with the *CRD implementation measures* of its *Home State* for Articles 18 and 20 (Minimum capital requirements) of the *Capital Adequacy Directive*; [deleted]

(e)  (in the case of any other a *CAD* investment firm) it would comply with the *rules* in (2)(c) if it had been a *BIPRU* firm on the basis of the following assumptions:

(i)  its head office had been in an *EEA State* the *UK*; and

(ii)  it had carried on all its business in the *EEA UK* and had obtained whatever *authorisations* *Part 4A permission* required for doing so as are required under *MiFID*; and

…

(3)  In accordance with in article 5(2) of the *Capital Adequacy Directive*, the holding *Holding* of non-trading book positions in *financial instruments* in order to invest *capital resources* is not dealing on own account for the purposes referred to in article 4(1)(2)(c) of the *EU UK CRR* (see *BIPRU* 1.1.7AG).

[Note: Article 5(2) of the *Capital Adequacy Directive* (Definition of dealing on own account)]

…
1.2 Definition of the trading book

Purpose

1.2.2 Pursuant to the third paragraph of article 95(2) of the EU UK CRR, this section implements applies certain provisions of that correspond to the Capital Adequacy Directive and the Banking Consolidation Directive relating to the trading book. The precise provisions being implemented are listed as a note after each rule.

...

1.2.8 CRD financial instruments include both primary CRD financial instrument or cash instruments, and derivative CRD financial instruments the value of which is derived from the price of an underlying CRD financial instrument, a rate, an index or the price of another underlying item and include as a minimum the instruments specified in Section C of Annex I to the MIFID Part 1 of Schedule 2 to the Regulated Activities Order.

[Note: CAD Article 3(1) last paragraph]

...

1.3 Applications for advanced approaches and waivers

Purpose

1.3.2 (1) A firm may apply for an Article 129 permission or a waiver in respect of:

...

(2) A firm should apply for a waiver if it wants to:

...

(c) disapply consolidated supervision under BIPRU 8 for its UK consolidation group or non-EEA sub-group non-UK sub-group; or

...

Article 129

1.3.3 An EEA parent institution and its subsidiary undertakings or the subsidiary undertakings of its EEA parent financial holding company or the subsidiary undertakings of its EEA parent mixed financial holding company that wish to use any of the approaches listed in BIPRU 1.3.2G(1) in respect of its
The Article 129 procedure allows an EEA parent institution and its subsidiary undertakings or the subsidiary undertakings of its EEA parent financial holding company or the subsidiary undertakings of its EEA parent mixed financial holding company to apply for permission to use the approaches in BIPRU 1.3.2G(1) without making separate applications to the competent authority of each EEA State where members of a firm’s group are authorised. [deleted]

The Capital Requirements Regulations 2006 set out the Article 129 procedure. [deleted]

Where a firm or its group has been granted an Article 129 permission, each competent authority, including the lead competent authority, will need to take action to apply that Article 129 permission to the institutions that they authorise. Part 3 of the Capital Requirements Regulations 2006 governs how the appropriate regulator will take that action, whether or not the appropriate regulator is the lead competent authority. [deleted]

Forms and method of application

If a firm wishes to apply for a waiver or an Article 129 permission to use the IRB approach, it must complete and submit the form in BIPRU 1 Annex 2 D.

If a firm wishes to apply for a waiver or an Article 129 permission to use the CCR internal model method, it must complete and submit the form in BIPRU 1 Annex 3DD.

Where a firm makes an application in accordance with BIPRU 1.3.14D, BIPRU 1.3.15D or BIPRU 1.3.16D, the firm must state on the application whether it is making an application for a waiver or an Article 129 permission. [deleted]

Where a firm applies for a VaR model permission, the firm must state whether it is making an application for a waiver or an Article 129 permission. [deleted]

In respect of the application for waivers to apply the approaches set out in BIPRU 1.3.2G(1), the appropriate regulator will aim to give decisions on applications as soon as practicable. However, the appropriate regulator expects that it will take a significant period to determine and give a decision due to the complexity of the issues raised by the applications. Details of timelines for applications for waivers to use advanced approaches under the Article 129 procedure are set out on the appropriate regulator website.
1.3.21 G Before sending in an application for a waiver or Article 129 permission, a firm may find it helpful to discuss the application with its usual supervisory contact at the appropriate regulator. However, the firm should still ensure that all relevant information is included in the application.

2 Capital

2.1 Solo consolidation

... Purpose

2.1.2 G Pursuant to the third paragraph of article 95(2) of the EU UK CRR, the purpose of this section is to implement this section applies requirements that correspond to Articles 70 and 118 of the Banking Consolidation Directive so far as they apply under Articles 2 and 28 of the Capital Adequacy Directive to CAD investment firms that are subject to the requirements imposed by the UK legislation that implemented MiFID (or which would have been subject to that Directive those requirements if its head office were in an EEA State the UK), but excluding a bank, building society, a credit institution, a local and an exempt CAD firm.

... The basic rules for solo consolidation

...

2.1.8 R ...  

(2) If (1) applies, SYSC 12.1.13R applies to the group made up of the firm and its subsidiary undertakings referred to in (1) in the same way as it applies to a UK consolidation group or non-EEA sub-group non-UK sub-group.

... Solo consolidation and capital and concentration risk requirements

...

2.1.10 R A firm must treat itself and each subsidiary undertaking referred to in BIPRU 2.1.7R as a single undertaking and must apply, on that basis, BIPRU 8 (Group risk - consolidation) to the group made up of the firm and such subsidiary undertakings in the same way as BIPRU 8 applies to a UK consolidation group or non-EEA sub-group non-UK sub-group.
Minimum standards

2.1.23 R Where the firm is a parent institution in a Member State the UK, it must have measures in place that ensure the satisfactory allocation of risks within the group consisting of the firm and each subsidiary undertaking to which BIPRU 2.1 is applied.

2.2 Internal capital adequacy standards

The drafting of individual capital guidance and capital planning buffer

2.2.19 G (1) ...

(2) If BIPRU 8.2.1R (General consolidation rule for a UK consolidation group) applies to the firm the guidance relates to its UK consolidation group. If BIPRU 8.3.1R (General consolidation rule for a non-EEA sub-group non-UK sub-group) applies to the firm the guidance relates to its non-EEA sub-group non-UK sub-group. If both apply to the firm the guidance relates to its UK consolidation group and to its non-EEA sub-group non-UK sub-group.

Business risk: Stress tests for firms using the IRB approach

2.2.43 R ...

(1) references to capital resources are to the consolidated capital resources of the firm’s UK consolidation group or, as the case may be, its non-EEA sub-group non-UK sub-group; and

(2) references to the capital requirements in GENPRU 2.1 (Calculation of capital resources requirements) are to the consolidated capital requirements with respect to the firm’s UK consolidation group or, as the case may be, its non-EEA sub-group non-UK sub-group under BIPRU 8 (Group risk - consolidation).
2.3 Interest rate risk in the non-trading book

... Purpose ...

2.3.5 G BIPRU 2.3 implements applies requirements that correspond to Article 124(5) of the Banking Consolidation Directive.

... Standardised credit risk

3.1 Application and purpose ...

Purpose

3.1.2 G Pursuant to the third paragraph of article 95(2) of the EU UK CRR, BIPRU 3 implements applies requirements that correspond to:

(1) Articles 78 to 80, paragraph (1) of Article 81, Article 83, Annex II and Parts 1 and 3 of Annex VI of the Banking Consolidation Directive;

(2) Article 18 of the Capital Adequacy Directive so far as it applies Articles 78 to 80, paragraph (1) of Article 81, Article 83 and Parts 1 and 3 of Annex VI of the Banking Consolidation Directive to investment firms; and

(3) Article 40 of the Capital Adequacy Directive for the purposes of the calculation of credit risk under the Banking Consolidation Directive.

... The central principles of the standardised approach to credit risk ...

... Zero risk-weighting for intra-group exposures: core UK group ...

3.3.29A G (1) ...

(2) For the purpose of BIPRU 3.2.25R(1)(d) (Incorporation in the UK), if a counterparty is of a type that falls within the scope of the Council Regulation of 29 May 2000 on insolvency proceedings (Regulation 1346/2000/EC) Insolvency Proceedings Regulation and it is
established in the United Kingdom other than by incorporation, a firm wishing to include that counterparty in its core UK group may apply to the appropriate regulator for a waiver of this condition if it can demonstrate fully to the appropriate regulator that the counterparty’s centre of main interests is situated in the United Kingdom within the meaning of that Regulation.

…

3.3 The use of the credit assessments of ratings agencies

…

Recognition of ratings agencies

…

3.3.3 G Regulation 22 of the Capital Requirements Regulations 2006 deals with recognition by the appropriate regulator of eligible ECAIs for exposure risk weight purposes. Regulation 25 deals with revoking recognition.

…

3.3.6 G The list of eligible ECAIs includes those who have been recognised as eligible for exposure risk weighting purposes by a competent authority of another EEA State and are subsequently recognised as eligible ECAIs by the appropriate regulator without carrying out its own evaluation process under Regulation 22(2) of the Capital Requirements Regulations 2006. [deleted]

Mapping of credit assessments

…

3.3.9 G The table mapping the credit assessments of eligible ECAIs to credit quality steps is published on the appropriate regulator’s website and amended from time to time in line with additions to and deletions from the list of eligible ECAIs. The table includes mappings made by a competent authority of another EEA State which are subsequently recognised by the appropriate regulator without carrying out its own determination process under Regulation 22(5) of the Capital Requirements Regulations 2006.

[Note: For the most recent version of the table, refer to: http://www.fca.org.uk/your-fca/documents/fsa-ecais-standardised for the FCA and http://www.bankofengland.co.uk/publications/Documents/other/prapolicy/2013/ecaissstandardised.pdf for the PRA]

3.4 Risk weights under the standardised approach to credit risk

…
Exposures in the national currency of the borrower

3.4.5 R Exposures to EEA States’ central governments, the central government of the UK and central banks, the Bank of England denominated and funded in £ sterling must be assigned a risk weight of 0%.

[Note: BCD Annex VI Part 1 point 4]

3.4.6 R When the competent authorities of a third country which apply supervisory and regulatory arrangements at least equivalent to those applied in the EEA UK assign a risk weight which is lower than that indicated in BIPRU 3.4.1R to BIPRU 3.4.3R to exposures to their central government and central bank denominated and funded in the domestic currency, a firm may risk weight such exposures in the same manner.

[Note: BCD Annex VI Part 1 point 5]

Exposures to regional governments or local authorities: General

3.4.10 R Without prejudice to BIPRU 3.4.1R to BIPRU 3.4.19R:

(1) a firm must risk weight exposures to regional governments and local authorities in accordance with BIPRU 3.4.11R to BIPRU 3.4.14R and BIPRU 3.4.19AR; and

...
3.4.19 R When competent authorities of a third country jurisdiction which apply supervisory and regulatory arrangements at least equivalent to those applied in the EEA UK treat exposures to regional governments and local authorities as exposures to their central government, a firm may risk weight exposures to such regional governments and local authorities in the same manner.

[Note: BCD Annex VI Part 1 point 10]

3.4.19A R Without prejudice to BIPRU 3.4.17R to BIPRU 3.4.19R, an exposure to a regional government or local authority of an EEA State denominated and funded in the domestic currency of that regional government or local authority must be assigned a risk weight of 20%. [deleted]

[Note: BCD Annex VI Part 2(b)]

Public sector entities

3.4.25 R Where a competent authority of another EEA State implements points 14 or 15 of Part 1 of Annex VI of the Banking Consolidation Directive by exercising the discretion to treat exposures to public sector entities as exposures to institutions or as exposures to the central government of the EEA State concerned, a firm may risk weight exposures to the relevant public sector entities in the same manner. [deleted]

[Note: BCD Annex VI Part 1 point 16]

3.4.26 R When competent authorities of a third country jurisdiction, which apply supervisory and regulatory arrangements at least equivalent to those applied in the EEA UK, treat exposures to public sector entities as exposures to institutions, a firm may risk weight exposures to the relevant public sector entities in the same manner.

[Note: BCD Annex VI Part 1 point 17]

Exposures to multilateral development banks: Treatment

3.4.29 R A risk weight of 20% must be assigned to the portion of unpaid capital subscribed to the European Investment Fund. [deleted]

[Note: BCD Annex VI Part 1 point 21]

Exposures to international organisations
3.4.31 R  **BIPRU 3.4.32R to BIPRU 3.4.48R 3.4.47R** set out the treatment to be accorded to *exposures to institutions*.

Exposures to institutions: Treatment

3.4.32 R  Without prejudice to **BIPRU 3.4.33R to BIPRU 3.4.47R**, *exposures to financial institutions* authorised and supervised by the **competent authorities** responsible for the authorisation and supervision of *credit institutions PRA and FCA* and subject to prudential requirements equivalent to those applied to *credit institutions* must be *risk weighted* as *exposures to institutions*.

*[Note: BCD Annex VI Part 1 point 24]*

Exposures to institutions: Short-term exposures in the national currency of the borrower

3.4.45 R  (1)  **Where a competent authority** of another **EEA State** implements point 37 of Part 1 of Annex VI of the **Banking Consolidation Directive** by exercising the discretion to allow the treatment in that point, a **firm** may assign to the relevant national currency *exposures the risk weight** permitted by that **CRD implementation measure**. [deleted]

(2)  **When the competent authority** of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the **EEA UK** assigns to an *exposure to an institution* formed under the law of that third country of a residual maturity of 3 months or less denominated and funded in the national currency a *risk weight* that is one category less favourable than the preferential *risk weight*, as described in **BIPRU 3.4.6R** (Exposures in the national currency of the borrower), assigned to *exposures to the central government* of that third country, a **firm may risk weight** such *exposures in the same manner*.

*[Note: BCD Annex VI Part 1 point 37]*

Exposures to institutions: Minimum reserves required by the ECB

3.4.48 R  **Where an exposure to an institution** is in the form of minimum reserves required by the European Central Bank or by the **central bank of an EEA State** to be held by the **firm**, a **firm** may assign the *risk weight* that would be assigned to *exposures to the central bank* of the **EEA State** in question provided:
(4) the reserves are held in accordance with Regulation (EC) No. 1745/2003 of the European Central Bank of 12 September 2003 or a subsequent replacement regulation or in accordance with national requirements in all material respects equivalent to that Regulation; and

(2) in the event of the bankruptcy or insolvency of the institution where the reserves are held, the reserves will be fully repaid to the firm in a timely manner and will not be available to meet other liabilities of the institution. [deleted]

[Note: BCD Annex VI Part I point 40]

... Exposures secured by real estate property

3.4.54 R BIPRU 3.4.55R to BIPRU 3.4.94R BIPRU 3.4.89R set out the treatment to be accorded to exposures secured by real estate property.

... Exposures secured by mortgages on residential property

... 3.4.57 R Exposures fully and completely secured, to the satisfaction of the firm, by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of residential property which is or shall be occupied or let by the owner must be assigned a risk weight of 35%. [deleted]

[Note: BCD Annex VI Part I point 46]

... 3.4.60 R ...

(6) The value of the property exceeds the exposures by a substantial margin as set out in BIPRU 3.4.81R, BIPRU 3.4.83R, BIPRU 3.4.84R or BIPRU 3.4.85R (as applicable).

[Note: BCD Annex VI Part 1 point 48]

... 3.4.62 G The Banking Consolidation Directive permits a competent authority to disapply FCA may disapply the condition in BIPRU 3.4.60R(3), if it has evidence that a well-developed and long-established residential real estate market is present in its territory the UK with loss rates which are sufficiently low to justify such treatment disapplying the condition in BIPRU 3.4.60R(3). BIPRU 3.4.61R implements that option. However, if the
evidence changes so that these conditions are no longer satisfied, the appropriate regulator may be obliged to revoke BIPRU 3.4.61R.

3.4.63  R If a CRD implementation measure of another EEA State exercises the discretion in point 49 of Part 1 of Annex VI of the Banking Consolidation Directive to dispense with the condition corresponding to BIPRU 3.4.60R(3) (The risk of the borrower should not materially depend upon the performance of the underlying property or project), a firm may apply a risk weight of 35% to such exposures fully and completely secured by mortgages on residential property situated in that EEA State. [deleted]

[Note: BCD Annex VI Part 1 point 50]

…

3.4.77  R The property must be valued by an independent valuer at or less than the market value. In those EEA States that have laid down In the UK where rigorous criteria for the assessment of the mortgage lending value exist in statutory or regulatory provisions the property may instead be valued by an independent valuer at or less than the mortgage lending value.

[Note: BCD Annex VIII Part 3 point 62]

…

3.4.83  R A firm may only treat an exposure as fully and completely secured by residential property situated in another EEA State for the purposes of BIPRU 3.4.56R or BIPRU 3.4.58R if it would be treated as fully and completely secured by the relevant CRD implementation measures in that EEA State implementing points 45 and 47 of Part 1 of Annex VI of the Banking Consolidation Directive. [deleted]

…

3.4.87  G If a firm has more than one exposure secured on the same property they should be aggregated and treated as if they were a single exposure secured on the property for the purposes of BIPRU 3.4.56R and BIPRU 3.4.58R and BIPRU 3.4.81R, BIPRU 3.4.83R and BIPRU 3.4.84R.

…

Exposures secured by mortgages on commercial real estate

…

3.4.90  R Exposures fully and completely secured by shares in Finnish housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of offices or other commercial premises may be assigned a risk weight of 50%. [deleted]

[Note: BCD Annex VI Part 1 point 52]
If a CRD implementation measure in another EEA State implements the discretion in point 51 of Part 1 of Annex VI of the Banking Consolidation Directive, a firm may apply the same treatment as that CRD implementation measure to exposures falling within the scope of that CRD implementation measure which are fully and completely secured by mortgages on offices or other commercial premises situated in that EEA State. [deleted]

[Note: BCD Annex VI Part 1 points 51 and 57]

If a CRD implementation measure in another EEA State implements the discretion in point 53 of Part 1 of Annex VI of the Banking Consolidation Directive, a firm may apply the same treatment as that CRD implementation measure to exposures related to property leasing transactions concerning offices or other commercial premises situated in that EEA State and governed by statutory provisions whereby the lessor retains full ownership of the rented assets until the tenant exercises his option to purchase, as long as that exposure falls within the scope of that CRD implementation measure. [deleted]

[Note: BCD Annex VI Part 1 points 53 and 57]

In particular, if a firm applies BIPRU 3.4.91R or BIPRU 3.4.92R, it must comply with the corresponding CRD implementation measures in relation to points 54-56 of Part 1 of Annex VI of the Banking Consolidation Directive. [deleted]

[Note: BCD Annex VI Part 1 points 54 to 56]

If a CRD implementation measure in another EEA State implements the discretion in point 58 of Part 1 of Annex VI of the Banking Consolidation Directive to dispense with the condition in point 54(b) for exposures fully and completely secured by mortgages on commercial property situated in that EEA State, a firm may apply the same treatment as that CRD implementation measure to exposures fully and completely secured by mortgages on commercial property situated in that EEA State falling within the scope of that CRD implementation measure.

However a firm may not apply the treatment in (1) if the eligibility to use that treatment under the CRD implementation measure referred to in (1) ceases as contemplated under point 59 of Annex VI of the Banking Consolidation Directive (condition in point 54(b) must apply where conditions in point 58 are not satisfied). [deleted]

[Note: BCD Annex VI Part 1 points 58, 59 and 60]

Past due items
3.4.99  R    Exposures indicated in BIPRU 3.4.56R to BIPRU 3.4.63R to BIPRU 3.4.61R (Exposures secured by mortgages on residential property) must be assigned a risk weight of 100% net of value adjustments if they are past due for more than 90 days. If value adjustments are no less than 20% of the exposure gross of value adjustments, the risk weight to be assigned to the remainder of the exposure is 50%.

[Note: BCD Annex VI Part 1 point 64]

...

3.4.101  R    Exposures indicated in BIPRU 3.4.89R to BIPRU 3.4.94R (Exposures secured by mortgages on commercial real estate) must be assigned a risk weight of 100% if they are past due for more than 90 days.

[Note: BCD Annex VI Part 1 point 65]

...

Items belonging to regulatory high-risk categories

...

3.4.105  G    For the purposes of point 66 of Part 1 of Annex VI of the Banking Consolidation Directive, the exposures listed in BIPRU 3 Annex 3R are in the view of the appropriate regulator associated with particularly high risk.

[Note: BCD Annex VI Part 1 point 66]

Exposures in the form of covered bonds

...

3.4.107  R    (1) Covered bonds means covered bonds as defined in paragraph (1) of the definition in the glossary (Definition based on Article 22(4) of the UCITS Directive) and collateralised by any of the following eligible assets:

(a) exposures to or guaranteed by the central governments, central bank, UK central government, the Bank of England, public sector entities, regional governments and local authorities in the EEA UK;

(b) (i) exposures to or guaranteed by non-EEA UK central governments, non-EEA UK central banks, multilateral development banks, international organisations that qualify for the credit quality step 1;

(ii) exposures to or guaranteed by non-EEA UK public sector entities, non-EEA UK regional governments and non-EEA UK local authorities that are risk
weighted as exposures to institutions or central governments and central banks according to BIPRU 3.4.23R, BIPRU 3.4.24R, BIPRU 3.4.10R or BIPRU 3.4.16G to BIPRU 3.4.17R respectively and that qualify for the credit quality step 1; and

...

... (d) loans secured:

(i) by residential real estate or shares in Finnish residential housing companies as referred to in BIPRU 3.4.57R up to the lesser of the principal amount of the liens that are combined with any prior liens and 80% of the value of the pledged properties; or

(ii) by senior units issued by French Fonds Communs de Créances or by equivalent securitisation entities governed by the laws of an EEA State securitising residential real estate exposures provided that the special public supervision to protect bond holders as provided for in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council ensures that the assets underlying such units must, at any time while they are included in the cover pool, be at least 90% composed of residential mortgages that are combined with any prior liens up to the lesser of the principal amounts due under the units, the principal amounts of the liens, and 80% of the value of the pledged properties, that the units qualify for credit quality step 1 and that such units do not exceed 10% of the nominal amount of the outstanding issue; or [deleted]

(e) (i) loans secured by commercial real estate or shares in Finnish housing companies as referred to in BIPRU 3.4.57R up to the lesser of the principal amount of the liens that are combined with any prior liens and 60% of the value of the pledged properties; or [deleted]

(ii) loans secured by senior units issued by French Fonds Communs de Créances or by equivalent securitisation entities governed by the laws of an EEA State securitising commercial real estate exposures provided that the special public supervision to protect bond holders as provided for in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council ensures that the assets underlying such units must, at any time while they are included in the
cover pool, be at least 90% composed of commercial mortgages that are combined with any prior liens up to the lesser of the principal amounts due under the units, the principal amounts of the liens, and 60% of the value of the pledged properties, that the units qualify for credit quality step 1 and that such units do not exceed 10% of the nominal amount of the outstanding issue; or [deleted]

(iii) a firm may recognise loans secured by commercial real estate as eligible where the loan to value ratio of 60% is exceeded up to a maximum level of 70% if the value of the total assets pledged as collateral for the covered bonds exceed the nominal amount outstanding on the covered bond by at least 10%, and the bondholders’ claim meets the legal certainty requirements set out in BIPRU 3 and BIPRU 5; the bondholders’ claim must take priority over all other claims on the collateral; or

(f) loans secured by ships where only liens that are combined with any prior liens within 60% of the value of the pledged ship.

(2) For the purposes of BIPRU 3.4.107R(1)(d)(ii) and BIPRU 3.4.107 R(1)(e)(ii) exposures caused by transmission and management of payments of the obligors of, or liquidation proceeds in respect of, loans secured by pledged properties of the senior units or debt securities must not be comprised in calculating the 90% limit. [deleted]

... (4A) Until 31 December 2013, the 10% limit for senior units issued by French Fonds Communs de Créances or by equivalent securitisation entities as specified in (1)(d)(ii) and (1)(e)(ii) does not apply, provided that:

(a) the securitised residential or commercial real estate exposures were originated by a member of the same consolidated group of which the issuer of the covered bonds is also a member or by an entity affiliated to the same central body to which the issuer of the covered bonds is also affiliated (that common group membership or affiliation to be determined at the time the senior units are made collateral for covered bonds); and

(b) a member of the same consolidated group of which the issuer of the covered bonds is also a member or an entity affiliated to the same central body to which the issuer of the covered
bonds is also affiliated retains the whole first loss tranche supporting those senior units. [deleted]

(5) Until 31 December 2010 the figure of 60% in (1)(f) can be replaced with a figure of 70%. [deleted]

[Note: BCD Annex VI Part 1 point 68]

... 3.4.109 R Notwithstanding BIPRU 3.4.107R to BIPRU 3.4.108R, covered bonds meeting the definition of Article 22(4) of the UCITS Directive paragraph (1) of the definition in the glossary and issued before 31 December 2007 are also eligible for the preferential treatment until their maturity.

[Note: BCD Annex VI Part 1 point 69]

... Exposures in the form of collective investment undertakings (CIUs)

... 3.4.121 R Where BIPRU 3.4.116R does not apply, a firm may determine the risk weight for a CIU as set out in BIPRU 3.4.123R to BIPRU 3.4.125R, if the following eligibility criteria are met:

(1) one of the following conditions is satisfied:

(a) the CIU is managed by a company which is subject to supervision in an EEA State the UK; or

(b) the following conditions are satisfied:

(i) the CIU is managed by a company which is subject to supervision that is equivalent to that laid down in EU UK law; and

(ii) cooperation between competent authorities and third country competent authorities is sufficiently ensured; and

...

3.4.122 R If another EEA competent authority approves a third country CIU as eligible under a CRD implementation measure with respect to point 77(a) of Part I of Annex VI of the Banking Consolidation Directive then a firm may make use of this recognition. [deleted]

[Note: BCD Annex VI Part 1 point 78]

...
### Simplified method of calculating risk weights

3.5.5 **Table: Simplified method of calculating risk weights**

This table belongs to *BIPRU 3.5.4G.*

<table>
<thead>
<tr>
<th>Exposure class</th>
<th>Exposure sub-class</th>
<th>Risk weights</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central government</td>
<td><em>Exposures to United Kingdom government or Bank of England in sterling</em></td>
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<td></td>
<td><em>Exposures to United Kingdom government or Bank of England in the currency of another EEA State</em></td>
<td>0%</td>
<td>See Note 2.</td>
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<td><em>Exposures to EEA State’s central government or central bank in currency of that state</em></td>
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<td></td>
<td><em>Exposures to EEA State’s central government or central bank in the currency of another EEA State</em></td>
<td>0%</td>
<td>See Notes 2 and 3.</td>
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<tr>
<td></td>
<td><em>Exposures to central governments or central banks of certain countries outside the EEA UK in currency of that country</em></td>
<td>See next column</td>
<td>The risk weight is whatever it is under local law. See <em>BIPRU 3.4.6R</em> for precise details.</td>
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<td>Exposures to European</td>
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<td>Central Bank</td>
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<td>Regional/local governments</td>
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<td>Assembly for Wales and Northern</td>
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<td></td>
<td>Ireland Assembly in the</td>
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<tr>
<td></td>
<td>currency of another EEA State</td>
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<td></td>
<td></td>
<td>See Note 2.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Exposures to EEA States’</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>equivalent regional/local</td>
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<tr>
<td></td>
<td>governments in the currency of</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>that state</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>See BIPRU 3.4.17R for details of type of local/regional government covered.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Exposures to EEA States’</td>
<td>0%</td>
<td></td>
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<tr>
<td></td>
<td>equivalent regional/local</td>
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<tr>
<td></td>
<td>governments in the currency of</td>
<td></td>
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<tr>
<td></td>
<td>another EEA State</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>See BIPRU 3.4.17R for details of type of local/regional government covered. See Notes 2 and 3.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Exposures to local or regional</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>governments of certain countries</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>See BIPRU 3.4.19R for details of type of</td>
<td></td>
</tr>
<tr>
<td>Outside the <strong>EEA UK</strong> in currency of that country</td>
<td><strong>local/regional government covered.</strong></td>
<td>See Note 4.</td>
<td></td>
</tr>
<tr>
<td>---</td>
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<td></td>
</tr>
<tr>
<td><em>Exposures to United Kingdom or EEA States’ local/regional government in currency of that state</em> <strong>sterling</strong> if the <em>exposure</em> has original effective maturity of 3 months or less</td>
<td>20%</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>Exposures to United Kingdom or EEA States’ local/regional government in the currency of another EEA State</em> if the <em>exposure</em> has original effective maturity of 3 months or less</td>
<td>20%</td>
<td>See Note 2. See Note 3 for local/regional government of an EEA State other than the United Kingdom</td>
<td></td>
</tr>
<tr>
<td><em>Exposures to local or regional governments of countries outside the EEA UK in currency of that country</em> if the <em>exposure</em> has original effective maturity of 3 months or less</td>
<td>20%</td>
<td>See Note 4.</td>
<td></td>
</tr>
<tr>
<td><strong>Other exposures</strong></td>
<td>100%</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>PSE</strong></td>
<td><strong>Exposures to a PSE of the United Kingdom</strong></td>
<td>0%</td>
<td><strong>BIPRU 3.4.24R</strong> describes the</td>
</tr>
<tr>
<td>or of an <strong>EEA State</strong> if that PSE is guaranteed by its central government and if the exposure is in currency of that PSE’s state in sterling.</td>
<td><strong>United Kingdom PSEs covered and BIPRU 3.4.25R describes the EEA PSEs covered.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Exposures to PSE of a country outside the <strong>EEA</strong> UK</strong> if that PSE is guaranteed by the country’s central government and if the exposure is in currency of that country.</td>
<td>0%</td>
<td>See BIPRU 3.4.26R and Note 1.</td>
<td></td>
</tr>
<tr>
<td><strong>Exposures to a PSE of the United Kingdom or of an EEA State in currency of that state sterling if the exposure has original effective maturity of 3 months or less</strong></td>
<td>20%</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Exposures to a PSE of the United Kingdom or of an EEA State in the currency of another EEA State if the exposure has original effective maturity of 3 months or less</strong></td>
<td>20%</td>
<td>See Notes 2 and 3.</td>
<td></td>
</tr>
<tr>
<td>Exposures to</td>
<td>Percentage</td>
<td>Notes</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
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<td></td>
</tr>
<tr>
<td>PSE of a country outside the UK in currency of that country if the exposure has original effective maturity of 3 months or less</td>
<td>20%</td>
<td>See Note 1.</td>
<td></td>
</tr>
<tr>
<td>Other exposures</td>
<td>100%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multilateral development banks</td>
<td>Exposures to multilateral development banks listed in paragraph (1) of the Glossary definition</td>
<td>0%</td>
<td>Simplified approach does not apply. Normal rules apply.</td>
</tr>
<tr>
<td>Other exposures</td>
<td>Various</td>
<td>Treated as an institution</td>
<td></td>
</tr>
<tr>
<td>EU, the International Monetary Fund and the Bank for International Settlements</td>
<td></td>
<td>0%</td>
<td>Simplified approach does not apply. Normal rules apply.</td>
</tr>
<tr>
<td>Institutions</td>
<td>Exposures to United Kingdom institution in sterling with original effective maturity of three months or less</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Exposures to United Kingdom institution in the currency of another EEA State with original effective maturity of 3 months or less</td>
<td>20%</td>
<td>See Note 2.</td>
</tr>
<tr>
<td>Description</td>
<td>Percentage</td>
<td>Notes</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>Maturity of three months or less</td>
<td>20%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exposures to institution whose head office is in another EEA State in the currency of that state with original effective maturity of three months or less</td>
<td>20%</td>
<td>See Notes 2 and 3.</td>
<td></td>
</tr>
<tr>
<td>Exposures to institution with a head office in a country outside the EEA UK in the currency of that country with original effective maturity of three months or less</td>
<td>20%</td>
<td>See Note 4.</td>
<td></td>
</tr>
<tr>
<td>Exposures to United Kingdom institution in sterling with original effective maturity of over three months</td>
<td>50%</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Exposures to</strong></td>
<td><strong>50%</strong></td>
<td><strong>See Note 2.</strong></td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td>---------</td>
<td>----------------</td>
<td></td>
</tr>
<tr>
<td><strong>United Kingdom institution in the currency of another EEA State with original effective maturity of over three months</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| **Exposures to an EEA institution with a head office in another EEA State in the currency of that state with original effective maturity of over three months** | **50%** |                      |

| **Exposures to an EEA institution with a head office in another EEA State in the currency of another EEA State with original effective maturity of over three months** | **50%** | **See Notes 2 and 3.** |

| **Exposures to institution with a head office in a country outside the EEA UK in the currency of that country with original effective maturity of over three months** | **50%** | **See Note 4.** |

| **Other exposures** | **100%** |                      |
Note 4: The risk weight should not be lower than the risk weight that applies for national currency exposures of the central government of the third country in question under BIPRU 3.5. That means that this risk weight only applies if the third country is one of those to which BIPRU 3.4.6R (Preferential risk weight for exposures of the central government of countries outside the EEA UK that apply equivalent prudential standards) applies.

Note 2: This is a transitional measure. It lasts until 31 December 2012.

Note 3: The risk weight should not be lower than the risk weight that applies for exposures of the central government of the EEA State in question in the currency of another EEA State under BIPRU 3.5.

4 The IRB approach

4.1 The IRB approach: Application, purpose and overview

... Purpose

4.1.2 G Pursuant to the third paragraph of article 95(2) of the EU UK CRR, BIPRU 4 implements applies requirements that correspond to the following provisions of the Banking Consolidation Directive:

(1) Articles 84 - 89; and

(2) Annex VII.

4.1.3 G Pursuant to the third paragraph of article 95(2) of the EU UK CRR, BIPRU 4 also implements applies requirements that correspond to Annex VIII of the Banking Consolidation Directive so far as it applies to the IRB approach. In particular, it implements applies requirements corresponding to (in part):

(1) from Part 1 of that Annex, points 12-16, 19-22, 26(g)(ii) and 27;

(2) from Part 2 of that Annex, points 8-11; and

(3) from Part 3 of that Annex, points 1, 11, 20, 23-24, 58(h), 61, 64-79 and 90-93.

4.1.4 G Similarly, BIPRU 4 also implements applies requirements that correspond to article 40 of the Capital Adequacy Directive as it applies to the IRB approach.
Overview

4.1.6 The IRB approach is an alternative to the standardised approach for calculating a firm’s credit risk capital requirements. It may be applied to all a firm’s exposures or to some of them, subject to various limitations on partial use as set out in BIPRU 4.2. Under the IRB approach capital requirements are based on a firm’s own estimates of certain parameters together with other parameters as set out in the Banking Consolidation Directive BIPRU 4.

IRB permissions: general

4.1.13 The appropriate regulator recognises that the nature of IRB approaches will vary between firms. The scope of and the requirements and conditions set out in an IRB permission may therefore differ in substance or detail from BIPRU 4 in order to address individual circumstances adequately. However any differences will only be allowed if they are compliant with the Banking Consolidation Directive. The FCA will consider any differences by having regard to the Banking Consolidation Directive. An IRB permission will implement any such variation by modifying the relevant provisions of GENPRU and BIPRU. An IRB permission may also include additional conditions to meet the particular circumstances of the firm.

Link to standard rules: Incorporation of the IRB output into the capital calculation

4.1.23 If a provision of the Handbook relating to the IRB approach says that a firm may do something if its IRB permission allows it, a firm may do that thing unless its IRB permission expressly says that it may not do so except that:

(6) in the case of collateral that is only eligible for recognition under paragraph 21 of Part 1 of Annex VIII of the Banking Consolidation Directive (Other physical collateral) a firm may not recognise as eligible collateral an item of a type referred to in BIPRU 4.10.16R (Other physical collateral) unless that item is of a type specified as permitted in its IRB permission.

[Note: BCD Annex VIII Part 1 point 21]
4.2 The IRB approach: High level material

General approach to granting an IRB permission

4.2.3 R Where an EEA parent institution a **parent institution in the UK** and its subsidiary undertakings or an EEA parent financial holding company a **parent financial holding company in the UK** and its subsidiary undertakings or an EEA parent mixed financial holding company a **parent mixed financial holding company in the UK** and its subsidiary undertakings use the IRB approach on a unified basis, the question whether the minimum IRB standards are met is answered by considering the parent undertaking and its subsidiary undertakings together, unless the firm’s IRB permission specifies otherwise.

[Note: BCD Article 84(2) (part)]

Outsourcing

4.2.4 G (1) This guidance sets out the basis on which a firm may rely upon a **rating system** or data provided by another member of its group.

(2) A firm may rely upon a **rating system** or data provided by another member of its group if the following conditions are satisfied:

(a) the firm only does so to the extent that it is appropriate, given the nature and scale of the firm’s business and portfolios and the firm’s position within the group;

(b) the group is an **EEA banking and investment group**;

... (if the provision of the rating system or data is not carried out in the United Kingdom or in the jurisdiction of the competent authority that is the lead regulator of the group) the firm can demonstrate to the appropriate regulator that the ability of the appropriate regulator and that lead regulator to carry out their responsibilities under the Handbook, the Banking Consolidation Directive and the Capital Adequacy Directive are not adversely affected.

... Combined use of methodologies: Basic provisions
4.2.26 R

(1) ...

(2) A firm may apply the standardised approach to the IRB exposure class referred to in BIPRU 4.3.2R(1) (Sovereigns) where the number of material counterparties is limited and it would be unduly burdensome for the firm to implement a rating system for these counterparties. A firm may include in this treatment an exposure of the type described in BIPRU 3.4.18R (Exposures to churches or religious communities) that would fall within BIPRU 3.4.15R or BIPRU 3.4.17R (Exposure to a regional government or local authority) if those provisions had not been excluded by BIPRU 3.4.18R.

...

(5) A firm may apply the standardised approach to exposures to the UK’s central governments of EEA States and their regional governments, local authorities and administrative bodies, provided that:

...

...

(9) A firm may apply the standardised approach to the exposures identified in BIPRU 3.4.48R (Exposures in the form of minimum reserves required by the European Central Bank or by the central bank of an EEA State) meeting the conditions specified therein. [deleted]

...

4.3 The IRB approach: Provisions common to different exposure classes

...

Corporate governance

...

4.3.12 G

Where the firm’s rating systems are used on a unified basis for the parent undertaking and its subsidiary undertakings under BIPRU 4.2.3R, and approval and reporting of the ratings systems are carried out at the group level, the governance requirements in BIPRU 4.3.9R and BIPRU 4.3.11R may be met if:

(1) the subsidiary undertakings have delegated to the governing body or designated committee of the EEA parent institution in the UK or EEA parent financial holding company parent financial
holding company in the UK responsibility for approval of the firm’s rating systems;

(2) the governing body or designated committee of the EEA parent institution parent institution in the UK or EEA parent financial holding company parent financial holding company in the UK approves either:

(a) all aspects of the firm’s rating systems, and material changes; or

(b) all aspects of the firm’s rating systems that are material in the context of the group, and material changes to those, and a policy statement defining the overall approach to material aspects of rating and estimation processes for all rating systems, including non-material rating systems.

…

4.4 The IRB approach: Exposures to corporates, institutions and sovereigns

…

Risk quantification: Definition of default

4.4.22 R …

(3) For counterparts that are PSEs situated in another EEA State the number of days past due is the lower of:

(a) 180; and

(b) the number of days past due fixed under the CRD implementation measure with respect to point 48 of Part 4 of Annex VII of the Banking Consolidation Directive for that EEA State for such exposures. [deleted]

(4) For counterparts that are PSEs in a state outside the EEA other than the UK the number of days past due is the lower of:

(a) 180; and

(b) (if a number of days past due for such exposures has been fixed under any law of that state applicable to undertakings in the banking sector or the investment services sector that implements the IRB approach) that number.

[Note: BCD Annex VII Part 4 point 44 (part) and point 48 (part)]

…

Double default
4.4.83 R An institution, an insurance undertaking (including an insurance undertaking that carries out reinsurance) or an export credit agency which fulfils the following conditions may be recognised as an eligible provider of unfunded credit protection which qualifies for the treatment set out in BIPRU 4.4.79R:

1. the protection provider has sufficient expertise in providing unfunded credit protection;

2. the protection provider is regulated in a manner equivalent to the rules laid down in the Banking Consolidation Directive GENPRU and BIPRU or had, at the time the credit protection was provided, a credit assessment by an eligible ECAI which is associated with credit quality step 3 or above under the rules for the risk weighting of exposures to corporates under the standardised approach;

4.6 The IRB approach: Retail exposures

Risk quantification: Definition of default

4.6.20 R (1) This rule, in accordance with BIPRU 4.3.57R(4) (Definition of default), sets the exact number of days past due that a firm must abide by in the case of retail exposures.

(2) For retail exposures to counterparts situated within the United Kingdom the number of days past due is 180 days with the exception of retail SME exposures. For these exposures the number is 90 days.

(3) For retail exposures to counterparts situated in another EEA State the number of days past due is the lower of:

(a) 480; and

(b) the number of days past due fixed under the CRD implementation measure in that EEA State with respect to paragraph 48 of Part 4 of Annex VII of the Banking Consolidation Directive for such exposures. [deleted]

(4) For retail exposures to counterparts in a state outside the EEA United Kingdom the number of days past due is the lower of:
4.9 The IRB approach: Securitisation, non-credit obligations assets and CIUs

Collective investment undertakings

4.9.11 R (1) Where exposures in the form of a CIU meet the criteria set out in BIPRU 3.4.121R to BIPRU 3.4.122R (Conditions for look through treatment under the standardised approach) and the firm is aware of all of the underlying exposures of the CIU, the firm must look through to those underlying exposures in order to calculate risk weighted exposure amounts and expected loss amounts in accordance with the methods set out in BIPRU 4. BIPRU 4.9.12R applies to the part of the underlying exposures of the CIU of which the firm is not aware or could not reasonably be aware. In particular, BIPRU 4.9.12R must apply where it would be unduly burdensome for the firm to look through the underlying exposures in order to calculate risk weighted exposure amounts and expected loss amounts in accordance with methods set out in this rule.

4.9.12 R (1) Where exposures in the form of a CIU do not meet the criteria set out in BIPRU 3.4.121R to BIPRU 3.4.122R (Conditions for look through treatment under the standardised approach) or the firm is not aware of all of the underlying exposures of the CIU, a firm must look through to the underlying exposures and calculate risk weighted exposure amounts and expected loss amounts in accordance with the approach set out in BIPRU 4.7.9R - BIPRU 4.7.12R (Simple risk weights). If, for those purposes, the firm is unable to differentiate between private equity, exchange-traded and other equity exposures, it must treat the exposures concerned as other equity exposures. For these purposes, non-equity exposures must be assigned to one of the classes (private equity, exchange traded equity or other equity) set out in BIPRU 4.7.9R (Simple risk weight approach) and unknown exposures must be assigned to the other equity class.

4.10 The IRB approach: Credit risk mitigation

Eligibility of funded credit protection: General
In addition to the collateral set out in BIPRU 5.3.1R to BIPRU 5.3.2R, BIPRU 5.4.1R to BIPRU 5.4.8R and BIPRU 5.6.1R (Eligibility of funded credit protection) the provisions of BIPRU 4.10.6R - BIPRU 4.10.11R BIPRU 4.10.12R (Eligibility of real estate collateral), BIPRU 4.10.14R (Eligibility: receivables), BIPRU 4.10.16R (Eligibility: other physical collateral), and BIPRU 4.10.19R (Eligibility: leasing), apply where a firm calculates risk weighted exposure amounts and expected loss amounts under the IRB approach.

[Note: BCD Annex VIII Part 1 point 12]

Real estate collateral: Types of eligible collateral: General

Under paragraph 16 of Part 1 of Annex VIII of the Banking Consolidation Directive, a competent authority may only disapply the condition in BIPRU 4.10.6R(3) if it has evidence that the relevant UK market is well-developed and long-established with loss-rates which are sufficiently low to justify such action.

(2) If the evidence were to change so that the action was no longer justified the appropriate regulator would expect to revoke BIPRU 4.10.7R.

[Note: BCD Annex VIII Part 1 point 16]

The condition in BIPRU 4.10.6R(3) does not apply for exposures secured by residential real estate property situated within the territory of another EEA State outside the UK.

(2) However (1) only applies if and to the extent that the CRD implementation measures for that EEA State in relation to the IRB approach implement the option set out in paragraph 16 of Part 1 of Annex VIII of the Banking Consolidation Directive (waiver for residential real estate property) with respect to residential real estate property situated within that EEA State. Therefore (1) does not apply if the eligibility to use this treatment under those measures ceases as contemplated under paragraph 18 of Part 1 of Annex VIII of the Banking Consolidation Directive (suspension of alternative treatment). [deleted]

[Note: BCD Annex VIII Part 1 point 16 (part)]

The condition in BIPRU 4.10.6R(3) does not apply for commercial real estate property situated within the territory of another EEA State outside the UK.
(2) However (1) only applies if and to the extent that the CRD implementation measures for that EEA State in relation to the IRB approach implement the option set out in paragraph 17 of Part I of Annex VIII of the Banking Consolidation Directive (waiver for commercial real estate property) with respect to commercial real estate property situated within that EEA State. Therefore (1) does not apply if the eligibility to use this treatment under those measures ceases as contemplated under paragraph 18 of Part I of Annex VIII of the Banking Consolidation Directive (suspension of alternative treatment). [deleted]

[Note: BCD Annex VIII Part 1 point 19]

Real estate collateral: Types of eligible collateral: Finnish housing legislation

4.10.11 R A firm may also recognise as eligible collateral shares in Finnish residential housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation in respect of residential property which is or will be occupied or let by the owner, as residential real estate collateral, provided that the conditions in BIPRU 4.10.6R are met. [deleted]

[Note: BCD Annex VIII Part 1 point 14]

4.10.12 R A firm may also recognise as eligible collateral shares in Finnish housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation as commercial real estate collateral, provided that the conditions in BIPRU 4.10.6R are met. [deleted]

[Note: BCD Annex VIII Part 1 point 15]

….

Other physical collateral: Types of eligible collateral

4.10.16 R A firm may recognise as eligible collateral a physical item of a type other than those types indicated in BIPRU 4.10.6R - BIPRU 4.10.8R - BIPRU 4.10.12R (Eligibility of real estate collateral) if its IRB permission provides that the firm may treat collateral of that type as eligible and if the firm is able to demonstrate the following:

…

….

Calculating risk weighted exposure amounts and expected loss amounts: General treatment

4.10.23 R BIPRU 4.10.24 R - BIPRU 4.10.28R - BIPRU 4.10.29R apply to collateral in the form of real estate collateral, receivables, other physical collateral and leasing permitted by BIPRU 4.10 and exposures secured by such collateral.
Calculating risk weighted exposure amounts and expected loss amounts for funded credit risk mitigation: Alternative treatment for real estate collateral

4.10.29 R (1) A firm may apply the treatment in paragraph 74 of Part 3 of Annex VIII of the Banking Consolidation Directive (50% risk weight for exposures secured by real estate) in respect of exposures collateralised by:

(a) residential real estate property; or
(b) commercial real estate property;

located in the territory of another EEA State.

(2) However (1)(a) or (1)(b) only applies if the CRD implementing measures for that EEA State with respect to the IRB approach have implemented the option set out in the provision of the Banking Consolidation Directive referred to in (1) with respect to the relevant category of real estate property situated within that EEA State.

(3) The use of the treatment in (1) with respect to property in another EEA State must be subject to the same conditions as apply under the relevant CRD implementation measures for that EEA State. [deleted]

[Note: BCD Annex VIII Part 3 point 75]

5 Credit risk mitigation

5.1 Application and purpose

Purpose

5.1.2 G Pursuant to the third paragraph of article 95(2) of the EU UK CRR, BIPRU 5 implements applies requirements that correspond, in part, to Articles 78(1) and 91 to 93 and Annex VIII of the Banking Consolidation Directive.

5.1.4 G BIPRU 4.10 implements applies requirements that correspond to those parts of Articles 91 to 93 and Annex VIII of the Banking Consolidation Directive which are specific to the recognition of credit risk mitigation by firms using the IRB approach, and modifies the application of the provisions in BIPRU 5 to those firms.
5.4 Financial collateral

The financial collateral simple method: Repurchase transactions and securities lending or borrowing transactions

5.4.19 R A risk weight of 0% must be assigned to the collateralised portion of the exposure arising from transactions which fulfil the criteria enumerated in BIPRU 5.4.62R or BIPRU 5.4.65R. If the counterparty to the transaction is not a core market participant a risk weight of 10% must be assigned.

[Note: BCD Annex VIII Part 3 point 27]

The financial collateral comprehensive method: General

5.4.24 R In valuing financial collateral for the purposes of the financial collateral comprehensive method, volatility adjustments must be applied to the market value of collateral, as set out in BIPRU 5.4.30R to BIPRU 5.4.64R, in order to take account of price volatility.

[Note: BCD Annex VIII Part 3 point 30]

5.4.25 R Subject to the treatment for currency mismatches in the case of financial derivative instrument set out in BIPRU 5.4.26R, where collateral is denominated in a currency that differs from that in which the underlying exposure is denominated, an adjustment reflecting currency volatility must be added to the volatility adjustment appropriate to the collateral as set out in BIPRU 5.4.30R to BIPRU 5.4.64R.

[Note: BCD Annex VIII Part 3 point 31]

In the case of a firm using the financial collateral comprehensive method, where an exposure takes the form of securities or commodities sold, posted or lent under a repurchase transaction or under a securities or commodities lending or borrowing transaction, and margin lending transactions the exposure value must be increased by the volatility adjustment appropriate to such securities or commodities as prescribed in BIPRU 5.4.30R to BIPRU 5.4.64R.

[Note: BCD Article 78(1), third sentence]

The financial collateral comprehensive method: Calculating adjusted values

5.4.28 R ...
The fully adjusted value of the exposure, taking into account both volatility and the risk-mitigating effects of collateral is calculated as follows:

\[ E^* = \max \{0, [E_{VA} - C_{VAM}]\} \]

Where:

\( H_E \) is the volatility adjustment appropriate to the exposure \((E)\), as calculated under BIPRU 5.4.30R to BIPRU 5.4.64R BIPRU 5.4.65R.

\( H_C \) is the volatility adjustment appropriate for the collateral, as calculated under BIPRU 5.4.30R to BIPRU 5.4.64R BIPRU 5.4.65R.

\( H_{FX} \) is the volatility adjustment appropriate for currency mismatch, as calculated under BIPRU 5.4.30R to BIPRU 5.4.64R BIPRU 5.4.65R.

The financial collateral comprehensive method: Calculation of volatility adjustments to be applied: General

5.4.29 **R** BIPRU 5.4.30R - BIPRU 5.4.64R BIPRU 5.4.65R set out the calculation of volatility adjustments under the financial collateral comprehensive method.

The financial collateral comprehensive method: Conditions for applying a 0% volatility adjustment

5.4.65 **R** If under the CRD implementation measure for a particular EEA State with respect to point 58 of Part 3 of Annex VIII of the Banking Consolidation Directive (Conditions for applying the 0% volatility adjustment) the treatment set out in that point is permitted to be applied in the case of repurchase transactions or securities lending or borrowing transactions in securities issued by the domestic government of that EEA State, then a firm may adopt the same approach to the same transactions. [deleted]

[Note: BCD Annex VIII Part 3 point 59]

5.5 Other funded credit risk mitigation
Life insurance policies: Minimum requirements

5.5.5 R For life insurance policies pledged to a lending firm to be recognised the following conditions must be met:

(1) the party providing the life insurance must be subject to the Solvency II Directive a Solvency II firm listed in paragraphs (a), (d) or (e) of the definition in the Glossary, or is subject to supervision by a competent authority of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the Community UK.

5.6 Master netting arrangements

Calculation of the fully adjusted exposure value: the supervisory volatility adjustments approach and the own estimates of volatility adjustments approach

5.6.5 R In calculating the ‘fully adjusted exposure value’ (E*) for the exposures subject to an eligible master netting agreement covering repurchase transactions and/or securities or commodities lending or borrowing transactions and/or other capital market-driven transactions, a firm must calculate the volatility adjustments to be applied in the manner set out in BIPRU 5.6.6R to BIPRU 5.6.11R either using the supervisory volatility adjustments approach or the own estimates of volatility adjustments approach as set out in BIPRU 5.4.30R to BIPRU 5.4.64R BIPRU 5.4.65R for the financial collateral comprehensive method. For the use of the own estimates of volatility adjustments approach the same conditions and requirements apply as under the financial collateral comprehensive method.

[Note: BCD Annex VIII Part 3 point 5]

5.6.7 R For the purposes of BIPRU 5.6.6R, type of security means securities which are issued by the same entity, have the same issue date, the same maturity and are subject to the same terms and conditions and are subject to the same liquidation periods as indicated in BIPRU 5.4.30R to BIPRU 5.4.64R BIPRU 5.4.65R.

[Note: BCD Annex VIII Part 3 point 7]
Calculation of the fully adjusted exposure value: the master netting agreement internal models approach

... 5.6.18  R  A firm may use the master netting agreement internal models approach independently of the choice it has made between the standardised approach and the IRB approach for the calculation of risk weighted exposure amounts. However, if a firm uses the master netting agreement internal models approach, it must do so for all counterparties and securities, excluding immaterial portfolios where it may use the supervisory volatility adjustments approach or the own estimates of volatility adjustments approach as set out in BIPRU 5.4.30R to BIPRU 5.4.64R BIPRU 5.4.65R.

[Note: BCD Annex VIII Part 3 point 13]

... 5.7  Unfunded credit protection

... Additional requirements for guarantees

... 5.7.12  R  In the case of guarantees provided in the context of mutual guarantee schemes recognised for these purposes by another EEA competent authority under a CRD implementation measure with respect to point 19 of Part 2 of Annex VIII of the Banking Consolidation Directive or provided by or counter-guaranteed by entities referred to in BIPRU 5.7.9R, the requirements in BIPRU 5.7.1R(1) - (3) will be satisfied where either of the following conditions are met:

(1)  the lending firm has the right to obtain in a timely manner a provisional payment by the guarantor calculated to represent a robust estimate of the amount of the economic loss, including losses resulting from the non-payment of interest and other types of payment which the borrower is obliged to make, likely to be incurred by the lending firm proportional to the coverage of the guarantee; or

(2)  the lending firm is able to demonstrate to the appropriate regulator that the loss-protecting effects of the guarantee, including losses resulting from the non-payment of interest and other types of payments which the borrower is obliged to make, justify such treatment.

[Note: BCD Annex VIII Part 2 point 19]...
7 Market risk

7.1 Application, purpose, general provisions and non-standard transactions

... Purpose

7.1.2 Pursuant to the third paragraph of article 95(2) of the EU UK CRR, the purpose of this chapter is to implement apply requirements that correspond to Annexes I, III, IV and V of the Capital Adequacy Directive.

... 7.2 Interest rate PRR

... Derivation of notional positions: Futures, forwards or synthetic futures on a basket or index of debt securities

... 7.2.15 Under BIPRU 7.2.14R(2)(b), a forward on basket of three Euro denominated debt securities and two Dollar denominated debt securities would be treated as a forward on a single notional Euro denominated debt security and a forward on a single notional Dollar denominated debt security.

... Specific risk calculation

... 7.2.44 Table: specific risk position risk adjustments

This table belongs to BIPRU 7.2.43R.

<table>
<thead>
<tr>
<th>Issuer</th>
<th>Residual maturity</th>
<th>Position risk adjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or EEA States’ United Kingdom regional governments or local authorities which would qualify for credit quality step 1 or which would receive a 0% risk weight under the standardised approach to credit risk.</td>
<td>Any</td>
<td>0%</td>
</tr>
</tbody>
</table>
(A) Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or EEA States’ United Kingdom regional governments or local authorities which would qualify for credit quality step 2 or 3 under the standardised approach to credit risk.

Any 8%

(B) Debt securities issued or guaranteed by corporates which would qualify for credit quality step 4 under the standardised approach to credit risk.
(C) Exposures for which a credit assessment by a nominated ECAI is not available.

<table>
<thead>
<tr>
<th>(A) Debt securities issued or guaranteed by central governments, issued by central banks, international organisations, multilateral development banks or EEA States’ United Kingdom regional governments or local authorities or institutions which would qualify for credit quality step 6 under the standardised approach to credit risk.</th>
<th>Any</th>
<th>12%</th>
</tr>
</thead>
<tbody>
<tr>
<td>(B) Debt securities issued or guaranteed by corporates which would qualify for credit quality step 5 or 6 under the standardised approach to credit risk.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(C) An instrument that shows a particular risk because of the insufficient solvency of the issuer of liquidity. This paragraph applies even if the instrument would otherwise qualify for a lower position risk adjustment under this table.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note:** The question of what a corporate is and of what category a debt security falls into must be decided under the rules relating to the standardised approach to credit risk.

---

**Definition of a qualifying debt security**

**7.2.49** R A debt security is a qualifying debt security if:

... 

(4) it is a debt security issued by an institution subject to the capital adequacy requirements set out in the EU UK CRR or, as may be applicable, the Banking Consolidation Directive GENPRU and BIPRU, that satisfies the following conditions:

(a) it is considered by the firm to be sufficiently liquid;

(b) its investment quality is, according to the firm’s own discretion, at least equivalent to that of the assets referred to under (1) above; or

(5) it is a debt security issued by an institution that is deemed to be of equivalent or higher credit quality than that associated with credit...
quality step 2 under the standardised approach to credit risk and that is subject to supervision and regulatory arrangements comparable to those under the Capital Adequacy Directive GENPRU and BIPRU.

...

7.7 Position risk requirements for collective investment undertakings

...

Look through methods: General criteria

...

7.7.7 R The general eligibility criteria for using the methods in BIPRU 7.7.4R and BIPRU 7.7.9R - BIPRU 7.7.11R, for CIUs issued by companies supervised or incorporated within the EEA UK are that:

...

7.9 Use of a CAD 1 model

Introduction

...

7.9.5 G Waivers permitting the use of models in the calculation of PRR will not be granted if that would be contrary to the CAD BIPRU. Any waiver which is granted will only be granted on terms that are compatible with the CAD. When granting any waiver the FCA will have regard to the CAD. Accordingly, the only waivers permitting the use of models in calculating PRR that the appropriate regulator is likely to grant are CAD 1 model waivers and VaR model permissions.

...

7.10 Use of a Value at Risk Model

...

Introduction and purpose

...

7.10.3 G The models described in BIPRU 7.10 are described as VaR models in order to distinguish them from CAD 1 models, which are dealt with in BIPRU 7.9 (Use of a CAD 1 model). A VaR model is a risk management model which uses a statistical measure to predict profit and loss movement ranges with a confidence interval. From these results PRR
charges can be calculated. The standards described in BIPRU 7.10, and which will be applied by the appropriate regulator, are based on and implement Annex V of the Capital Adequacy Directive.

Conditions for granting a VaR model permission

7.10.7 G A waiver or other permission allowing the use of models in the calculation of PRR will not be granted if that would be contrary to the Capital Adequacy Directive be considered with regards to CAD and any VaR model permission which is granted will only be granted on terms that are compatible with the Capital Adequacy Directive be considered with regards to CAD. Accordingly, the appropriate regulator is likely only to grant a waiver or other permission allowing the use of models in the calculation of PRR if it is a VaR model permission or a CAD 1 model waiver.

7.10.9 G The appropriate regulator recognises that the nature of VaR models will vary between firms. The scope of and the requirements and conditions set out in a VaR model permission may therefore differ in substance or detail from BIPRU 7.10 in order to address individual circumstances adequately. However any differences will only be allowed if they are compliant with the Capital Adequacy Directive. The FCA will consider any differences by having regard to the CAD. A VaR model permission will implement any such variation by modifying BIPRU 7.10. A VaR model permission may also include additional conditions to meet the particular circumstances of the firm or the model.

8 Group risk consolidation

8.1 Application

8.1.1 R This chapter applies to:

1. a BIPRU firm that is a member of UK consolidation group;

2. a BIPRU firm that is a member of a non-EEA sub-group non-UK sub-group; and

3. [deleted]

4. a firm that is not a BIPRU firm and is a parent financial holding company in a Member State the UK in a UK consolidation group.

8.1.2 R This chapter does not apply to a firm in BIPRU 8.1.1R(1) to BIPRU 8.1.1R(3) which is a member of the UK consolidation group or non-EEA sub-group non-UK sub-group if the interest of the relevant UK
A firm is not subject to consolidated supervision under BIPRU 8 where any of the following conditions are fulfilled:

(1) the firm is included in the supervision on a consolidated basis of the group of which it is a member by the FCA or PRA under the EU UK CRR; or

(2) the firm is included in the supervision on a consolidated basis of the group of which it is a member by a competent authority other than the FCA under the EU CRR as implemented by that competent authority. [deleted]

Where a group includes one or more BIPRU firms and one or more IFPRU investment firms which has permission under article 19 of the EU UK CRR (Exclusion from the scope of prudential consolidation) from the FCA not to be included in the supervision on a consolidated basis of the group of which it is a member, consolidated supervision under BIPRU 8 applies to those IFPRU investment firms and the BIPRU firms.

Pursuant to the third paragraph of article 95(2) of the EU UK CRR, this chapter implements applies provisions corresponding to articles 71, 73(1) and (2), 125, 126, 127(1), 133 and 134 of the Banking Consolidation Directive and articles 2 (in part), 22-27 and 37(1) (in part) of the Capital Adequacy Directive.

BIPRU 8.3 sets out the definition of a non-EEA sub-group non-UK sub-group and the basic requirement to apply financial resources and concentration risk requirements to that group on a consolidated basis.

GENPRU 3.2 (Prudential rules for third country groups) deals, amongst other things, with banking and investment services groups headed by a parent undertaking outside the EEA UK.

Scope and basic consolidation requirements for UK consolidation groups
Main consolidation rule for UK consolidation groups

8.2.1 R A firm that is a member of a UK consolidation group must comply, to the extent and in the manner prescribed in BIPRU 8.5, with the obligations laid down in GENPRU 1.2 (Adequacy of financial resources) and the main BIPRU firm Pillar 1 rules (but not the base capital resources requirement) on the basis of the consolidated financial position of:

(1) where either Test 1A or Test 1B in BIPRU 8 Annex 1 (Decision tree identifying a UK consolidation group) apply, the parent institution in a Member State the UK in the UK consolidation group; or

(2) where either Test 1C or Test 1D in BIPRU 8 Annex 1 apply, the parent financial holding company in a Member State the UK or the parent mixed financial holding company in a Member State the UK.

Definition of UK consolidation group

8.2.4 R A firm’s UK consolidation group means a group that is identified as a UK consolidation group in accordance with the decision tree in BIPRU 8 Annex 1R (Decision tree identifying a UK consolidation group); the members of that group are:

(1) where either Test 1A or Test 1B in BIPRU 8 Annex 1R apply, the members of the consolidation group made up of the sub-group of the parent institution in a Member State the UK identified in BIPRU 8 Annex 1R together with any other person who is a member of that consolidation group because of a consolidation Article 12(1) relationship or an Article 134 relationship; or

(2) where either Test 1C or Test 1D in BIPRU 8 Annex 1R apply, the members of the consolidation group made up of the sub-group of the parent financial holding company in a Member State the UK or the parent mixed financial holding company in a Member State the UK identified in BIPRU 8 Annex 1R together with any other person who is a member of that consolidation group because of a consolidation Article 12(1) relationship or an Article 134 relationship;

in each case only persons included under BIPRU 8.5 (Basis of consolidation) are included in the UK consolidation group.

...
supervise a group or part of a group and hence whether that group or part of a group is a UK consolidation group. BIPRU 8 Annex 4 (Text of Articles 125 and 126 of the Banking Consolidation Directive) sets out these articles together with an explanation of how those articles should be read in the case of a group which also contains CAD investment firms. [deleted]

8.3 Scope and basic consolidation requirements for non-EEA sub-groups non-UK sub-groups

Main consolidation rule for non-EEA sub-group non-UK sub-groups

8.3.1 (1) A BIPRU firm that is a subsidiary undertaking of a BIPRU firm or of a financial holding company or of a mixed financial holding company must apply the requirements laid down in GENPRU 1.2 (Adequacy of financial resources) and the main BIPRU firm Pillar 1 rules (but not the base capital resources requirement) on a sub-consolidated basis if the BIPRU firm, or the parent undertaking where it is a financial holding company or a mixed financial holding company, have a third country investment services undertaking as a subsidiary undertaking or hold a participation in such an undertaking.

(2) (1) only applies if the appropriate regulator is required by the Banking Consolidation Directive or the Capital Adequacy Directive to supervise the group established under (1) under Article 73(2) of the Banking Consolidation Directive (Non-EEA sub-groups). [deleted]

8.3.2 R Further to BIPRU 8.3.1R, a firm that is a member of a non-EEA sub-group non-UK sub-group must at all times ensure that the consolidated capital resources of that non-EEA sub-group non-UK sub-group are equal to or exceed its consolidated capital resources requirement.

...  

8.3.4 G The sub-group identified in BIPRU 8.3.1R is called a non-EEA sub-group non-UK sub-group. How to identify a non-EEA sub-group non-UK sub-group

8.3.6 G The remainder of this section sets out a process for identifying a non-EEA sub-group non-UK sub-group in straightforward cases.

8.3.7 G A firm will not be a member of a non-EEA sub-group non-UK sub-group unless it is also a member of a UK consolidation group. So the first step is to identify each undertaking in the firm’s UK consolidation group that satisfies the following conditions:
(1) it is a CAD investment firm, financial institution or asset management company whose head office is outside the EEA UK (a third country investment services undertaking);

(2) one of the following applies:

(a) it is a subsidiary undertaking of a BIPRU firm in that UK consolidation group; or

(b) a BIPRU firm in that UK consolidation group holds a participation in it; and

(3) that BIPRU firm is not a parent institution in a Member State the UK.

8.3.8 G The sub-group of the BIPRU firm identified in BIPRU 8.3.7G(2)(a) or BIPRU 8.3.7G(2)(b) is a potential non-EEA sub-group non-UK sub-group.

8.3.9 G If more than one BIPRU firm is a direct or indirect parent undertaking in accordance with BIPRU 8.3.7G(2)(a) then the sub-groups of each of them are all non-EEA sub-group non-UK sub-groups.

8.3.10 G Similarly if there is more than one BIPRU firm that holds a participation in the third country investment services undertaking in accordance with BIPRU 8.3.7G(2)(b) then the sub-group of each such BIPRU firm is a potential non-EEA sub-group non-UK sub-group.

8.3.11 G The effect of BIPRU 8.3.7G(3) is that a non-EEA sub-group non-UK sub-group cannot be headed by a parent institution in a Member State the UK.

8.3.12 G The firm should then identify each undertaking in the firm’s UK consolidation group that satisfies the following conditions:

(1) it is a CAD investment firm, financial institution or asset management company whose head office is outside the EEA UK (a third country investment services undertaking);

8.3.13 G The sub-group of the financial holding company identified in BIPRU 8.3.12G(2)(a) or BIPRU 8.3.12G(2)(b) is a potential non-EEA sub-group non-UK sub-group.

8.3.14 G The financial holding company identified in BIPRU 8.3.12G may be a parent financial holding company in a Member State the UK.

8.3.15 G If more than one financial holding company is a direct or indirect parent undertaking in accordance with BIPRU 8.3.12G(2)(a) then the sub-groups of each of them are all potential non-EEA sub-groups non-UK sub-groups.

8.3.16 G Similarly if there is more than one financial holding company that holds a participation in the third country investment services undertaking in
accordance with BIPRU 8.3.12G(2)(b) then the sub-group of each such financial holding company is a potential non-EEA sub-group non-UK sub-group.

8.3.17 G The firm should apply the process in BIPRU 8.3.12G to a third country investment services undertaking even though it may be also be part of a potential non-EEA sub-group non-UK sub-group under BIPRU 8.3.7G.

8.3.18 G Having identified potential non-EEA sub-groups non-UK sub-groups for each third country investment services undertaking in its UK consolidation group the firm should then eliminate overlapping potential non-EEA sub-groups non-UK sub-groups in the following way. If:

(1) one potential non-EEA sub-group non-UK sub-group is contained within a wider potential non-EEA sub-group non-UK sub-group; and

(2) the third country investment services undertakings in the two potential non-EEA sub-groups non-UK sub-groups are the same;

then the smaller potential non-EEA sub-group non-UK sub-group is eliminated.

8.3.19 G If there is a chain of three or more non-EEA sub-group non-UK sub-groups, each with the same third country investment services undertakings, the elimination process may remove all but the highest.

8.3.20 G Each remaining potential non-EEA sub-group non-UK sub-group is a non-EEA sub-group non-UK sub-group, even though it may be part of a wider non-EEA sub-group non-UK sub-group.

8.3.22 G If a UK consolidation group is headed by a parent financial holding company in a Member State the UK the result of the elimination process may be that a firm's UK consolidation group contains only one non-EEA sub-group non-UK sub-group and that the non-EEA sub-group non-UK sub-group is the same as the UK consolidation group. In theory that means that there are two sets of consolidation requirements, one in relation to the UK consolidation group and one in relation to the non-EEA sub-group non-UK sub-group. However as the UK consolidation group and the non-EEA sub-group non-UK sub-group are the same, in practice this means that the additional non-EEA sub-group non-UK sub-group consolidation disappears.

8.3.23 G Even where the requirements for a non-EEA sub-group non-UK sub-group are absorbed into those for the UK consolidation group a firm should still make clear in its regulatory reporting that the consolidation figures relate to a UK consolidation group and a non-EEA sub-group non-UK sub-group and that they both contain the same members.

8.3.24 G The examples in this section have so far assumed that the only EEA State involved is the United Kingdom. If a potential non-EEA sub-group that
would otherwise be regulated by the appropriate regulator contains a potential non-EEA sub-group in another EEA State then the United Kingdom one is eliminated if the third country investment services undertaking in the UK potential non-EEA sub-group and the potential non-EEA sub-group in the other EEA State are the same. The intention here is that the EEA competent authority closest to the third country investment services undertaking should be responsible for the non-EEA sub-group subconsolidation. Example 6 in BIPRU 8 Annex 3 (Examples of how to identify a non-EEA sub-group) illustrates this situation.

[deleted]

8.4 CAD Article 22 groups and investment firm consolidation waiver

... The effect of an investment firm consolidation waiver and the conditions for getting one

... 8.4.3 G An investment firm consolidation waiver will waive the application of BIPRU 8.2.1R and BIPRU 8.2.2R (if it applies with respect to a UK consolidation group) or BIPRU 8.3.1R and BIPRU 8.3.2R (if it applies with respect to a non-EEA sub-group non-UK sub-group). The effect will be to switch off this chapter with respect to the group in question apart from this section.

8.4.4 G The FCA will not grant an investment firm consolidation waiver unless:

(1) the UK consolidation group or non-EEA sub-group non-UK sub-group meets the conditions for being a CAD Article 22 group;

(2) the FCA is satisfied that each BIPRU firm in the UK consolidation group or non-EEA sub-group non-UK sub-group will be able to meet its capital requirements using the calculation of capital resources in GENPRU 2 Annex 6R (Capital resources table for a BIPRU firm with a waiver from consolidated supervision); and

(3) the firm demonstrates that the requirements in BIPRU 8.4.11R to BIPRU 8.4.18R will be met.

... Meeting the terms of an investment firm consolidation waiver

8.4.7 R If a firm has an investment firm consolidation waiver with respect to its UK consolidation group or non-EEA sub-group non-UK sub-group but that UK consolidation group or non-EEA sub-group non-UK sub-group ceases to meet the definition of a CAD Article 22 group the firm must
Comply with the rest of this chapter rather than this section notwithstanding the *investment firm consolidation waiver.*

8.4.8 G Compliance with the capital requirements set out in BIPRU 8.4.11R is a condition under the *Capital Adequacy Directive* for the exemption from capital requirements as it applies in accordance with article 95(2) of the *UK CRR.* Thus if they are breached the FCA is likely to revoke the *investment firm consolidation waiver.*

Definition of a CAD Article 22 group

8.4.9 R (1) A CAD Article 22 group means a UK consolidation group or non-EEA sub-group non-UK sub-group that meets the conditions in this rule.

(2) There must be no bank, building society or credit institution in the UK consolidation group or non-EEA sub-group non-UK sub-group and any investment firm in the UK consolidation group or non-EEA sub-group non-UK sub-group must not be subject to consolidated supervision under the EU UK CRR.

(3) Each CAD investment firm in the UK consolidation group or non-EEA sub-group UK sub-group which is an EEA firm must use the definition of own funds given in the CRD implementation measure of its EEA State for Article 16 of the Capital Adequacy Directive that would be at least equivalent to that which would apply under GENPRU and BIPRU.

(4) Each CAD investment firm in the UK consolidation group or non-EEA sub-group non-UK sub-group must be a:

(a) limited activity firm; or

(b) limited licence firm.

(5) Each CAD investment firm in the UK consolidation group or non-EEA sub-group UK sub-group which is an EEA firm must:

(a) meet the requirements imposed by the CRD implementation measures of its EEA State for Articles 18 and Article 20 of the Capital Adequacy Directive that would be at least equivalent to those that would apply under GENPRU and BIPRU on an individual basis; and

(b) deduct from its own funds any contingent liability in favour of other members of the UK consolidation group or non-EEA sub-group UK sub-group.

(6) Each BIPRU firm in the UK consolidation group or non-EEA sub-group non-UK sub-group must comply with the main BIPRU firm Pillar 1 rules on an individual basis.
8.4.10  

**GENPRU 2.2** (Capital resources) says that a BIPRU firm with an investment firm consolidation waiver should calculate its capital resources on a solo basis using **GENPRU 2 Annex 6** (Capital resources table for a BIPRU firm with a waiver from consolidated supervision). **GENPRU 2 Annex 6** requires a BIPRU firm to deduct contingent liabilities in favour of other members of the UK consolidation group or non-EEA sub-group. Therefore **BIPRU 8.4.9R(5)(b)** only imposes the requirement to deduct them on EEA firms. [deleted]

Capital adequacy obligations relating to a CAD Article 22 group: General rule

8.4.11  

If a firm has an investment firm consolidation waiver, it must ensure that any financial holding company in the UK consolidation group or the non-EEA sub-group non-UK sub-group that is the UK parent financial holding company in a Member State of a CAD investment firm in the UK consolidation group or non-EEA sub-group non-UK sub-group has capital resources, calculated under BIPRU 8.4.12R, in excess of the sum of the following (or any higher amount specified in the investment firm consolidation waiver):

1. the sum of the solo notional capital resources requirements for each CAD investment firm, financial institution, asset management company and ancillary services undertaking in the UK consolidation group or the non-EEA sub-group non-UK sub-group, as calculated in accordance with BIPRU 8.4.13R; and

2. the total amount of any contingent liability in favour of CAD investment firms, financial institutions, asset management companies and ancillary services undertakings in the UK consolidation group or non-EEA sub-group non-UK sub-group.

Capital adequacy obligations relating to a CAD Article 22 group: Capital resources

8.4.12  

A firm must calculate the capital resources of the parent financial holding company in a Member State the UK for the purpose of BIPRU 8.4.11R as follows:

...  

Additional rules that apply to a firm with an investment firm consolidation waiver

8.4.18  

If a firm has an investment firm consolidation waiver, it must:

1. ensure that each CAD investment firm in the UK consolidation group or non-EEA sub-group non-UK sub-group which is a firm or an EEA firm has in place systems to monitor and control the sources of capital and funding of all the members in the UK consolidation group or non-EEA sub-group non-UK sub-group;
(2) notify the FCA of any serious risk that could undermine the financial stability of the UK consolidation group or non-EEA sub-
group non-UK sub-group, as soon as the firm becomes aware of that risk, including those associated with the composition and sources of the capital and funding of members of the UK consolidation group or non-EEA sub-group non-UK sub-group;

(3) report the amount of the consolidated capital resources and consolidated capital resources requirement of the UK consolidation group or non-EEA sub-group non-UK sub-group on a periodic basis as set out in the investment firm consolidation waiver;

(4) report any large exposures risks of members of the UK consolidation group or non-EEA sub-group non-UK sub-group including any undertakings not located in an EEA State the UK on a periodic basis set out in the investment firm consolidation waiver;

(5) notify the FCA immediately it becomes aware that the UK consolidation group or non-EEA sub-group non-UK sub-group has ceased to meet the conditions for being a CAD Article 22 group; and

(6) notify the FCA immediately it becomes aware of any breach of BIPRU 8.4.11R.

8.4.19 G Although an investment firm consolidation waiver switches off most of this chapter, a firm should still carry out the capital adequacy calculations in BIPRU 8.3 to BIPRU 8.8 as if those parts of this chapter still applied to the UK consolidation group or non-EEA sub-group non-UK sub-group and report these to the FCA. It should also still monitor large exposure risk on a consolidated basis.

8.5 Basis of consolidation

Undertakings to be included in consolidation

8.5.1 R A firm must include only the following types of undertaking in a UK consolidation group or non-EEA sub-group non-UK sub-group for the purposes of this chapter:

…

8.5.2 G Although an undertaking falling outside BIPRU 8.5.1R will not be included in a UK consolidation group or non-EEA sub-group non-UK sub-group it may be relevant in deciding whether one undertaking in the banking sector or the investment services sector is a subsidiary
undertaking of another with the result that they should be included in the same UK consolidation group or non-EEA sub-group non-UK sub-group.

8.5.3 G An example of BIPRU 8.5.2G is as follows. Say that the undertaking at the head of a BIPRU firm’s UK group is a parent financial holding company in a Member State the UK. One of its subsidiary undertakings is the firm. The parent financial holding company in a Member State the UK also has an insurer as a subsidiary undertaking. That insurer has several BIPRU firms as subsidiary undertakings. Say that the UK group is not a financial conglomerate. The UK consolidation group will include the parent financial holding company in a Member State the UK and the firm. It will also include the BIPRU firms that are subsidiary undertakings of the insurer. This is because the BIPRU firms are subsidiary undertakings of the parent financial holding company in a Member State the UK through the parent financial holding company in a Member State’s the UK’s holding in the insurer. However it will not include the insurer itself.

Basis of inclusion of undertakings in consolidation

8.5.4 R A firm must include any subsidiary undertaking in the UK consolidation group or non-EEA sub-group non-UK sub-group in full in the calculations in this chapter.

8.5.5 R In carrying out the calculations for the purposes of this chapter a firm must only include the relevant proportion of an undertaking that is a member of the UK consolidation group or non-EEA sub-group non-UK sub-group:

…

8.5.6 R In BIPRU 8.5.5R, the relevant proportion is either:

(1) (in the case of a participation) the proportion of shares issued by the undertaking held by the UK consolidation group or the non-EEA sub-group non-UK sub-group; or

…

Exclusion of undertakings from consolidation: Other reasons

8.5.11 R Article 73(1) of the Banking Consolidation Directive allows Article 95(2) preserves the discretion for the appropriate regulator to decide to exclude a BIPRU firm, financial institution, asset management company or ancillary services undertaking that is a subsidiary undertaking in, or an undertaking in which a participation is held by, the UK consolidation group or non-EEA sub-group non-UK sub-group for the purposes of this chapter in the following circumstances:
(1) where the head office of the undertaking concerned is situated in a country outside the EEA UK where there are legal impediments to the transfer of the necessary information; or

...

Information about excluded undertakings

8.5.14 G The appropriate regulator may require a firm to provide information about the undertakings excluded from consolidation of the UK consolidation group or non-EEA sub-group non-UK sub-group pursuant to this section.

8.6 Consolidated capital resources

General

8.6.1 R A firm must calculate the consolidated capital resources of its UK consolidation group or its non-EEA sub-group non-UK sub-group by applying GENPRU 2.2 (Capital resources) to its UK consolidation group or non-EEA sub-group non-UK sub-group on an accounting consolidation basis, treating the UK consolidation group or non-EEA sub-group non-UK sub-group as a single undertaking. The firm must adjust GENPRU 2.2 in accordance with this section for this purpose.

Notification of issuance of capital instruments

8.6.1A R This section applies to a firm if another member of its group intends to issue a capital instrument on or after 1 March 2012 for inclusion in the firm’s capital resources or consolidated capital resources of its UK consolidation group or non-EEA sub-group non-UK sub-group.

8.6.1B R A firm must notify the appropriate regulator in writing of the intention of another member of its group which is not a firm to issue a capital instrument which the firm intends to include within its capital resources or the consolidated capital resources of its UK consolidation group or non-EEA sub-group non-UK sub-group as soon as it becomes aware of the intention of the group undertaking to issue the capital instrument. When giving notice, a firm must:

...

8.6.1D R If a group undertaking proposes to establish a debt securities program for the issue of capital instruments which the firm intends to include within
its capital resources or the consolidated capital resources of its UK consolidation group or non-EEA sub-group non-UK sub-group, it must:

...

8.6.1E R The capital instruments to which BIPRU 8.6.1BR does not apply are:

...

(3) capital instruments which are not materially different in terms of their characteristics and eligibility for inclusion in a particular tier of capital to capital instruments previously issued by a group undertaking for inclusion in the firm’s capital resources or consolidated capital resources of its UK consolidation group or non-EEA sub-group non-UK sub-group.

8.6.1F R A firm must notify the appropriate regulator in writing, no later than the date of issue, of the intention of a group undertaking to issue a capital instrument listed in BIPRU 8.6.1ER which the firm intends to include within its capital resources or the consolidated capital resources of its UK consolidation group or non-EEA sub-group non-UK sub-group. When giving notice a firm must:

...

Limits on the use of different forms of capital

8.6.2 R The capital resources gearing rules apply for the purposes of calculating consolidated capital resources. They apply to the UK consolidation group or non-EEA sub-group non-UK sub-group on an accounting consolidation basis, treating the UK consolidation group or non-EEA sub-group non-UK sub-group as a single undertaking.

8.6.3 R As the various components of capital differ in the degree of protection that they offer, the capital resources gearing rules as applied on a consolidated basis place restrictions on the extent to which certain types of capital are eligible for inclusion in a UK consolidation group or non-EEA sub-group's non-UK sub-group's consolidated capital resources. GENPRU 2.2.25R (Limits on the use of different forms of capital: Use of higher tier capital in lower tiers) also applies.

...

Calculation of consolidated capital resources for a BIPRU firm group

8.6.8 R A firm must calculate the consolidated capital resources of its UK consolidation group or non-EEA sub-group non-UK sub-group using the calculation of capital resources in GENPRU 2 Annex 4 (Capital resources table for a BIPRU firm deducting material holdings) or GENPRU 2 Annex 5 (Capital resources table for a BIPRU firm deducting illiquid assets).
Treatment of minority interests

8.6.10 R (1) This rule sets out how to determine whether minority interests in an undertaking in a UK consolidation group or non-EEA sub-group non-UK sub-group may be included in tier one capital, tier two capital or tier three capital for the purpose of calculating consolidated capital resources (each referred to as a “tier” of capital in this rule).

Indirectly issued capital and group capital resources

8.6.12 R Consolidated indirectly issued capital means any capital instrument issued by a member of the UK consolidation group or non-EEA sub-group non-UK sub-group where:

(1) …

(2) any of the SPVs referred to in (1) is a member of the UK consolidation group or non-EEA sub-group non-UK sub-group or a subsidiary undertaking of any member of the UK consolidation group or non-EEA sub-group non-UK sub-group.

8.6.13 R A firm may only include consolidated indirectly issued capital in the consolidated capital resources of its UK consolidation group or non-EEA sub-group non-UK sub-group if:

(1) it is issued by an SPV that is a member of the UK consolidation group or non-EEA sub-group non-UK sub-group to persons who are not members of the UK consolidation group or non-EEA sub-group non-UK sub-group; and

8.6.14 R Consolidated indirectly issued capital that is eligible for inclusion in the consolidated capital resources of a UK consolidation group non-EEA sub-group non-UK sub-group may only be included as a minority interest created by the capital instrument issued by the SPV referred to in BIPRU 8.6.13R. If it is eligible, it is innovative tier one capital.

8.6.15 R For the purposes of this section, an undertaking is an SPV if the main activity of the SPV is to raise funds for undertakings in:

(1) (in the case of a UK consolidation group) that UK consolidation group; or
(2) (in the case of a non-EEA sub-group non-UK sub-group) that non-
EEA sub-group non-UK sub-group or any UK consolidation group
of which it forms part.

8.6.16 R The SPV referred to in BIPRU 8.6.13R must satisfy the conditions in
GENPRU 2.2.127R (Conditions that an SPV has to satisfy if indirectly
issued capital is to be included in capital resources on a solo basis) as
modified by the following:

(1) references in GENPRU 2.2.127R(1) to being controlled by the firm
are to being controlled by a member of the firm’s UK
consolidation group or non-EEA sub-group non-UK sub-group as
the case may be; and

(2) references to the firm’s group are to the firm’s UK consolidation
group or non-EEA sub-group non-UK sub-group as the case may
be.

8.6.17 R The capital issued by the SPV referred to in BIPRU 8.6.13R must satisfy
the conditions in GENPRU 2.2.129R (Conditions that capital issued by an
SPV has to satisfy if indirectly issued capital is to be included in capital
resources on a solo basis) as modified by the following:

(1) references to the firm’s group are to the firm’s UK consolidation
group or non-EEA sub-group non-UK sub-group as the case may
be;

(2) the substitution obligation in GENPRU 2.2.129R(2) need not be
the firm’s but may apply to any member of the UK consolidation
group or non-EEA sub-group non-UK sub-group as the case may
be; and

(3) that substitution obligation applies if the consolidated capital
resources of the UK consolidation group or non-EEA sub-group
non-UK sub-group, as the case may be, fall, or are likely to fall,
below its consolidated capital resources requirement.

8.6.18 R The SPV referred to in BIPRU 8.6.13R must invest the funds raised from
the issue of capital by the SPV by subscribing for capital resources issued
by an undertaking that is a member of the UK consolidation group or non-
EEA sub-group non-UK sub-group. Those capital resources must satisfy
the following conditions:

…

8.7 Consolidated capital resources requirements

General approach
8.7.1 G The calculation of the consolidated capital resources requirement of a firm’s UK consolidation group or non-EEA sub-group non-UK sub-group involves taking the individual components that make up the capital resources requirement on a solo basis and applying them on a consolidated basis. Those components are the capital charge for credit risk (the credit risk capital requirement), the capital charge for market risk (the market risk capital requirement) and the fixed overheads requirement.

…

Method of calculation to be used

8.7.10 R A firm must calculate the consolidated capital resources requirement of its UK consolidation group or non-EEA sub-group non-UK sub-group as the higher of the following consolidated requirements components:

…

Calculation of the consolidated requirement components

8.7.11 R A firm must calculate a consolidated requirement component by applying the risk capital requirement applicable to that consolidated requirement component to the UK consolidation group or non-EEA sub-group non-UK sub-group in accordance with BIPRU 8.7.13R. Except where BIPRU 8.7.34R to BIPRU 8.7.38R allow the requirements of another regulator to be used, the risk capital requirement must be calculated in accordance with the appropriate regulator’s rules. The risk capital requirement applicable to a consolidated requirement component is the one specified in the second column of the table in BIPRU 8.7.12R.

…

Choice of consolidation method

8.7.13 R (1) A firm must calculate a consolidated requirement component by using one of the methods in this rule.

(2) Under the first method a firm must:

(a) apply the risk capital requirement set out in BIPRU 8.7.12R to each undertaking in the UK consolidation group or non-EEA sub-group non-UK sub-group; and

(b) add the risk capital requirements together.

(3) Under the second method a firm must:

(a) treat the whole UK consolidation group or non-EEA sub-group non-UK sub-group as a single undertaking; and
(b) apply the risk capital requirement set out in BIPRU 8.7.12R to the group on an accounting consolidation basis.

(4) The third method is a mixture of methods one and two. Under the third method a firm must:

(a) treat one or more parts of the UK consolidation group or non-EEA sub-group non-UK sub-group as separate single undertakings;

(b) apply the risk capital requirement set out in BIPRU 8.7.12R to each such part of the group on an accounting consolidation basis;

(c) apply the risk capital requirement set out in BIPRU 8.7.12R to each of the remaining undertakings in the UK consolidation group or non-EEA sub-group non-UK sub-group (if any); and

(d) add the risk capital requirements together.

(5) A firm may use different methods for different consolidated requirement components.

... Notifying the appropriate regulator of the choice of consolidation technique

8.7.16 R A firm must notify the appropriate regulator which method under BIPRU 8.7.13R it applies for which consolidated requirement component and to which parts of the UK consolidation group or non-EEA sub-group non-UK sub-group it is applying an aggregation approach and to which parts it is applying an accounting consolidation approach.

... Special rules for the consolidated credit risk requirement

8.7.20 R A firm may use a combination of the CCR standardised method, the CCR mark to market method and the CCR internal model method on a permanent basis with respect to the firm’s UK consolidation group or non-EEA sub-group non-UK sub-group for the purposes of calculating the consolidated credit risk requirement. In particular, where the firm is permitted to apply the CCR internal model method on a consolidated basis with respect to its UK consolidation group or non-EEA sub-group non-UK sub-group, it may combine the use of CCR standardised method and CCR mark to market method on a permanent basis for financial derivative instruments and long settlement transaction not covered by its CCR internal model method permission.
8.7.21 R BIPRU 9.4.1R (Minimum requirements for recognition of significant credit risk transfer) as applied on a consolidated basis requires the transfer to be to a person outside the UK consolidation group or non-EEA sub-group non-UK sub-group.

8.7.22 R A firm must not use both the financial collateral simple method and the financial collateral comprehensive method with respect to its UK consolidation group or non-EEA sub-group non-UK sub-group.

8.7.23 R (1) A firm may only treat an exposure as exempt under BIPRU 3.2.25R (Zero risk-weighting for intra-group exposures) as applied on a consolidated basis if the member of the UK consolidation group or non-EEA sub-group non-UK sub-group that has the exposure:

... 

... 

Special rules for the consolidated market risk requirement

8.7.24 R For the purposes of calculating the consolidated market risk requirement of a UK consolidation group or non-EEA sub-group non-UK sub-group, a firm must apply BIPRU 1.2.3R (Definition of the trading book) and BIPRU 1.2.17R (Size thresholds for the purposes of the definition of the trading book) to the whole UK consolidation group or non-EEA sub-group non-UK sub-group as if the group were a single undertaking.

8.7.25 R A firm may not apply the second method in BIPRU 8.7.13R(3)(accounting consolidation for the whole group) or apply accounting consolidation to parts of its UK consolidation group or non-EEA sub-group non-UK sub-group under method three as described in BIPRU 8.7.13R(4)(a) for the purposes of the calculation of the consolidated market risk requirement unless the group or sub-group and the undertakings in that group or sub-group satisfy the conditions in this rule. Instead the firm must use the aggregation approach described in BIPRU 8.7.13R(2) (method one) or BIPRU 8.7.13R(4)(c). Those conditions are as follows:

(1) each of the undertakings in that group or sub-group is an institution that is:

(a) a BIPRU firm; or

(b) an EEA firm that is a CAD investment firm; or [deleted]

(c) a recognised third country investment firm;

(2) each of the undertakings referred to in (1) that is a BIPRU firm has capital resources that are equal to or in excess of its capital resources requirement;
(3) each of the undertakings referred to in (1) that is an EEA firm complies with the CRD implementation measures in its EEA State that correspond to the requirements in (2); [deleted]

(4) each of the undertakings referred to in (1) that is a recognised third country investment firm complies with laws in the state or territory in which it has its head office that are equivalent to the requirements of the Banking Consolidation Directive or Capital Adequacy Directive GENPRU and BIPRU relating to capital adequacy;

Special rules for calculating specific consolidated requirement components

8.7.28 G BIPRU 8.7.21R to BIPRU 8.7.26R are generally examples of the application of the general principles in BIPRU 8.2.1R (Main consolidation rule for UK consolidation groups) and BIPRU 8.3.1R (Main consolidation rule for non-EEA sub-groups non-UK sub-groups). BIPRU 8.7.20R and BIPRU 8.7.25R are exceptions to those principles.

Elimination of intra-group transactions

8.7.29 R In accordance with BIPRU 8.2.1R and BIPRU 8.3.1R (The basic consolidation rules for a UK consolidation group or non-EEA sub-groups non-UK sub-groups), a firm may exclude that part of the risk capital requirement that arises as a result of:

(1) (in respect of the consolidated credit risk requirement) intra-group balances; or

(2) (in respect of the consolidated fixed overheads requirement) intra-group transactions;

with other undertakings in the UK consolidation group or non-EEA sub-group non-UK sub-group.

Use of the solo requirements of another EEA competent authority

8.7.34 R A firm may calculate the risk capital requirement for an institution in the firm’s UK consolidation group or non-EEA sub-group that is an EEA firm in accordance with the CRD implementation measures in the EEA firm’s EEA State that correspond to the appropriate regulator’s rules that would otherwise apply under this section if the institution is subject to those CRD implementation measures. [deleted]

Use of the consolidated requirements of another EEA competent authority

8.7.37 R (4) This rule applies if:
(a) a firm is applying an accounting consolidation approach to part of its UK consolidation group or non-EEA sub-group under method three as described in BIPRU 8.7.13R(4)(a); and

(b) the part of the group in (a) constitutes the whole of a group subject to the consolidated capital requirements of a competent authority under the CRD implementation measures relating to consolidation under the Banking Consolidation Directive or the Capital Adequacy Directive.

(2) If the conditions in this rule are satisfied, a firm may apply the consolidated capital requirement in (1)(b) as the risk capital requirement for the group identified in (1)(a) so far as that consolidated capital requirement corresponds to the appropriate regulator’s rules that would otherwise apply under this section.

[deleted]

Prohibition on using the standardised rules of a regulator outside the EEA UK

8.7.38A R (1) This rule applies to a firm if:

(a) an institution in its UK consolidation group or non-EEA sub-group non-UK sub-group is subject to any of the rules or requirements of, or administered by, a third-country competent authority applicable to its financial sector that correspond to the sectoral rules applicable to that financial sector (“corresponding sectoral rules”), or

(b) a part of its UK consolidation group or non-EEA sub-group non-UK sub-group constitutes the whole of a group subject to the consolidated capital requirements of a third-country competent authority under the corresponding sectoral rules applicable to the banking sector or the investment services sector for a state or territory outside the EEA UK.

(2) A firm may not use the requirements under any of the corresponding sectoral rules of a state or territory outside the EEA UK in order to calculate the consolidated capital resources requirement of its UK consolidation group or non-EEA sub-group non-UK sub-group for the purpose of this chapter.

...

8.8 Advanced prudential calculation approaches

...

Prohibition on using the rules of an overseas regulator
8.8.3  R  Even if a firm has an advanced prudential calculation approach permission that allows it to use an advanced prudential calculation approach for the purposes of this chapter, the firm may not use the requirements of another state or territory to the extent they provide for that advanced prudential calculation approach. Therefore a firm may not use BIPRU 8.7.34R and BIPRU 8.7.37R (Use of the capital requirements of another EEA competent authority) if that would involve using an advanced prudential calculation approach.

Special provisions relating to the internal ratings based approach

8.8.4  R  The conditions in BIPRU 4.2.26R (Combined use of methodologies under the IRB approach) apply to a firm’s UK consolidation group or non-EEA sub-group or non-UK sub-group as if that group were a single undertaking.

…

Corporate governance arrangement for the IRB approach and the AMA

8.8.9  G  The governance arrangements that apply to the governing body, the senior management and any designated committee of a firm in relation to the IRB approach also apply to the body or persons with equivalent powers with respect to the UK consolidation group or non-EEA sub-group or non-UK sub-group. Where the parent undertaking and its subsidiary undertakings use rating systems on a unified basis, the approval and reporting process described in BIPRU 4.3.12G (Approval and reporting arrangements for the IRB approach where rating systems are used on a unified group basis) apply for the purpose of this paragraph too.

…

The current decision tree (diagram) in BIPRU 8 Annex 1 is deleted and is replaced by the one below. The new decision tree (diagram) below is not underlined.
8 Annex  Decision tree identifying a UK consolidation group
1R

Test 1A: Is the firm a parent institution in the UK? (PIUK)

Yes                    No

Test 1B: Is the firm a subsidiary undertaking of a parent institution in the UK?

Yes                    No

Test 1C: Is the firm a parent financial holding company in the UK (PFHC UK)?

Yes                    No

Test 1D: Is the firm a subsidiary undertaking of a parent financial holding company in the UK?

Yes                    No

UK CONSOLIDATION GROUP is the PIUK or PFHC UK and its group

NOT A UK CONSOLIDATION GROUP
BIPRU 8 Annex 4 is deleted in its entirety. The deleted text of the Annex is not shown but it is marked as [deleted] as shown below.

8 Annex 4G Text of Articles 125 and 126 of the Banking Consolidation Directive

[deleted]

Amend the following as shown.

8 Annex 6R Non-EEA Non-UK regulators’ requirements deemed CRD-equivalent for individual risks

<table>
<thead>
<tr>
<th>Regime regulators</th>
<th>Market risk</th>
<th>Credit risk</th>
<th>Operational risk</th>
</tr>
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<tbody>
<tr>
<td>Part 1 (Non-EEA Non-UK banking regulators’ requirements deemed CRD-equivalent for individual risks)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regime regulators</td>
<td>Market risk</td>
<td>Credit risk</td>
<td>Operational risk</td>
</tr>
<tr>
<td>Part 2 (Non-EEA Non-UK investment firm regulators’ requirements deemed CRD-equivalent for individual risks)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
9  Securitisation

9.1  Application and purpose

... Purpose

9.1.2  G  Pursuant to the third paragraph of article 95(2) of the EU UK CRR, the purpose of BIPRU 9 is to implement apply requirements that correspond to:

... Purpose

11  Disclosure (Pillar 3)

11.1  Application and purpose

... Purpose

11.1.2  G  Pursuant to the third paragraph of article 95(2) of the EU UK CRR, the purpose of BIPRU 11 is to implement apply requirements that correspond to:

... Purpose

11.2  Basis of disclosures

Disclosure on an individual basis

11.2.1  R  The following must comply with the obligations laid down in BIPRU 11.3 on an individual basis:

(1)  a firm which is neither a parent undertaking nor a subsidiary undertaking;

(2)  a firm which is excluded from a UK consolidation group or non-EEA sub-group non-UK sub-group pursuant to BIPRU 8.5; and

[Note: BCD Article 68(3)]

(3)  a firm which is part of a group which has been granted an investment firm consolidation waiver under BIPRU 8.4;
[Note: CAD Article 23]

EEA parent Parent institutions in the UK

11.2.2 R A firm which is an EEA parent institution a parent institution in the UK must comply with the obligations laid down in BIPRU 11.3 on the basis of its consolidated financial situation.

[Note: BCD Article 72(1)]

11.2.3 R A firm which is a significant subsidiary of an EEA parent institution a parent institution in the UK must disclose the information specified in BIPRU 11.4.5R on an individual or sub-consolidated basis.

Firms controlled by an EEA a parent financial holding company in the UK

11.2.4 R A firm controlled by an EEA parent financial holding company a parent financial holding company in the UK or an EEA parent mixed financial holding company a parent mixed financial holding company in the UK must comply with the obligations laid down in BIPRU 11.3 on the basis of the consolidated financial situation of that EEA parent financial holding company parent financial holding company in the UK or EEA parent mixed financial holding company parent financial holding company in the UK.

[Note: BCD Article 72(2)]

11.2.5 R A firm which is a significant subsidiary of an EEA parent financial holding company a parent financial holding company in the UK or an EEA parent mixed financial holding company a parent financial holding company in the UK must disclose the information specified in BIPRU 11.4.5R on an individual or sub-consolidated basis.

Waiver: Comparable disclosures provided on a consolidated basis by a parent undertaking established in a third country

11.2.6 G A firm which is included within comparable disclosures provided on a consolidated basis by a parent undertaking whose head office is not in an EEA State the UK may apply for a waiver from the relevant disclosure requirements in BIPRU 11.2.2R - BIPRU 11.2.5R. The appropriate regulator’s approach to granting waivers is set out in the Supervision manual (see SUP 8).

[Note: BCD Article 72(3)]

11.2.7 G A firm applying for a waiver from one or more of the disclosure requirements in BIPRU 11.2.2R - BIPRU 11.2.5R will need to:

(1) satisfy the appropriate regulator that it is included within comparable disclosures provided on a consolidated basis by a parent undertaking whose head office is not in an EEA State the UK; and
(2) notify the appropriate regulator of the location where the comparable disclosures are provided.

...  

11.4 Technical criteria on disclosure: General

...  

Disclosures: Significant subsidiaries

11.4.5 R A firm which is a significant subsidiary of:

(1) an EEA parent institution a parent institution in the UK; or

(2) an EEA parent financial holding company a parent financial holding company in the UK; or

(3) an EEA parent mixed financial holding company a parent mixed financial holding company in the UK;

must disclose the information specified in BIPRU 11.5.3R to BIPRU 11.5.4R on an individual or sub-consolidated basis.

[Note: BCD Annex XII Part 1 point 5]

11.5 Technical criteria on disclosure: General requirements

...  

Disclosure: Scope of application of directive requirements

11.5.2 R A firm must disclose the following information regarding the scope of application of the requirements of the Banking Consolidation Directive GENPRU and BIPRU:

...  

...  

Disclosures: remuneration

...  

11.5.19 G The appropriate regulator would normally consider the requirements to publish disclosures in accordance with BIPRU 11.3.8R and 11.3.9R in respect of BIPRU 11.5 as a whole to meet the requirement in paragraph 15 of Annex XII to the Banking Consolidation Directive to publish “regular, at least annual, updates” (as implemented in BIPRU 11.5.18R).
11.5.20  R  (1)  A firm that is significant in terms of its size, internal organisation and the nature, scope and the complexity of its activities must also disclose the quantitative information referred to in BIPRU 11.5.18R at the level of senior personnel.

(2)  Firms must comply with the requirements set out in BIPRU 11.5.18R in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities and without prejudice to the General Data Protection Regulation, UK or other national transposition of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

[Note: Paragraph 15 of Annex XII to the Banking Consolidation Directive.]

[Note: The appropriate regulator has given guidance for the purpose of providing a framework for complying with the disclosure requirements of BIPRU 11.5.18R in accordance with the proportionality test set out in BIPRU 11.5.20R(2).]

12  Liquidity standards

12.1  Application

...

12.1.7  R  In relation to an incoming EEA firm or a third country BIPRU firm, this chapter applies only with respect to the activities of the firm’s UK branch. [deleted]

12.2  Adequacy of liquidity resources

The overall liquidity adequacy rule

12.2.1  R  …

(2)  For the purpose of (1):

...

(b)  an incoming EEA firm or a third country BIPRU firm may not, in relation to its UK branch, include liquidity resources other than those which satisfy the conditions in BIPRU 12.2.3R; [deleted]

...
... Branch liquidity resources

12.2.3 R The conditions to which BIPRU 12.2.1R(2)(b) refers are that the firm's liquidity resources are:

(1) under the day-to-day control of the UK branch's senior management;

(2) held in an account with one or more custodians in the sole name of the UK branch;

(3) unencumbered; and

(4) for the purpose of the overall liquidity adequacy rule only, attributed to the balance sheet of the UK branch. [deleted]

12.2.4 G The effect of BIPRU 12.2.1R(2)(b) and BIPRU 12.2.3R is to require an incoming EEA firm or a third country BIPRU firm to maintain a local operational liquidity reserve in relation to the activities of its UK branch. BIPRU 12.9 contains further guidance on this point. [deleted]

Liquidity resources: general

... 12.2.6 G The overall liquidity adequacy rule is expressed to apply to each firm on a solo basis. Each firm must be able to satisfy that rule relying solely on its own liquidity resources. Where the firm is an incoming EEA firm or a third country BIPRU firm, compliance with the overall liquidity adequacy rule with respect to the UK branch must be achieved relying solely on liquidity resources that satisfy the conditions in BIPRU 12.2.3R.

12.2.7 G The starting point, therefore, is that each firm, or where relevant its UK branch, must be self-sufficient in terms of its own liquidity adequacy. The appropriate regulator does, however, recognise that there are circumstances in which it may be appropriate for a firm or branch to rely on liquidity support provided by other entities in its group or from elsewhere within the firm. A firm wishing to rely on support of this kind; whether for itself or for its UK branch, may only do so with the consent of the appropriate regulator, given by way of a waiver under section 138A (Modification or waiver of rules) of the Act to the overall liquidity adequacy rule.

... 12.3 Liquidity risk management

... Overarching liquidity systems and controls requirements
The strategies, policies, processes and systems referred to in BIPRU 12.3.4R must be proportionate to the complexity, risk profile and scope of operation of the firm, and the liquidity risk tolerance set by the firm’s governing body in accordance with BIPRU 12.3.8R, and must reflect the firm’s importance in each EEA State, in which it carries on business. [Note: article 86(2) (part) of the CRD]

Management of collateral

A firm must also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the EEA UK. [Note: article 86(6) of the CRD]

Stress testing and contingency funding

A firm must have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in another EEA State. Those plans must be tested at least annually, updated on the basis of the outcome of the alternative scenarios set out in BIPRU 12.4.-1R, and be reported to and approved by the firm’s governing body, so that internal policies and processes can be adjusted accordingly. A firm must take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately. [Note: article 86(11) (part) of the CRD]

Individual Liquidity Adequacy Standards

Wholesale secured and unsecured funding risk
12.5.18 G In the appropriate regulator’s view, Type A wholesale funding is likely to include at least funding which:

…

(5) is accepted from overseas counterparties (other than those in the country or territory of incorporation of a firm’s parent undertaking or, in the case of a UK branch, of the firm of which it forms part); or

…

Intra-group liquidity risk

…

12.5.38 R In relation to an incoming EEA firm or third country BIPRU firm which does not have a whole-firm liquidity modification, that firm must assess the risk that its UK branch may be exposed to calls on liquidity under its control from its head office:

(1) in normal financial conditions; and

(2) under the liquidity stresses required by BIPRU 12.5.6R. [deleted]

12.5.39 R In complying with BIPRU 12.5.38R a firm is therefore assessing its exposure to inter-office liquidity risk, rather than intra-group liquidity risk. It is the appropriate regulator’s assessment of the firm’s inter-office liquidity risk that is one of the factors that will inform the appropriate regulator’s decision as to the appropriate size for the firm’s local operational liquidity reserve (as described in BIPRU 12.2). [deleted]

…

12.7 Liquid assets buffer

…

12.7.5 R Subject to BIPRU 12.7.6R, for the purpose of BIPRU 12.7.2R(3) a firm may include reserves in the form of sight deposits held by the firm with the central bank of a third country:

(1) an EEA State; or

(2) Canada, the Commonwealth of Australia, Japan, Switzerland or the United States of America.

12.7.6 R For the purpose of BIPRU 12.7.5R, a firm may not include reserves held at a central bank unless:
(1) the central bank in question has been assessed by at least two eligible ECAIs as having a credit rating associated with credit quality step 1 in the table set out in BIPRU 12 Annex 1R (Mapping of credit assessments of ECAIs to credit quality steps); and

(2) those reserves are denominated in the domestic currency of the central bank in question; and

(3) there are no legal or practical impediments to the firm using or withdrawing those reserves.

---

12.8 Cross-border and intra-group management of liquidity

12.8.1 R Every firm subject to BIPRU 12 is subject to the overall liquidity adequacy rule. The effect of that rule is that every firm is required to be self-sufficient in terms of liquidity adequacy and to be able to satisfy that rule relying on its own liquidity resources. Where the firm is an incoming EEA firm or third country BIPRU firm compliance with the overall liquidity adequacy rule with respect to the UK branch must be achieved relying solely on liquidity resources that satisfy the conditions in BIPRU 12.2.3R.

12.8.2 G However, the appropriate regulator recognises that there may be circumstances in which it would be appropriate for a firm to rely on liquidity resources which can be made available to it by other members of its group, or for a firm to rely on liquidity resources elsewhere in the firm for the purposes of ensuring that its UK branch has adequate liquidity resources in respect of the activities carried on from the branch. Where the appropriate regulator is satisfied that the statutory tests in section 138A (Modification or waiver of rules) of the Act are met, the appropriate regulator will consider modifying the overall liquidity adequacy rule to permit reliance on liquidity support of this kind.

12.8.3 G BIPRU 12.8 provides guidance on two types of modification to the overall liquidity adequacy rule and to other rules in BIPRU 12 for which the appropriate regulator considers a firm may wish to apply, namely:

(1) an intra-group liquidity modification; and

(2) a whole-firm liquidity modification. [deleted]

12.8.4 G In considering whether the statutory tests in section 138A of the Act have been met, the appropriate regulator will, amongst others, have regard to the factors detailed below in relation to an intra-group liquidity modification (of the kind permitting the inclusion in a firm’s liquidity resources of parent undertaking liquidity support) and a whole-firm liquidity modification. In practice it is likely that the appropriate regulator will view these as preconditions to the grant of an intra-group liquidity modification of that type or a whole-firm liquidity modification and will therefore ordinarily need to be satisfied fully that each has been adequately
addressed. They include matters on which the appropriate regulator will need to reach agreement with the Home State regulator, third country competent authority, or other another relevant supervisor, and also matters which it will need to agree directly with a firm or the parent undertaking of a firm. It is likely that a number of these matters will be reflected as requirements or conditions in the modification.

12.8.5 G This section represents merely an indication of the matters to which the appropriate regulator will have regard in considering an application for a whole-firm liquidity modification or an intra-group liquidity modification. In considering such an application, the appropriate regulator will always take into account anything that it reasonably considers to be relevant for the purposes of assessing whether the statutory tests in section 138A of the Act are met. In doing so, it will have regard to the role and importance of a firm or UK branch in the UK financial system.

Whole-firm liquidity modification: general

12.8.22 G In relation to an incoming EEA firm or third country BIPRU firm, the overall liquidity adequacy rule provides that, for the purpose of complying with that rule, a firm may not, in relation to its UK branch, include liquidity resources other than those which satisfy the conditions in BIPRU 12.2.3R. Those conditions seek to ensure that a firm of this kind has a reserve of liquidity for operational purposes that is under the control of, and available for use by, that firm’s UK branch. Further guidance is given in BIPRU 12.5.39G in relation to the local operational liquidity reserve. In addition, BIPRU 12.9.10G explains how the appropriate regulator will approach the giving of individual liquidity guidance to an incoming EEA firm or third country BIPRU firm. The appropriate regulator does, however, recognise that there are circumstances in which it may be appropriate for a UK branch to rely on the availability of liquidity resources from elsewhere within the firm. A firm wishing to rely on support of this kind for its UK branch may apply for a modification to the overall liquidity adequacy rule where it considers that the statutory tests in section 138A of the Act are met. [deleted]

12.8.23 G Although an incoming EEA firm or third country BIPRU firm may apply to modify the overall liquidity adequacy rule and other rules in BIPRU 12, in relation to its UK branch, the appropriate regulator anticipates that many such firms will wish to apply for a modification in the form which the appropriate regulator defines as a whole-firm liquidity modification. In the appropriate regulator’s view, a modification to the overall liquidity adequacy rule for a firm of this kind will tend to be appropriate where an applicant firm manages its liquidity on an integrated, whole-firm basis. Where that is the case, and having regard to the matters outlined in the guidance in this section, the appropriate regulator is likely to consider it more appropriate for the UK branch to be subject, in large part, to the same regulatory liquidity regime which applies to the rest of the firm. In granting a whole-firm liquidity modification, the appropriate regulator therefore
recognises that in certain circumstances a UK branch can have adequate liquidity resources in circumstances where the liquidity resources upon which the firm seeks to rely do not meet the criteria set out in BIPRU 12.2.3R. [deleted]

12.8.24 Accordingly, a whole-firm liquidity modification envisages:

(1) a modification to the overall liquidity adequacy rule so as to permit reliance by the firm, in relation to its UK branch, on liquidity resources wherever held in the firm for the purposes of meeting that rule; and

(2) a waiver of the remainder of the substantive rules in BIPRU 12, with the effect that the UK branch of the applicant firm becomes subject for the purpose of day-to-day liquidity supervision to the liquidity regime of the Home State regulator or third country competent authority in question. [deleted]

12.8.25 The effect of a whole-firm liquidity modification is that the appropriate regulator will in its supervision of the liquidity of the UK branch place reliance on the liquidity regime of the Home State regulator or third country competent authority in question. The appropriate regulator will wish to ensure that it has adequate data at the time of consideration of the whole-firm liquidity modification application and, if the application is granted, on a continuing basis thereafter, about the liquidity position of the firm as a whole. It is therefore likely that an applicant firm will be asked to provide as part of its application relevant liquidity data items covering the liquidity position of the firm as a whole. It is also likely that an applicant firm will be asked, as part of its application, to provide an appropriately detailed account as to the activities conducted by its UK branch as at the date of the application. In addition, the appropriate regulator anticipates that an applicant firm will be asked to ensure as a condition of the modification, if granted, that it provides relevant data items, covering the whole-firm liquidity position, to the appropriate regulator on a continuing basis at a frequency to be determined as part of the appropriate regulator’s consideration of the applicant firm’s case but in any event likely to be reflective of the appropriate regulator’s assessment of the liquidity risk profile of the firm. [deleted]

Consideration of an application for a whole-firm liquidity modification

12.8.26 In relation to the Home State regulator’s or third country competent authority’s regime of liquidity regulation, the appropriate regulator will, before granting a whole-firm liquidity modification, ordinarily expect to be satisfied that:

(1) the regime in question delivers outcomes as regards the regulation of the applicant firm’s liquidity risk that are broadly equivalent to those intended by this chapter; and
there is clarity as to any legal constraints imposed by the Home State regulator or third country competent authority on the provision of liquidity by a firm to its UK branch, as well as the potential for such restrictions to be imposed in the future. [deleted]

12.8.27 G In relation to the applicant firm in question, the appropriate regulator will, before granting a whole-firm liquidity modification, ordinarily expect to have reached agreement with the Home State regulator or third country competent authority in a number of areas, including agreement that:

(1) it will notify the appropriate regulator promptly of any material or persistent breaches by that firm of its liquidity rules, or of risks that such breaches are imminent;

(2) it is satisfied with the adequacy of the arrangements in place for firm-wide liquidity risk management;

(3) it is satisfied as to the adequacy of that firm’s liquidity resources including the size and quality of its liquid assets buffer;

(4) it does not object to any undertakings given by that firm in respect of its UK branch to ensure that the branch has adequate liquidity resources; and

(5) it will have due regard to the views of the appropriate regulator in its supervision of that firm’s liquidity position. [deleted]

12.8.28 G In relation to the applicant firm in question, the appropriate regulator will, before granting a whole-firm liquidity modification, ordinarily expect to have reached agreement with that firm in a number of areas, including agreement that:

(1) it will make available liquidity resources at all times to its UK branch if needed;

(2) it will make available to the appropriate regulator information in an appropriate format on firm-wide liquidity;

(3) it will notify the appropriate regulator at the same time as it notifies the Home State regulator or third country competent authority of any issues relevant to the liquidity position of its UK branch or compliance with the rules to which it is subject in respect of its liquidity (including with the terms of its whole-firm liquidity modification);

(4) its UK branch will continue to be fully integrated with the rest of the firm for liquidity risk management purposes;

(5) it will participate in the appropriate regulator’s thematic supervisory work in relation to liquidity when requested to do so by the appropriate regulator. [deleted]
Ongoing requirements

12.8.29 G

The appropriate regulator also anticipates that a whole-firm liquidity modification would be made subject to a number of ongoing conditions and requirements. These are likely to include:

1. the appropriate regulator receiving annual confirmation from the Home State regulator or third country competent authority that it remains satisfied with the arrangements in respect of that firm for liquidity supervision and their operation;

2. an annual meeting with the Home State regulator or third country competent authority to discuss liquidity supervision of that firm;

3. the appropriate regulator receiving annual confirmation from the firm, approved by its governing body, that it remains in full compliance with the terms of its whole-firm liquidity modification; and

4. as at the first anniversary of the grant of the whole-firm liquidity modification and on each anniversary thereafter, the appropriate regulator receiving from the firm:
   (a) an appropriate account of the activities conducted by the UK branch over the previous year; and
   (b) a copy of the firm’s latest business plan where this differs from that previously sent to the appropriate regulator after grant of its whole-firm liquidity modification. [deleted]

12.8.30 G

In determining the appropriate duration of a whole-firm liquidity modification, the appropriate regulator will have regard to the role and importance of the UK branch in question in the UK financial system. In some cases, the appropriate regulator may take the view that a whole-firm liquidity modification, covering a UK branch whose role and importance in the UK financial system are significant, ought to be reviewed more regularly than one granted in respect of a less systemically significant branch. The appropriate regulator will consider this issue in determining the appropriate duration of such a modification. The appropriate regulator is also likely to consider it appropriate in modifications other than those of short duration to reflect in the terms of the modification representations made either in an applicant firm’s business plan or direct to the appropriate regulator as part of the application process, but in either case as to the expected nature and size of the UK branch’s activities over the course of the duration of the modification. Where requirements are included in a modification in relation to these matters, a firm that anticipates that it will breach those requirements will need to apply in advance of any such event for a variation to its then existing whole-firm liquidity modification. In considering an application to vary, the appropriate regulator will consider afresh whether the tests in section 138A of the Act continue to be met for
12.9 Individual liquidity guidance and regulatory intervention points

Additional guidance for branches

12.9.10 G In relation to an incoming EEA firm or third country BIPRU firm, where the appropriate regulator gives that firm individual liquidity guidance in relation to its UK branch, it will have regard to the liquidity risk profile of the branch. In the absence of a whole firm liquidity modification, the effect of BIPRU 12.2.1R(2)(b) and BIPRU 12.2.3R is to require the firm to hold a liquid assets buffer of the amount identified as appropriate in its individual liquidity guidance (or in the case of a simplified ILAS BIPRU firm, the amount of its simplified buffer requirement unless this has been superseded by the appropriate regulator issuing individual liquidity guidance to the firm in question) in the form of a local operational liquidity reserve. Further guidance is given in BIPRU 12.5.39G in relation to the local operational liquidity reserve. In determining the appropriate size of such a firm’s liquid assets buffer the appropriate regulator will have regard to all relevant factors, including the extent to which the appropriate regulator has adequate data to enable it to assess accurately the liquidity risk elsewhere in the firm beyond its UK branch. [deleted]

13 The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions

13.1 Application and Purpose

Purpose

13.1.4 G Pursuant to the third paragraph of article 95(2) of the EU UK CRR, BIPRU 13 implements applies requirements that correspond to:

...
Definition of financial derivative instrument

13.3.3 R Each of the following is a financial derivative instrument:

... 

(3) a contract of a nature similar to those in 1(a) to (e) and 2(a) to (d) concerning other reference items or indices, including as a minimum all instruments specified in points paragraphs 4 to 7, 9 and 10 of Section C of Annex I to the MIFID Part 1 of Schedule 2 to the Regulated Activities Order not otherwise included in (1) or (2).

[Note: BCD Annex IV]

13.6 CCR internal model method

... 

Use of other models

13.6.9 G Point 2 of Part 6 of Annex III of the Banking Consolidation Directive provides that a firm using the CCR internal model method may use a type of model other than the type set out in BIPRU 13.6. If the appropriate regulator agrees to this the details of the model and the necessary calculations will be set out in the CCR internal model method permission, which will modify BIPRU 13.6 to the extent necessary. The appropriate regulator would not expect to agree to such a request unless the firm was able to satisfy the appropriate regulator that the method was at least as conservative as the method set out in BIPRU 13.6 and in particular that, for every counterparty, any method was more conservative than alpha multiplied by effective EPE calculated according to the equation in BIPRU 13.6.27R.

[Note: BCD Annex III Part 6 point 2 (second sentence) and point 11]

14 Capital requirements for settlement and counterparty risk

14.1 Application and purpose

... 

Purpose

14.1.3 G Pursuant to the third paragraph of article 95(2) of the EU UK CRR, BIPRU 14 implements applies requirements that correspond to:
TP 2  Capital floors for a firm using the IRB approach

... Purpose

2.3 G Pursuant to the third paragraph of article 95(2) of the EU UK CRR, this section in part implements applies requirements that correspond to Articles 152(1) - (7) of the Banking Consolidation Directive and Article 43 of the Capital Adequacy Directive.

2.4 G The purpose of this section is to limit the amount of capital reduction arising from the implementation of the requirements that correspond to the Banking Consolidation Directive and the Capital Adequacy Directive compared with the requirements arising from the previous versions of those Directives. As such it is effectively a comparison of the capital resource requirements arising from BIPRU with those arising from the appropriate IPRU sourcebook that would have applied as at 31 December 2006. However the effect of changes to the market risk requirements is removed by requiring BIPRU 7 (Market risk) to be used for both sides of the comparison.

How to apply the capital floors

... 2.6 G The Directive provisions on which this section is based are written as a floor on a firm’s capital resources requirement. This section is intended as a floor on the firm’s capital resources. This section however is also written as a second capital resources requirement that sits beside the general capital resources requirements of BIPRU and GENPRU. The reason for this is that a firm should meet the general capital resources requirements of BIPRU and GENPRU using capital resources calculated under GENPRU 2.2 (Capital resources). On the other hand a firm should meet the capital resources requirements of this section (which are based on IPRU) using the relevant IPRU definition. In practice the two sets of definitions of capital resources are similar apart from the provisions about expected loss. Therefore as shown by the example in BIPRU TP 2.12G and BIPRU TP 2.13G, in practice a firm is subject to a single capital resources requirement.

... Waiver from IPRU capital resources requirement

2.11A G Article 152(5d) and (5e) of the Banking Consolidation Directive allows the The appropriate regulator to may waive the capital floor calculation based on the IPRU capital resources requirement in BIPRU TP 2.8R(3) on a case-by-case basis only if a firm started to use the IRB approach on or after 1 January 2010. The appropriate regulator will consider an application for such a waiver in the light of the criteria in section 138A of the Act (Modification or waiver of rules).
2.32 R The scope of the consolidation under BIPRU TP 2.30R and any exemption from consolidation is determined in accordance with BIPRU 8 (Group risk - consolidation) rather than IPRU. In particular, the following adjustments apply:

(1) if a firm is a member of a UK consolidation group and applies the IRB approach with respect to that UK consolidation group, BIPRU TP 2.30R applies with respect to that UK consolidation group; and

(2) if a firm is a member of a non-EEA sub-group non-UK sub-group and applies the IRB approach with respect to that non-EEA sub-group non-UK sub-group, BIPRU TP 2.30R applies with respect to that non-EEA sub-group non-UK sub-group.

2.33 G If for example the consolidation rules that apply for the purposes of this section are those in chapter 14 of IPRU(INV) (Consolidated supervision of investment firms) then IPRU(INV) 14.1 (Application) and 14.2 (Scope of consolidation) do not apply. BIPRU 8.2 (Scope and basic consolidation requirements for UK consolidation groups), BIPRU 8.3 (Scope and basic consolidation requirements for non-EEA sub-groups non-UK sub-groups), BIPRU 8.4 (CAD Article 22 groups and investment firm consolidation waiver) and BIPRU 8.5 (Basis of consolidation) apply instead.

TP 15 Commodities firm transitionals: Exemption from capital requirements

Application

15.1 R Subject to BIPRU TP 15.2R, BIPRU TP 15 applies to a BIPRU firm:

(1) whose main business consists exclusively of the provision of investment services or investment activities in relation to the financial instruments set out in points paragraphs 5, 6, 7, 9 and 10 of Section C of Annex I to the MIFID Part 1 of Schedule 2 to the Regulated Activities Order; and

...
15.3 **BIPRU TP 15** implements applies requirements that correspond to Article 48(1) of the *Capital Adequacy Directive* as applied pursuant to the discretion in the third paragraph of article 95(2) of the EU UK CRR.

…

Consolidation

15.13 **BIPRU TP 15** does not apply for the purposes of BIPRU 8 with respect to a firm’s UK consolidation group or, as the case may be, non-EEA UK sub-group unless the following conditions are satisfied:

1. there is no credit institution in that group;
2. each CAD investment firm in the group meets the conditions in BIPRU TP 15.1R(1); and
3. each CAD investment firm whose head office is in an EEA State satisfies the conditions in BIPRU TP 15.1R(2); and [deleted]
4. any CAD investment firm whose head office is outside the EEA UK would have fallen into BIPRU TP 15.1R(2) if:
   a. its head office had been in an EEA State the UK; and
   b. it had carried on all its business in the EEA UK and had obtained whatever authorisations for doing so were required under the ISD in the form that Directive was in on 31 December 2006.

…
Annex C

Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

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

1 Application

1.1 Application and Purpose

…

Exclusion of certain types of firms

1.1.5 R None of the following is an IFPRU investment firm:

(1) an incoming EEA firm [deleted];
(2) an incoming Treaty firm [deleted];
(3) any other an overseas firm;

…

Meaning of dealing on own account

1.1.1 R (1) For the purpose of IFPRU and the EU UK CRR, dealing on own account means the service of dealing in any financial instruments for own account as referred to in point paragraph 3 of Section A of Annex I to MiFID Part 3 of Schedule 2 to the Regulated Activities Order, subject to (2) and (3).

(2) In accordance with article 29(2) of CRD (Definition of dealing on own account), an An investment firm that executes investors’ orders for financial instruments and holds such financial instruments for its own account does not, for that reason, deal on own account if the following conditions are met:

…

(c) (for an investment firm that is an IFPRU investment firm or an EEA firm) it complies with the requirements in articles 92 to 95 (Own funds requirements for investment firms with limited authorisation to provide investment services) and Part Four (Large exposures) of the EU UK CRR;
In accordance with article 29(4) of CRD, the holding on non-trading book positions in financial instruments in order to invest in own funds is not dealing on own account for the purposes of IFPRU 1.1.9R (Types of IFPRU investment firm: IFPRU 125K firm) and IFPRU 1.1.10R (Types of IFPRU investment firm: IFPRU 50K firm).

[Note: CRD article 29(4)]

Interpretation of the definition of types of firm and undertaking

1.1.1 G A firm whose head office is not in an EEA State the UK is an investment firm if it would have been subject to the requirements imposed by MiFID (but it is not a bank, building society, credit institution, local firm, exempt CAD firm and BIPRU firm) if:

(1) its head office had been in an EEA State the UK; and

(2) it had carried on all its business in an EEA State the UK and had obtained whatever authorisations for doing so as are required under the UK legislation that implemented MiFID.

…

1.1.1 G For the purposes of the definitions in IFPRU and Part Three, Title I, Chapter 1, Section 2 of the EU UK CRR (Own funds requirements for investment firms with limited authorisation to provide investment services), a person does any of the activities referred to in IFPRU and the EU UK CRR if:

…

(3) (for an EEA firm) it is authorised by its Home State regulator to do that activity; or [deleted]

(4) (if the carrying on of that activity is prohibited in a state or territory without an authorisation in that state or territory) that firm has such an authorisation.

…

1.2 Significant IFPRU firm

Purpose

1.2.1 G Throughout CRD and the EU UK CRR there are various policies which have restricted application based on a firm’s scope, nature, scale, internal organisation and complexity. These policies are provided in the UK legislation related to the following:

(1) article 76 of CRD on the establishment of an independent risk committee;
(2) article 88 of CRD on the establishment of an independent nominations committee;

(3) article 91 of CRD on the limitations on the number of directorships an individual may hold;

(4) article 95 of CRD on the establishment of an independent remuneration committee;

(5) article 100 of CRD on supervisory stress testing to facilitate the SREP under article 97 of CRD;

(6) articles 129 and 130 of CRD on applicability of the capital conservation buffer and the countercyclical capital buffer (provided that an exemption from the application of these articles does not threaten the stability of the financial system of the EEA State UK);

(7) article 6(4) of the EU UK CRR on the scope of liquidity reporting on an individual basis;

(8) article 11(3) of the EU UK CRR on the scope of liquidity reporting on a consolidated basis; and

(9) article 450 of the EU UK CRR on disclosure on remuneration.

…

1.3 Supervisory benchmarking of internal approaches for calculating own funds requirements

…

1.3.2 G A firm must submit the results of the calculations referred to in IFPRU 1.3.1R(1), in line with the template set out in the Commission Regulation adopted under article 78(8) of CRD, to the FCA and to EBA CRD ITS on templates, definitions and IT-solutions.

1.3.3 R Where the FCA has chosen to develop specific portfolios in accordance with article 78(2) of CRD, a firm must report the results of the calculations separately from the results of the calculations for EBA portfolios referred to in IFPRU 1.3.1R.

[Note: article 78(2) of CRD]

…

1.5 Notification of FINREP reporting

…
1.5.2 R A firm must notify the FCA if it adjusts its firm’s accounting reference date under the Commission Regulation made under article 99 of the EU CRR ITS on supervisory reporting.

2 Supervisory processes and governance

2.1 Application and purpose

[Note: On 19 December 2014, the EBA published guidelines “Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)”, EBA/GL/2014/13. The FCA has confirmed its intention to make every effort to comply with these guidelines that can be found at: http://www.eba.europa.eu/documents/10180/935249/EBA-GL-2014-13+%28Guidelines+on+SREP+methodologies+and+processes%29.pdf.

... Level of application: ICAAP rules

...]

2.2.4 R A firm which is a UK parent institution in a Member State must comply with the ICAAP rules on a consolidated basis.

[Note: article 108(2) of CRD]

2.2.4 R A firm controlled by a UK parent financial holding company in a Member State or a UK parent mixed financial holding company in a Member State must comply with the ICAAP rules on the basis of the consolidated situation of that holding company, if the FCA is responsible for supervision of the firm on a consolidated basis under article 111 of CRD regulation 20 of the Capital Requirements Regulation 2013.

[Note: article 108(3) of CRD]

2.2.4 R A firm that is a subsidiary must apply the ICAAP rules on a sub-consolidated basis if the firm, or the parent undertaking where it is a financial holding company or mixed financial holding company, have an institution or financial institution or an asset management company as a subsidiary in a third country or hold a participation in such an undertaking as members of a non-EEA sub-group non-UK sub-group.

[Note: article 108(4) of CRD]

... Level of application: risk control rules

...
2.2.5 R Where a firm is a member of a FCA consolidation group or a non-EEA sub-group non-UK sub-group, the firm must ensure that the risk management processes and internal control mechanisms at those levels comply with the obligations set out in the risk control rules on a consolidated basis (or a sub-consolidated basis).

[Note: article 109(2) of CRD]

2.2.6 R Compliance with the obligations in IFPRU 2.2.59R must enable the FCA consolidation group or the non-EEA sub-group non-UK sub-group to have arrangements, processes and mechanisms that are consistent, well integrated and ensure that data relevant to the purpose of supervision can be produced.

[Note: article 109(2) of CRD]

... Group risk ...

2.2.8 G A firm should include in the written record in IFPRU 2.2.43R (Documentation of risk assessments) a description of the broad business strategy of the FCA consolidation group or the non-EEA sub-group non-UK sub-group of which it is a member, the group’s view of its principal risks and its approach to measuring, managing and controlling the risks. This description should include the role of stress testing, scenario analysis and contingency planning in managing risk on an individual basis and consolidated basis.

2.2.8 G A firm should satisfy itself that the systems (including IT) of the FCA consolidation group or the non-EEA sub-group non-UK sub-group of which it is a member are sufficiently sound to support the effective management and, where applicable, the quantification of the risks that could affect the FCA consolidation group or the non-EEA sub-group non-UK sub-group, as the case may be.

...

2.3 Supervisory review and evaluation process: internal capital adequacy standards

[Note: On 19 December 2014, the EBA published guidelines “Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP)”, EBA/GL/2014/13. The FCA has confirmed its intention to make every effort to comply with these guidelines that can be found at: http://www.eba.europa.eu/documents/10180/935249/EBA-GL-2014-13+Guidelines+on+SREP+methodologies+and+processes%29.pdf.]

...
The ICAAP and the SREP: the SREP

2.3.1 G  (1) …

(2) In making these assessments, the FCA will have regard to the nature, scale and complexity of a firm’s business and of the major sources of risks relevant to such business as referred to in the general stress and scenario testing rule and SYSC 20 (Reverse stress testing), and the extent to which the firm has used any of the capital buffers that are required of it under the UK legislation that implemented the CRD, as applicable.

Business risk: stress tests for firms using the IRB approach

2.3.5 R  If IFPRU 2.3.50R applies to a firm on a consolidated basis, the following adjustments are made to IFPRU 2.3.50R in accordance with the general principles of Part One, Title II, Chapter 2 of the EU UK CRR (Prudential consolidation):

(1) references to own funds are to the consolidated own funds of the firm’s FCA consolidation group or, as the case may be, its non-EEA sub-group non-UK sub-group; and

(2) references to the capital requirements in Part Three of the EU UK CRR (Capital requirements) are to the consolidated capital requirements with respect to the firm’s FCA consolidation group or, as the case may be, its non-EEA sub-group non-UK sub-group under Part One, Title II, Chapter 2 of the EU UK CRR (Prudential consolidation).

3 Own funds

3.1 Base own funds requirement

3.3 Basel 1 floor

Permission not to apply the Basel 1 floor
3.3.1 G The FCA does not expect that it will waive the application of the Basel I floor as contemplated in article 500(2) of the EU CRR. [deleted]

4 Credit risk

4.2 Standardised approach

Retail exposures

4.2.6 G Where an exposure is denominated in a currency other than the euro, the FCA expects a firm to use appropriate and consistent exchange rates to determine compliance with relevant thresholds in the EU UK CRR. Accordingly, a firm should calculate the euro equivalent value of the exposure for the purposes of establishing compliance with the aggregate monetary limit of €1 million for retail exposures using a set of exchange rates the firm considers to be appropriate. The FCA expects a firm’s choice of exchange rate to have no obvious bias and to be derived on the basis of a consistent approach (see article 123(c) of the EU UK CRR).

Mapping of ECAIs credit assessments

4.2.12 G Until such time as the European Commission adopts implementing technical standards drafted by the European Supervisory Authorities Joint Committee to specify for all ECAIs the relevant credit assessments of the ECAI that correspond to credit quality steps, the FCA expects a firm to continue to have regard to the table mapping the credit assessments of certain ECAIs to credit quality steps produced in accordance with regulation 22(3) of the Capital Requirements Regulations 2006. For mapping of the credit quality step to the credit assessments of eligible ECAIs, refer to: http://www.fca.org.uk. [deleted]

4.3 Guidance on internal ratings based approach: high level material

Application of requirements to EEA groups applying the IRB approach on a unified basis

4.3.4 G Article 20(6) of the EU UK CRR states that, where the IRB approach is used on a unified basis by those entities which fall within the scope of article 20(6) (EEA group), the FCA is required to permit certain IRB requirements to be met on a collective basis by members of that group. In particular, the
FCA considers that, where a firm is reliant upon a rating system or data provided by another member of its group, it will not meet the condition that it is using the IRB approach on a unified basis unless:

1. the firm only does so to the extent that it is appropriate, given the nature and scale of the firm’s business and portfolios and the firm’s position within the group;
2. the integrity of the firm’s systems and controls is not adversely affected;
3. the outsourcing of these functions meets the requirements of SYSC; and
4. the abilities of the FCA and the consolidating supervisor of the group to carry out their responsibilities under the EU UK CRR are not adversely affected.

Corporate governance

4.3.8 G (1) Where the firm’s rating systems are used on a unified basis under article 20(6) of the EU UK CRR, the FCA considers that the governance requirements in article 189 of the EU UK CRR can only be met if the subsidiaries have delegated to the governing body or designated committee of the EEA parent institution, UK parent institution, EEA parent financial holding company, UK parent financial holding company, or EEA parent mixed financial holding company, UK parent mixed financial holding company, responsibility for approval of the firm’s rating systems.

2. The FCA expects an appropriate individual in a significant-influence function role to provide to the FCA on an annual basis written attestation that the rating system permissions required by the EU UK CRR have been carried out appropriately.

[Note: see articles 189 and 20(6) of the EU UK CRR and article 3(1)(7) of CRD]

Permanent partial use: non-significant business units and immaterial exposure classes and types

4.3.12 G The following points set out the level at which the FCA expects the 15% test to be applied for a firm that is a member of a group:
(1) if a firm is part of a group subject to consolidated supervision in the EEA UK and for which the FCA is the consolidating supervisor, the calculations in (1) are carried out with respect to the wider group;

(2) if a firm is part of a group subject to consolidated supervision in the EEA UK and for which the FCA is not the consolidating supervisor the calculation in (1) would not apply but the requirements of the consolidating supervisor relating to materiality will need to be met for the wider group;

(3) if the firm is part of a sub-group subject to consolidated supervision in the EEA UK and part of a wider third-country group subject to equivalent supervision by a regulatory authority outside of the EEA UK, the calculation in (1) would not apply but the requirements of the consolidating or lead regulator relating to materiality would need to be met for both the sub-group and the wider group; and

(4) if the firm is part of a sub-group subject to consolidated supervision in the EEA UK and is part of a wider third-country group that is not subject to equivalent supervision by a regulatory authority outside of the EEA UK, then the calculation in (1) would apply for the wider group if supervision by analogy is applied and for the sub-group if other alternative supervisory techniques are applied.

4.3.13 G Whether a third-country group is subject to equivalent supervision, whether it is subject to supervision by analogy or whether other alternative supervisory techniques apply, is decided in accordance with article 127 of CRD (Assessment of equivalence of third countries' consolidated supervision) GENPRU 3.2 (Third-country groups). (See article 150(1)(c) of the EU UK CRR.)

7 Liquidity

7.1 Application

... Application of BIPRU 12 (Liquidity standards)

7.1.3 G The FCA’s liquidity regime and liquidity reporting in BIPRU 12 (Liquidity standards) and SUP 16 (Reporting requirements) continue to apply to an IFPRU investment firm until the liquidity coverage requirement in article 412 of the EU CRR becomes applicable in 2015.

7.1.4 Pending specification of a uniform definition under article 460 of the EU CRR (Liquidity) of high and extremely high liquidity and credit quality, a firm should be guided by BIPRU 12 (Liquidity standards) when complying with article 416 of the EU CRR (Reporting on liquid assets).
8 Prudential consolidation and large exposures

8.1 Prudential consolidation

Application

8.1.1 R (1) This section applies to an IFPRU investment firm.

(2) This section does not apply to an exempt IFPRU commodities firm if the conditions in (2) are met.

(3) The conditions are:

(a) article 498 of the EU UK CRR (Exemptions for commodities dealers) applies to it;

(b) the exempt IFPRU commodities firm is not a member of a FCA consolidation group or non-EEA sub-group;

(c) each investment firm in the group that the exempt IFPRU commodities firm belongs to meets the conditions in article 498 of the EU UK CRR; and

(d) any investment firm in the group that the exempt IFPRU commodities firm belongs to whose head office is outside the EEA UK would have been a firm to whom article 498 would have applied if its head office had been in an EEA State the UK.

8.2 Large exposures

Intra-group exposures: non-core large exposures group

8.2.5 G The FCA expects that applications for exemptions under article 400(2)(c) of the EU UK CRR will be for firms established in the UK where the intra-group undertakings to which they have exposures meet the criteria for the core UK group in article 113(6) of the EU UK CRR, except for article 113(6)(d) (established in the same EEA State).

8.2.6 R A firm with a non-core large exposures group permission may (in line with that permission) exempt, from the application of article 395(1) of the EU
CRR (Limits to large exposures), exposures, including participations or other kinds of holdings, incurred by a firm to:

... in so far as those undertakings are covered by the supervision on a consolidated basis to which the firm itself is subject, in accordance with the EU CRR, Directive 2002/87/EC regarding the supplementary supervision of financial entities in a financial conglomerate the UK legislation that implemented the Financial Groups Directive or with equivalent standards in force in a third country; exposures that do not meet these criteria, whether or not exempted from article 395(1), shall be treated as exposures to a third party.

[Note: article 400(2) of the EU CRR]

Conditions for exemptions

8.2.13 R A firm may only make use of the exemptions provided in this section where the following conditions are met:

(1) the specific nature of the exposure, the counterparty or the relationship between the firm and the counterparty eliminate or reduce the risk of the exposure; and

(2) any remaining concentration risk can be addressed by other equally effective means, such as the arrangements, processes and mechanisms in article 81 of CRD IFPRU 2.2.22R (Concentration risk).

[Note: article 400(3) of the EU CRR]

10 Capital buffers

10.3 Countercyclical capital buffer

Calculation of countercyclical capital buffer rates

10.3.2 R (1) To calculate the weighted average in IFPRU 10.3.1R, a firm must apply to each applicable countercyclical buffer rate its total own funds requirements for credit risk, specific risk, incremental default and migration risk that relates to the relevant credit exposures in the jurisdiction in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit exposures.
(2) For the purposes of (1), a firm must calculate its total own funds requirement for credit risk, specific risk, incremental default and migration risk in accordance with Part Three, Titles II (Capital requirements for credit risk) and IV (Own funds requirements for market risk) of the EU UK CRR.

(3) The countercyclical buffer rate for an exposure located in the UK is the rate set by the UK countercyclical buffer authority for the UK.

(4) The countercyclical buffer rate for an exposure located in an EEA State other than the UK is:

(a) the rate set by the EEA countercyclical buffer authority for that jurisdiction; or

(b) if that rate exceeds 2.5% of total risk exposure amount and has not been recognised by the UK countercyclical buffer authority, 2.5% [deleted]

(5) The countercyclical buffer rate for an exposure located in a third country is the rate set by the UK countercyclical buffer authority for that jurisdiction.

(6) If the UK countercyclical buffer authority has not set a rate for a third country, the countercyclical buffer rate for an exposure located in that jurisdiction is:

(a) the rate set by the third country countercyclical buffer authority for that jurisdiction; or

(b) if that rate exceeds 2.5% and has not been recognised by the UK countercyclical buffer authority, 2.5%.

(7) If the UK countercyclical buffer authority has not set a rate for a third country and either there is no third-country countercyclical buffer authority for that country or the authority has not set a rate for that jurisdiction, the countercyclical buffer rate for an exposure located in that jurisdiction is zero.

(8) If the countercyclical buffer rate for the UK is increased, that increase takes effect from the date specified by the UK countercyclical buffer authority.

(9) If the countercyclical buffer rate for an EEA State other than the UK is increased, subject to (4)(b), that increase takes effect from:

(a) the date specified by the EEA countercyclical buffer authority for that jurisdiction, if the rate applied under this chapter does not exceed 2.5%; or
(b) the date specified by the UK countercyclical buffer authority if the rate applied under this chapter exceeds 2.5%. [deleted]

(10) If the countercyclical buffer rate for a third country is increased by the UK countercyclical buffer authority, that increase takes effect from the date specified by the UK countercyclical buffer authority.

(11) If the UK countercyclical buffer authority does not set a countercyclical buffer rate for a third country and that rate is increased by the third-country countercyclical buffer authority for that jurisdiction, subject to 6(b), that increase takes effect from:

(a) the date 12 months after the date on which the increase was published by the third-country countercyclical buffer authority in accordance with the relevant law of the third country, if the rate applied under this chapter does not exceed 2.5%; or

(b) the date specified by the UK countercyclical buffer authority if the rate applied under this chapter exceeds 2.5%.

(12) If a countercyclical buffer rate is reduced, that reduction takes effect immediately.

[Note: articles 136(4) (part), 139(2) to (5) (part) and 140(1) to (4) and (6) (part) of CRD]

Location of exposures

10.3.3 G A firm must identify the geographical location of a relevant credit exposure in accordance with the regulatory technical standards adopted under article 140(7) of CRD CRD RTS on the identification of the geographical location of credit exposures for calculating institution-specific countercyclical capital buffer rates.

10.6 Application on an individual and consolidated basis

10.6.2 R A firm that is a UK parent institution in a Member State must comply with this chapter on the basis of its consolidated situation.

10.6.3 R A firm controlled by a UK parent financial holding company in a Member State or a UK parent mixed financial holding company in a Member State
must comply with this chapter on the basis of the consolidated situation of that holding company in the FCA consolidation group.

... 

### 10.7 Exemption

... 

#### 10.7.2 R

(1) The condition referred to in IFPRU 10.7.1R is that the firm is a small and medium-sized SME (as defined in article 4(1)(131) of the UK CRR) investment firm.

(2) For this purpose, a firm is categorised as small and medium-sized in accordance with the European Commission Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises. [deleted]

[Note: articles 129(4) and 130(4) of CRD]

... 

IFPRU TP 3 (Gains and losses) is deleted in its entirety. The deleted text of the TP is not shown but it is marked as [deleted] as shown below.

**TP 3 Gains and losses [deleted]**

Amend the following as shown.

**TP 4 Deductions from own funds**

<table>
<thead>
<tr>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1 R IFPRU TP 4 applies to an IFPRU investment firm, unless it is an exempt IFPRU commodities firm.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2 G IFPRU TP 4 contains the rules that exercise the discretion afforded to the FCA as competent authority under articles 469, 474 and 477 of the EU UK</td>
</tr>
</tbody>
</table>
CRR. The applicable percentages in IFPRU TP 4 apply instead of articles 36(1), 56(1)(c) and 66 of the EU UK CRR for the duration of the transitional.

### Duration of transitional

#### 4.3 R IFPRU TP 4 applies until 31 December 2023.

### Deduction from common equity tier 1

#### 4.4 R

For the purposes of article 469(1)(a) of the EU CRR, as it applies to the items in points (b), (d), (f), (g) and (h) of article 36(1) of the EU CRR (Deductions from Common Equity Tier 1 items), the applicable percentages are:

| (1) | 20% during the period from 1 January 2014 to 31 December 2014; |
| (2) | 40% during the period from 1 January 2015 to 31 December 2015; |
| (3) | 60% during the period from 1 January 2016 to 31 December 2016; and |
| (4) | 80% for the period from 1 January 2017 to 31 December 2017. [expired] |

#### 4.5 R

For the purposes of article 469(1)(a) of the EU CRR as it applies to the items in points (a), (e) and (i) of article 36(1)) of the EU CRR (Deductions from Common Equity Tier 1 items), the applicable percentages are:

| (1) | 100% during the period from 1 January 2014 to 31 December 2014; |
| (2) | 100% during the period from 1 January 2015 to 31 December 2015; |
| (3) | 100% during the period from 1 January 2016 to 31 December 2016; and |
| (4) | 100% for the period from 1 January 2017 to 31 December 2017. [expired] |

#### 4.6 R

For the purposes of article 469(1)(c) of the EU CRR, as it applies to the items in point (c) of article 36(1)) of the EU UK CRR (Deductions from Common Equity Tier 1 items) that existed prior to 1 January 2014, the applicable percentages are:

<p>| (1) | 0% for the period from 1 January 2014 to 31 December 2014; |
| (2) | 10% for the period from 1 January 2015 to 31 December 2015; |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>(3)</td>
<td>20% for the period from 1 January 2016 to 31 December 2016;</td>
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</tr>
<tr>
<td>(4)</td>
<td>30% for the period from 1 January 2017 to 31 December 2017;</td>
<td></td>
</tr>
<tr>
<td>(5)</td>
<td>40% for the period from 1 January 2018 to 31 December 2018;</td>
<td></td>
</tr>
<tr>
<td>(6)</td>
<td>50% for the period from 1 January 2019 to 31 December 2019;</td>
<td></td>
</tr>
<tr>
<td>(7)</td>
<td>60% for the period from 1 January 2020 to 31 December 2020;</td>
<td></td>
</tr>
<tr>
<td>(8)</td>
<td>70% for the period from 1 January 2021 to 31 December 2021;</td>
<td></td>
</tr>
<tr>
<td>(9)</td>
<td>80% for the period from 1 January 2022 to 31 December 2022; and</td>
<td></td>
</tr>
<tr>
<td>(10)</td>
<td>90% for the period from 1 January 2023 to 31 December 2023.</td>
<td></td>
</tr>
</tbody>
</table>

**4.7 R** For the purposes of article 469(1)(c) of the EU CRR, as it applies to the items in point (c) of article 36(1) of the EU CRR (Deductions from Common Equity Tier 1 items) that did not exist prior to 1 January 2014, the applicable percentages are:

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>(1)</td>
<td>20% during the period from 1 January 2014 to 31 December 2014;</td>
<td></td>
</tr>
<tr>
<td>(2)</td>
<td>40% during the period from 1 January 2015 to 31 December 2015;</td>
<td></td>
</tr>
<tr>
<td>(3)</td>
<td>60% during the period from 1 January 2016 to 31 December 2016; and</td>
<td></td>
</tr>
<tr>
<td>(4)</td>
<td>80% for the period from 1 January 2017 to 31 December 2017. [expired]</td>
<td></td>
</tr>
</tbody>
</table>

**Deductions from additional tier 1 items**

**4.8 R** For the purposes of article 474(a) of the EU CRR, the applicable percentages are:

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>(1)</td>
<td>20% during the period from 1 January 2014 to 31 December 2014;</td>
<td></td>
</tr>
<tr>
<td>(2)</td>
<td>40% during the period from 1 January 2015 to 31 December 2015;</td>
<td></td>
</tr>
<tr>
<td>(3)</td>
<td>60% during the period from 1 January 2016 to 31 December 2016; and</td>
<td></td>
</tr>
</tbody>
</table>
Deductions from tier 2 items

4.9 R For the purposes of article 476(a) of the EU CRR, the applicable percentages are:

(1) 20% during the period from 1 January 2014 to 31 December 2014;
(2) 40% during the period from 1 January 2015 to 31 December 2015;
(3) 60% during the period from 1 January 2016 to 31 December 2016; and
(4) 80% for the period from 1 January 2017 to 31 December 2017. [expired]

TP 5  Own funds: other transitionals

Application

5.1 R IFPRU TP 5 applies to an IFPRU investment firm, unless it is an exempt IFPRU commodities firm.

Purpose

5.2 G IFPRU TP 5 contains the rules that exercise the discretion afforded to the FCA as competent authority under articles 479 to 480, 484 to 486 of the EU UK CRR. The applicable percentages in IFPRU TP 5 apply for the duration of the transitional.

Duration of transitional

5.3 R IFPRU TP 5 applies until 31 December 2021.

Recognition of instruments and items not qualifying as minority interests

5.4 R For the purposes of article 479(2) of the EU CRR, the applicable percentages are:
### Recognition of minority interests and qualifying additional tier 1 and tier 2 capital

#### 5.5 R

For the purposes of article 480(1) of the EU CRR, the applicable factors are:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>(1)</td>
<td>0% during the period from 1 January 2014 to 31 December 2014;</td>
</tr>
<tr>
<td>(2)</td>
<td>0% during the period from 1 January 2015 to 31 December 2015;</td>
</tr>
<tr>
<td>(3)</td>
<td>0% during the period from 1 January 2016 to 31 December 2016; and</td>
</tr>
<tr>
<td>(4)</td>
<td>0% for the period from 1 January 2017 to 31 December 2017. [expired]</td>
</tr>
</tbody>
</table>

### Additional filters and deductions

#### 5.6 R

For the purposes of article 481(1) of the EU CRR, the applicable percentages are:

<p>| | |</p>
<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>0% during the period from 1 January 2014 to 31 December 2014;</td>
</tr>
<tr>
<td>(2)</td>
<td>0% during the period from 1 January 2015 to 31 December 2015;</td>
</tr>
<tr>
<td>(3)</td>
<td>0% during the period from 1 January 2016 to 31 December 2016; and</td>
</tr>
<tr>
<td>(4)</td>
<td>0% for the period from 1 January 2017 to 31 December 2017. [expired]</td>
</tr>
</tbody>
</table>

### Limits on grandfathering

#### 5.7 R

For the purposes of article 486 of the EU UK CRR the applicable factors are:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>80% during the period from 1 January 2014 to 31 December 2014;</td>
</tr>
<tr>
<td>(2)</td>
<td>70% during the period from 1 January 2015 to 31 December 2015;</td>
</tr>
</tbody>
</table>
(3) 60% during the period from 1 January 2016 to 31 December 2016;

(4) 50% during the period from 1 January 2017 to 31 December 2017;

(5) 40% during the period from 1 January 2018 to 31 December 2018;

(6) 30% during the period from 1 January 2019 to 31 December 2019;

(7) 20% during the period from 1 January 2020 to 31 December 2020; and

(8) 10% during the period from 1 January 2021 to 31 December 2021.

IFPRU TP 6 (Leverage) and IFPRU TP 7 (Capital conservation buffer: transitional) are deleted in their entirety. The deleted text of the TPs is not shown but they are marked as [deleted] as shown below.

**TP 6  Leverage [deleted]**

**TP 7  Capital conversation buffer: transitional [deleted]**

Amend the following as shown.

**Sch 1  Record-keeping requirements**

... 

(3) Table

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td><strong>IFPRU 4.3.17G</strong></td>
<td>Documents relating to rating systems</td>
<td>All documentation relating to a firm’s rating systems (including any document referenced in IFPRU 4 or...</td>
<td>Not specified</td>
<td>At least three years</td>
</tr>
</tbody>
</table>
required by the EU UK CRR that relate to the IRB approach

### Sch 2 Notification and reporting requirements

...  

(3) Table

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>IFPRU 3.2.17R</strong></td>
<td>Intention by firm or member of its group member to reduce own funds or consolidated own funds</td>
<td>Actions described in article 77 of the EU UK CRR</td>
<td>Intention to carry out the actions described in article 77 of the EU UK CRR</td>
<td>As soon as intention is formed</td>
</tr>
<tr>
<td><strong>IFPRU 4.12.1R</strong></td>
<td>Reliance on deemed transfer of significant risk under articles 243(2) and 244(2) of the EU UK CRR, including for the purposes of article 337(5) of the EU UK CRR</td>
<td>Sufficient information to allow the FCA to assess whether the possible reduction in risk-weighted exposure amounts achieved by the securitisation is justified by a commensurate transfer of credit risk to third parties</td>
<td>Intention to rely on deemed transfer of significant risk</td>
<td>Within a reasonable period before or after a relevant transfer, not being later than one month after the date of transfer</td>
</tr>
<tr>
<td>...</td>
<td></td>
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<td></td>
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</tbody>
</table>
Annex D

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

### 1 Capital resources requirements and technical provisions for insurance business

#### 1.1 Application

1.1.1 R INSPRU 1.1 applies to an insurer unless it is:

   (1) a non-directive friendly society; or

   (2) an incoming EEA firm; or [deleted]

   (3) an incoming Treaty firm; or [deleted]

   (4) a Solvency II firm.

…

1.1.3 R For a non-EEA insurer with a branch in the United Kingdom whose insurance business in the United Kingdom is not restricted to reinsurance (other than an EEA deposit insurer, a Swiss general insurer or a UK deposit insurer) INSPRU 1.1.27R applies separately in respect of its worldwide activities and its activities carried on from a branch in the United Kingdom.

1.1.4 R For an EEA deposit insurer or a Swiss general insurer INSPRU 1.1.27R applies in respect of the activities carried on from a branch in the United Kingdom. [deleted]

1.1.5 R For a UK deposit insurer INSPRU 1.1.27R applies separately in respect of its worldwide activities and its activities carried on from a branch in the EEA. [deleted]

1.1.6 G This section may apply in cases where a firm has its head office in another EEA State but is neither an incoming EEA firm nor an incoming Treaty firm. [deleted]

…

### 1.2 Mathematical reserves

Application
1.2.1 R  *INSPRU* 1.2 applies to a *long-term insurer* unless it is:

1. (1) a *non-directive friendly society*; or

2. (2) an incoming *EEA firm*; or [deleted]

3. (3) an incoming *Treaty firm*; or [deleted]

4. (4) a *Solvency II firm*.

... 

1.5 Internal-contagion risk

Application

1.5.1 R  *INSPRU* 1.5 applies to an *insurer* except any *insurer* in (1) to (3):

1. (1) (a) non-directive friendly societies; or

(b) Solvency II firms;

2. (2) none of the provisions, apart from *INSPRU* 1.5.33R (payment of financial penalties), apply to *firms* which qualify for authorisation under *Schedule 4* of the Act; [deleted]

... 

1.5.5A R In the application of this section to activities carried on by a *non-EEA insurer* a *firm* with its head office outside the United Kingdom:

1. (1) ...

2. (2) all other provisions of this section apply only in relation to:

(a) in the case of any *UK deposit insurer*, activities carried on from branches in any *EEA State*; and

(b) in any other case, activities carried on from a *branch* in the United Kingdom.

... 

1.5.12 G Finally, the section sets out requirements to protect *policyholders* of the United Kingdom branches of non-EEA firms *firms* with their head office outside the United Kingdom where these are supervised by the appropriate regulator. These apply only to a non-EEA *firm* that has established a *branch* in the United Kingdom.

...
3 Market risk

3.1 Market risk insurance

3.1.1 R INSPRU 3.1 applies to an insurer unless it is:

(1) a non-directive friendly society; or

(2) an incoming EEA firm; or [deleted]

(3) an incoming Treaty firm; or [deleted]

(4) a Solvency II firm.

...

3.2 Derivatives in insurance

Application

3.2.1 R This section applies to an insurer unless it is:

(1) a non-directive friendly society; or

(2) an incoming EEA firm; or [deleted]

(3) an incoming Treaty firm; or [deleted]

(4) ....

...

TP Transitional Provisions

Application

1.1 R INSPRU TP 1 applies to an insurer unless it is:

[FCA]

[PRA]

(1) a non-directive friendly society; or

(2) an incoming EEA firm; or [deleted]

(3) an incoming Treaty firm; or [deleted]

(4) a Solvency II firm.

...

1.6 R INSPRU TP 1.4 does not have effect if, and to the extent that, it would be inconsistent with any EU law obligation of the United Kingdom. [deleted]
PRU waivers

Application

3.1 R INSINU TP 3 applies to an insurer unless it is:

(1) a non-directive friendly society; or

(2) an incoming EEA firm; or [deleted]

(3) an incoming Treaty firm; or [deleted]

(4) a Solvency II firm.

3.6 R INSINU TP 3.4 does not have effect if, and to the extent that, it would be inconsistent with any EU law obligation of the United Kingdom. [deleted]
Annex E

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

4.1 Application and purpose

Application

...

4.1.2 G As this chapter applies only to a firm with Part 4A permission, it does not apply to an incoming EEA firm (unless it has a top-up permission). An incoming EEA firm includes a firm which is passporting into the United Kingdom under the Insurance Mediation Directive. [deleted]

...

4.2F Exposures and risk weights

...

Treatment of secured and unsecured portions of residential mortgages

...

4.2F.36 R Exposures to residential property situated in an EEA State or a third-country must be assigned a risk weight of 75% up to a limit of 100% of the value of the property.

...

4.4 Calculation of capital resources

...

Reversion providers: additional requirement for instalment reversions

4.4.10 R (1) If the reversion provider agrees under the terms of an instalment reversion plan to pay the reversion occupier for the qualifying interest in land over a period of time, then the provider must:

(a) take out and maintain adequate insurance from an insurance undertaking authorised in the EEA UK or a person of equivalent status in:
Annex F

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

GUIDANCE: THE PURPOSE OF THE PRUDENTIAL RULES FOR FRIENDLY SOCIETIES AND AN OVERALL DESCRIPTION

...

7A Directive friendly societies should also refer to the PRA Rulebook: Solvency II firms: Conditions Governing Business and the Solvency II Regulation of (EU) 2015/35 of 10 October 2014 which contain systems and control requirements, and the FCA will take these into account.

...

LEGAL COMPLIANCE

2.1 A friendly society must take reasonable steps to ensure that:

[FCA]

[PRA]

...

(b) ...

(ii) any requirement (whether of the law of any part of the United Kingdom or of the law of another EEA State) which gives effect to the insurance Directives implemented the Solvency II Directive or is otherwise applicable to the insurance activities of the friendly society.

...
Annex G

Amendments to the Interim Prudential sourcebook for Insurance Businesses (IPRU(INS))

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

1 Chapter 1: Application Rule

APPLICATION

Insurers

1.1 An insurer must comply with IPRU (INS) unless it is –

[FCA]

[PRA]

…

(b) an EEA insurer or an EEA pure reinsurer qualifying for authorisation under Schedules 3 or 4 to the Act; or [deleted]

…

8 Chapter 8: Non-UK Insurers

…

8.3 An insurer which has its head office outside the United Kingdom (other than a pure reinsurer which has a Treaty right under Schedule 4 to the Act, or a Swiss general insurer) must appoint and maintain the appointment of a chief executive (who alone or jointly with one or more others, is responsible for the conduct of its business through an establishment in the United Kingdom).
Annex H

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

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

1 Application and General provisions

1.2 Application

1.2.3 For the avoidance of doubt, IPRU-INV does not apply to any of the following:

   (e) an incoming EEA firm or an incoming Treaty firm which does not have a top-up permission; or [deleted]
   (f) an insurer; or
   (g) a UCITS qualifier. [deleted]

2 Authorised professional firms

2.1 Application

2.1.7 The activities that a full-scope UK AIFM and a UCITS management company are allowed to perform are restricted by article 6 of AIFMD and article 6 of the UCITS Directive to the management of AIFs and/or UCITS and the additional investment activities permitted by article 6(4) of AIFMD and article 6(3) of the UCITS Directive COLL 6.9.9R and FUND 1.4.3R (as applicable). As such, an authorised professional firm cannot be a collective portfolio management firm or a collective portfolio management investment firm.

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
Appendix 1- Glossary terms for IPRU(INV) 3

approved bank (in relation to a bank account opened by a firm) means:

(b) if the account is opened elsewhere:

(ii) a credit institution established in an EEA State other than the United Kingdom and duly authorised by the relevant Home State regulator; or [deleted]

3-182(5)R Consolidated Supervision

Under the Financial Conglomerates and Other Financial Groups Instrument 2004, the rules in Chapter 14 shall (with respect to a particular firm, group or financial conglomerate) apply from the first day of its financial year beginning in 2005 in place of rules 3-190(1) to 3-195. [deleted]

5 Financial resources

5.1 Application

5.1.1 G (1)

( This chapter applies to an investment management firm, other than:

(i) an incoming EEA firm unless it has a top-up permission for acting as trustee or depositary of a UCITS; or [deleted]

...
5.1.3 R An incoming EEA firm with a top-up permission for acting as trustee or depositary of a UCITS must comply with:

(a) IPRU-INV 5.2.1R;
(b) IPRU-INV 5.2.2R;
(c) IPRU-INV 5.2.3R;
(d) IPRU-INV 5.3.2R;
(e) IPRU-INV 5.4.4R; and
(f) IPRU-INV 5.4.8R. [deleted]

5.2 General requirement

... Financial resources

5.2.3 R A firm’s financial resources means:

(a) its own funds, if the firm is subject to an own funds requirement under IPRU-INV 5.4.2R or IPRU-INV 5.4.4R; or
(b) its liquid capital, if the firm is subject to a liquid capital requirement under IPRU-INV 5.4.1R.

5.4 Financial resources requirement

Determination of requirement

5.4.1 R The financial resources requirement for a firm is a liquid capital requirement, determined in accordance with IPRU-INV 5.4.10R:

(i) unless the firm falls within any of the exceptions in IPRU-INV 5.4.2R; or
(ii) the firm is an incoming EEA firm with a top-up permission of acting as trustee or depositary of a UCITS. [deleted]

Exceptions from the liquid capital requirement

5.4.2 R The financial resources requirement is an own funds requirement determined in accordance with IPRU-INV 5.4.3R for a firm if its permitted business does not include establishing, operating or winding up a personal pension scheme and which:
(ii) is not an exempt CAD firm if:

(c) the firm is a trustee of an authorised unit trust scheme whose permitted business consists only of trustee activities and does not include any other activity constituting specified trustee business or the firm is a depositary of an ICVC or ACS or a depositary appointed in line with FUND 3.11.12R (Eligible depositaries for UK AIFs) or a UK depositary of a non-EEA UK AIF whose permitted business consists only of depositary activities.

Own funds requirement

5.4.3 R The own funds requirement for a firm subject to IPRU-INV 5.4.2R is the higher of:

(i) £4 million for a firm which is a depositary of an authorised fund, if the authorised fund is an AIF;

(ii) £5,000 for any other firm.

5.4.4 R The financial resources requirement for an incoming EEA firm with a top-up permission for acting as trustee or depositary of a UCITS is the own funds requirement in IPRU-INV 5.4.3R(ib).

5.4.5 G In accordance with IPRU-INV 5.4.3R(ib)(A) and IPRU-INV 5.4.4R, a firm which is a depositary of a UCITS scheme has a choice between:

(a) the basic indicator approach in article 315 of the EU UK CRR; and
(b) the standardised approach in article 317 of the EU UK CRR.

5.4.7 G The effect of IPRU-INV 5.4.4R is to apply the financial resources requirement to an incoming EEA firm with a top-up permission for acting as trustee or depositary of a UCITS in relation to its activity in the UK of acting as trustee or depositary of a UCITS. [deleted]

5 App 1 Appendix 5(1): Glossary of terms for IPRU-INV 5

5 App 1.1G

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
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<tbody>
<tr>
<td>qualifying capital item</td>
<td>means that part of a firm’s capital which has the following characteristics:</td>
</tr>
<tr>
<td></td>
<td>...</td>
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<tr>
<td></td>
<td>Note: Verification by internal auditors will suffice until such time as EU provisions making external auditing mandatory have been implemented.</td>
</tr>
<tr>
<td>specified trustee business</td>
<td>...</td>
</tr>
<tr>
<td>2. For the purpose of this definition of “specified trustee business”:</td>
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<tr>
<td>(e) government, local authority or international organisation means:</td>
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<td></td>
<td>...</td>
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<tr>
<td>(iii) an international organisation the members of which include the United Kingdom or another EEA State.</td>
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<td>...</td>
</tr>
</tbody>
</table>
Financial resources requirements for an exempt CAD firm

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:

... (b) professional indemnity insurance covering the whole territory of the EEA UK or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1,000,000 applying to each claim and in aggregate EUR 1,500,000 per year for all claims; or ... 

Initial capital and professional indemnity insurance requirements – exempt CAD firms that are also IMD insurance intermediaries

9.2.5A G Article 4(7) of the Insurance Mediation Directive requires the limits of indemnity to be reviewed every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission. [deleted]

9.2.6 G A trade-off between initial capital and professional indemnity insurance is appropriate such that EUR 1 of initial capital is the equivalent of professional indemnity insurance cover of EUR 20 for a single claim against the firm and EUR 30 in aggregate.

Policy terms for professional indemnity insurance

Insurers whose professional indemnity insurance policies can be used by an exempt CAD firm
9.4.1 R An exempt CAD firm that has professional indemnity insurance in accordance with this chapter must take out and maintain professional indemnity insurance that is at least equal to the requirements of the rule below from:

(1) an insurance undertaking which is authorised to transact professional indemnity insurance in the EEA UK; or

...

11.1 INTRODUCTION

...

Purpose

11.1.4 R ... for an incoming EEA firm or an incoming Treaty firm which does not carry on any PRA-regulated activities, FCA threshold conditions 2C to 2F apply; and

(2) This original purpose of this chapter also was to implement relevant requirements of AIFMD and the UCITS Directive, which includes imposing capital and professional indemnity insurance requirements on a full-scope UK AIFM and a UCITS management company. AIFMD and the UCITS Directive incorporate references to provisions of the Banking Consolidation Directive and the Capital Adequacy Directive in relation to initial capital, own funds and fixed overheads. However, in line with article 163 of the CRD, the Banking Consolidation Directive and the Capital Adequacy Directive are repealed from 1 January 2014 and references to these directives are replaced with references to the CRD and the EU CRR in line with the correlation table set out in Annex II to the CRD and in Annex IV to the EU CRR.

...

11.2 MAIN REQUIREMENTS

11.2.1 R A firm must:

...

(2) at all times, maintain own funds which equal or exceed:

(a) the higher of:

(i) the funds under management requirement (in line with IPRU-INV 11.3.2R); and
(ii) the amount specified in article 97 of the EU UK CRR (Own funds based on fixed overheads) (as replicated in IPRU-INV 11.3.3A EU UK); plus

…

(3) at all times, hold liquid assets (in line with IPRU-INV 11.3.17R) which equal or exceed

(a) the higher of:

(i) the funds under management requirement (in line with IPRU-INV 11.3.2R) less the base own funds requirement (in line with IPRU-INV 11.3.1R); and

(ii) the amount specified in article 97 of the EU UK CRR (Own funds based on fixed overheads); plus

…

11.3 DETAIL OF MAIN REQUIREMENTS

…

Own Funds based on Fixed Overheads

11.3.3A EU UK (1) In accordance with Articles 95 and 96, an investment firm and firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in the UK legislation that implemented points (2) and (4) of Section A of Annex I to Directive 2004/39/EC shall hold eligible capital of at least one quarter of the fixed overheads of the preceding year.

…

…

Professional negligence

11.3.11 G A full-scope UK AIFM should:

(1) cover the professional liability risks set out in article 12 of the AIFMD level 2 regulation (professional liability risks) (as replicated in IPRU-INV 11.3.12 EU UK) by either:

(a) maintaining an amount of own funds in line with article 14 of the AIFMD level 2 regulation (additional own funds) (as replicated in IPRU-INV 11.3.14 EU UK) (the professional negligence capital requirement); or

(b) holding professional indemnity insurance and maintaining an amount of own funds to meet the PII capital requirement
under article 15 of the AIFMD level 2 regulation (professional indemnity insurance) (as replicated in IPRU-INV 11.3.15 EU UK and IPRU-INV 11.3.16R; and

(2) comply with the qualitative requirements addressing professional liability risks in article 13 of the AIFMD level 2 regulation (qualitative requirements addressing professional liability risks) (as replicated in IPRU-INV 11.3.13 EU UK).

Professional liability risks

11.3.12 EU UK

(1) The professional liability risks to be covered pursuant to the UK legislation that implemented Article 9(7) of Directive 2011/61/EU shall be risks of loss or damage caused by a relevant person through the negligent performance of activities for which the AIFM has legal responsibility.

…

Qualitative requirements addressing professional liability risks

11.3.13 EU UK

Additional own funds

11.3.14 EU UK

(4) The competent authority of the home Member State of the AIFM FCA may authorise the AIFM to provide additional own funds lower than the amount referred to in paragraph 2 only if it is satisfied - on the basis of the historical loss data of the AIFM as recorded over an observation period of at least three years prior to the assessment - that the AIFM provides sufficient additional own funds to appropriately cover professional liability risks. The authorised lower amount of additional own funds shall be not less than 0.008 % of the value of the portfolios of AIFs managed by the AIFM.

(5) The competent authority of the home Member State of the AIFM FCA may request the AIFM to provide additional own funds higher than the amount referred to in paragraph 2 if it is not satisfied that the AIFM has sufficient additional own funds to appropriately cover professional liability risks. The competent authority shall give reasons why it considers that the AIFM's additional own funds are insufficient.

…

Professional indemnity insurance
11.3.15 **EU** … **UK**

(2) An AIFM shall take out and maintain at all times professional indemnity insurance that:

…

Any agreed defined excess shall be fully covered by own funds which are in addition to the own funds to be provided in accordance with the *UK legislation that implemented* Article 9(1) and (3) of Directive 2011/61/EU.

…

11.6 **ADDITIONAL REQUIREMENTS FOR COLLECTIVE PORTFOLIO MANAGEMENT INVESTMENT FIRMS**

…

11.6.2 **G** …

(2) Subject to the conditions that the *firm* is not authorised to provide safekeeping and administration in relation to *shares or units* of collective investment undertakings and is not permitted to hold client money or client assets in relation to its MiFID business (and for that reason may not place itself in debt with those clients) competent authorities may allow the *firm* to stay on the capital requirements that would be binding on that firm as at 31 December 2013 under the *UK legislation that implemented* the Banking Consolidation Directive and the Capital Adequacy Directive (in line with article 95(2) of the **UK** CRR). The FCA has exercised this derogation and, as such, a firm meeting those conditions is a BIPRU firm. If the above conditions are not met, a collective portfolio management investment firm is an IFPRU investment firm.

…

12 **Financial resources requirements for operators of electronic systems in relation to lending**

…

12.2 **Financial resources requirements**

…

Financial resources requirement: firms carrying on other regulated activities
12.2.3  R  The financial resources requirement for a firm carrying on one or more regulated activities in addition to operating an electronic system in relation to lending, is the higher of:

…

(2)  the financial resources or own funds requirement which is applied by another rule or by directly applicable legislation of the EU UK to the firm.

…

13  Financial Resources Requirements for Personal Investment Firms

13.1  Application, general requirements and professional indemnity insurance requirements

…

Purpose

…

13.1.3  G  Although financial resources and appropriate systems and controls can generally mitigate operational risk, professional indemnity insurance has a role in mitigating the risks a firm faces in its day-to-day operations, including those arising from not meeting the legally required standard of care when advising on investments. The purpose of the rules in this section is also to ensure that a firm has in place the type, and level, of professional indemnity insurance necessary to mitigate these risks. This includes, in the case of a UK firm exercising an EEA right, cover for breaches of obligations imposed by or under laws, or provisions having the force of law, in each EEA State in which the firm carries on business.

…

Requirement to hold professional indemnity insurance

13.1.5  R  A firm must take out and maintain at all times professional indemnity insurance that is at least equal to the requirements in this section from:

(1)  an insurance undertaking which is authorised to transact professional indemnity insurance in the EEA UK; or

…

…

Limits of indemnity

…
13.1.14  G  Article 4(7) of the Insurance Mediation Directive requires the limits of indemnity to be reviewed every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission. [deleted]

13.1.15  G  If a policy is denominated in any currency other than euros, a firm must take reasonable steps to ensure that the limits of indemnity are, when the policy is effected (i.e. agreed) and at renewal, at least equivalent to those denominated in euros.

...  

Annex A  Limited liability partnerships: Eligible members’ capital

Annex A  Introduction

1

...  

Purpose

Annex A  G  The purpose of this annex is to amplify Principle 8 (Financial resources) which requires a firm to maintain adequate financial resources to meet its investment business commitments and to withstand the risks to which its business is subject. This annex imposes various conditions that must be satisfied for members’ capital to count as “Tier 1” or equivalent grade capital in meeting the limited liability partnership’s financial resources requirement. These conditions are made up of conditions specific to limited liability partnerships and general conditions based for the most part on those set out in article 57 of the Banking Consolidation Directive. This assists in the achievement of the statutory objective of consumer protection.

[Note: BCD Annex V Part 2 point 57]

...  

TP 1  Table: Transitional provisions applying to IPRU(INV)

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
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<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
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<td>Transitional provision : dates in force</td>
<td>Handbook provision: coming into force</td>
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<tr>
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<th>Regulation Code and Description</th>
<th>Action</th>
<th>Start Date</th>
<th>End Date</th>
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</thead>
<tbody>
<tr>
<td>3</td>
<td>IPRU-INV 9.2.5R and IPRU-INV 13.1.4(2)R(b)</td>
<td>R</td>
<td>The new limits of indemnity apply to a professional indemnity policy or a comparable guarantee commenced, renewed or extended with effect from or after 1 March 2009. Any other existing non-annual arrangements must be aligned with the new limits of indemnity before 1 March 2010</td>
<td>1 March 2009 to 28 February 2010</td>
</tr>
<tr>
<td>4</td>
<td>13.1.21 and 13.1.23</td>
<td>R</td>
<td>The requirement to hold additional capital resources where a policy excludes business or activities that have been carried out by the firm in the past or will be carried out by the firm only apply to a professional indemnity policy taken out, renewed or extended with effect from 31 December 2009.</td>
<td>31 December 2009 to 31 December 2010</td>
</tr>
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<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>7</td>
<td>IPRU-INV 11</td>
<td>R</td>
<td>Where a firm falls within regulation 74(1) or 75(1) of the AIFMD UK regulation it need not include AIFs managed by it that</td>
<td>From 22 July 2013 to 22 July 2013</td>
</tr>
<tr>
<td></td>
<td></td>
<td>fall within those regulations in the calculation of its funds under management requirement, professional negligence capital requirement or PII excess capital requirement. [expired]</td>
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</tr>
<tr>
<td>10</td>
<td>IPRU(INV) 12</td>
<td>R</td>
<td>IPRU(INV) 12 does not apply to a firm with an interim permission [expired]</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>IPRU(INV) 12.2.6R(1)</td>
<td>R</td>
<td>The amount is replaced with £20,000 [expired]</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>IPRU(INV) 12.3.5R</td>
<td>R</td>
<td>b = items 1, 4 and 5 in the Table of items which must be deducted in arriving at a firm’s financial resources (see IPRU(INV) 12.3.3R) [expired]</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>IPRU-INV 13.1A.3R(2)</td>
<td>R</td>
<td>A firm applying (b) or (c) above must have initial capital of at least £15,000. [expired]</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>IPRU-INV 13.1A.4R(2)</td>
<td>R</td>
<td>A firm applying (b) or (c) above must have initial capital</td>
<td></td>
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</tbody>
</table>

...
<table>
<thead>
<tr>
<th></th>
<th>Rule Reference</th>
<th>Requirement</th>
<th>Date From</th>
<th>Date To</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>IPRU-INF 13.13.2R(2)(a)</td>
<td>The firm must calculate its capital resources requirement as the higher of: (a) £15,000. [expired]</td>
<td>From 30 June 2016 to 29 June 2017</td>
<td>30 June 2016</td>
</tr>
<tr>
<td>16</td>
<td>IPRU-INF 13.13.3R(2)(a)</td>
<td>The firm must calculate its capital resources requirement as the higher of: (a) £15,000. [expired]</td>
<td>From 30 June 2016 to 29 June 2017</td>
<td>30 June 2016</td>
</tr>
<tr>
<td>17</td>
<td>IPRU-INF 13.15.9R and IPRU-INF 13.15.10R</td>
<td>These rules do not apply to a category B3 firm which is not a network, has fewer than 26 financial advisers or representatives and is not permitted to: (a) carry on discretionary portfolio management; (b) establish, operate or wind up a personal pension scheme; or (c) delegate the activities in (a) or (b) to an investment firm. [expired]</td>
<td>From 30 June 2016 to 29 June 2017</td>
<td>30 June 2016</td>
</tr>
<tr>
<td>18</td>
<td>IPRU(INV) 5.4.3R(i)(ib)</td>
<td>R</td>
<td>A depositary of a UCITS scheme appointed before 18 March 2016 need not calculate its own funds requirement under articles 315 or 317 of the EU CRR. [expired]</td>
<td>From 18 March 2016 until 18 March 2018</td>
</tr>
<tr>
<td>19</td>
<td>IPRU(INV) 5.4.8R</td>
<td>R</td>
<td>A depositary of a UCITS scheme appointed before 18 March 2016 need not comply with IPRU(INV) 5.4.8R. [expired]</td>
<td>From 18 March 2016 to 18 March 2018</td>
</tr>
</tbody>
</table>
Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of:

(1) regulation 3 of the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018; and

(2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

B. This instrument comes into force on [29 March 2019 at 11 p.m].

Amendments to the FCA Handbook

C. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex A to this instrument.

D. The Market Conduct sourcebook (MAR) is amended in accordance with Annex B to this instrument.

Citation

E. This instrument may be cited as the Exiting the European Union: Business Standards Sourcebooks (Amendments) Instrument 201[X].

By order of the Board
[date]
Editor’s notes

(1) The amendments proposed in this instrument relate to the statutory instruments set out in Annex 2 of the accompanying consultation paper and other matters arising from the UK’s withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.

(2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 2 of the consultation paper.

(3) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day, rather than the text of the Handbook in force on 1 July 2018.

(4) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.
Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Application

1.1 General application

Deposits (including structured deposits)

1.1.1A This sourcebook applies to a firm with respect to activities carried on in relation to deposits from an establishment maintained by it, or its appointed representative, in the United Kingdom only as follows:

<table>
<thead>
<tr>
<th>Section / chapter</th>
<th>Application in relation to deposits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule(s) in this sourcebook which implemented articles 24, 25, 26, 28 and 30 of MiFID (and related provisions of the MiFID Delegated Directive) (see COBS 1.1.1ADG).</td>
<td>A MiFID investment firm, a third country investment firm and a MiFID optional exemption firm when selling, or advising a client in relation to, a structured deposit.</td>
</tr>
</tbody>
</table>

1.1.1A EU UK Article 1(2) of the MiFID Org Regulation specifies how its provisions should be read where they apply to firms selling, or advising on, structured deposits.

1(2) References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under (so far as relevant) in Chapters II to IV of this Regulation.

1.1.1A RC A third country investment firm and a MiFID optional exemption firm must also comply with the provisions of the MiFID Org Regulation which relate to the rules which implemented the articles of MiFID referred to in COBS 1.1.1AR(1), as modified by article 1(2) of the MiFID Org Regulation, when selling, or advising a client in relation to, a structured deposit.
1.1.1A G The rules which implemented the provisions of MiFID and the MiFID Delegated Directive referred to in COBS 1.1.1AR(1) can be found in the chapters of COBS in the following table and are followed by a ‘Note:’. 

... 

1.1.5 G PERG 13 contains general guidance on the persons and businesses to which the UK provisions which implemented MiFID apply. 

1.1.6 G PERG 16 contains general guidance on the businesses to which the UK provisions which implemented AIFMD apply. FUND 1 contains guidance on the types of AIFM. 

1.2 Markets in Financial Instruments Directive 

References in COBS to the MiFID Org Regulation 

1.2.1 G (1) This sourcebook contains a number of provisions which transpose transposed MiFID. A rule transposed a provision of MiFID if it is followed by a ‘Note:’ indicating the article of MiFID or the MiFID Delegated Directive which it transposed. 

(2) In order to help firms which are subject to the those requirements of which implemented MiFID to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the directly applicable MiFID Org Regulation, marked with the status letters “EU” “UK”. The authentic provisions of the MiFID Org Regulation are directly applicable to firms in relation to their MiFID business. 

(3) This sourcebook does not reproduce the MiFID Org Regulation in its entirety. A firm to which provisions of the MiFID Org Regulation applies should refer to the electronic version of the Official Journal of the European Union for: MiFID Org Regulation. 

(a) the authentic version of the applicable articles of the MiFID Org Regulation; and 

(b) a comprehensive statement of its obligations under the MiFID Org Regulation. 

... 

1.2.3 R ... 

(2) In this sourcebook, a word or phrase found in a provision marked “EU” “UK” and referred to in column (1) of the table below has
the meaning indicated in the corresponding row of column (2) of the table.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>“derivative”</td>
<td>as defined in article 4(1)(49) of MiFID those financial instruments referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>“group”</td>
<td>as defined in article 4(1)(34) of MiFID section 421 of the Act</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>“professional client covered by Section 1 of Annex II to Directive 2014/65/EU Part 2 of Schedule 1 to Regulation (EU) No 600/2014”</td>
<td>per se professional client</td>
</tr>
<tr>
<td>“professional client in accordance with Section 2 of Annex II to Directive 2014/65/EU Part 3 of Schedule 1 to Regulation (EU) No 600/2014”</td>
<td>elective professional client</td>
</tr>
</tbody>
</table>

1.2.4  G  *Firms* to which provisions of the *MiFID Org Regulation* are applied as if they were *rules* should use the text of any preamble to the relevant provision marked “EU” “UK” to assist in interpreting any such references or cross-references.

**Interpretation – “in good time”**

1.2.5  G  (1)  Certain of the provisions in this sourcebook which *implemented* *MiFID* require *firms* to provide *clients* with information “in good time”.

…
ESMA Guidelines

[Note: ESMA has issued a number of guidelines under article 16(3) of the ESMA Regulation in relation to certain aspects of MiFID. These include:

guidelines on certain aspects of the MiFID suitability requirements which also include guidelines on conduct of business obligations, 21 August 2012/ESMA/2012/387 (EN); See [https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf];

guidelines on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN) - See [https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf]; and

guidelines on complex debt instruments and structured deposits, 4 February 2016/ESMA/2015/1787 (EN) - See [https://www.esma.europa.eu/sites/default/files/library/2015-1787_guidelines_on_complex_debt_instruments_and_structured_deposits.pdf].

Application (see COBS 1.1.2R)

Part 1: What?

Modifications to the general application of COBS according to activities

<table>
<thead>
<tr>
<th></th>
<th>1. Eligible counterparty business</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>R</td>
</tr>
</tbody>
</table>

The COBS provisions shown below do not apply to eligible counterparty business.

<table>
<thead>
<tr>
<th>COBS provision</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td><strong>COBS 4</strong> (other than <strong>COBS 4.2, COBS 4.4.1R, COBS 4.5A.9EU, COBS 4.5A.9UK and COBS 4.7.1AEU, COBS 4.7.1AUK</strong>)</td>
<td>Communicating with clients including financial promotions</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td><strong>COBS 8A</strong> (other than <strong>COBS 8A.1.5EU, COBS 8A.1.5UK</strong> to <strong>COBS 8A.1.8G</strong>)</td>
<td>Client agreements (MiFID provisions)</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td><strong>COBS 12.2.18EU, COBS 12.2.18UK</strong></td>
<td>Labelling of non-independent research</td>
</tr>
</tbody>
</table>
### 5. Consumer credit products

**5.1** R If a firm, in relation to its *MiFID* business, offers an *investment service* as part of a financial product that is subject to other provisions of *EU EU-derived* law related to *credit institutions* and consumer credits with respect to information requirements, that service is not subject to the rules in this sourcebook that implement articles 24(3), (4) and (5) of *MiFID*.  

[Note: article 24(6) of *MiFID*]

---

### 5A. Mortgages and mortgage bonds

**5A.1** R The *rule* in paragraph 5A.2R applies in relation to an *MCD credit agreement* with a *consumer* which is subject to the provisions concerning the creditworthiness assessment of *consumers* in Chapter 6 of the *MCD* (as which were transposed in *MCOB* 11 and *MCOB* 11A).

**5A.2** R If an agreement with a *consumer* within paragraph 5A.1R has as a pre-requisite the provision to that same *consumer* of an *investment service* in relation to mortgage bonds satisfying the conditions in paragraph 5A.3R in order for the loan to be payable, refinanced or redeemed, that *investment service* is not subject to the *rules* in this sourcebook which implement article 25 of *MiFID*.

---

Part 2: Where?

Modifications to the general application according to location

| 1. EEA territorial scope rule: compatibility with European law |
|---|---|---|
| 1.1 | R | (4) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 3 for guidance on this). |
| | | (2) This rule overrides every other rule in this sourcebook. [deleted] |
| 1.2 | R | … |

| 2. Business with UK clients from overseas establishments |
2.2 G One of the effects of the **EEA territorial scope rule** is to override the application of this sourcebook to the overseas establishments of **EEA firms** in a number of cases, including circumstances covered by **MiFID**, the **Distance Marketing Directive** or the **Electronic Commerce Directive**. See Part 3 for guidance on this. [deleted]

---

### Part 3: Guidance

<table>
<thead>
<tr>
<th></th>
<th>The main extensions, modifications and restrictions to the general application</th>
</tr>
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<tbody>
<tr>
<td></td>
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</tr>
<tr>
<td>1.</td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td>The provisions of the <strong>Single Market Directives</strong> and other directives also extensively modify the general application of this sourcebook, particularly in relation to territorial scope. [deleted]</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>1.4</td>
<td><strong>COBS</strong> 18 (Specialist regimes) contains specialist regimes which modify the application of the provisions in this sourcebook for particular types of <strong>firm</strong> and business. To the extent that they are in conflict, the <strong>rules</strong> in <strong>COBS</strong> 18 on the application of the provisions in this sourcebook should be understood as overriding any other provision (whether in <strong>COBS</strong> 1 or an individual chapter) on the application of <strong>COBS</strong>. For the avoidance of doubt, nothing in <strong>COBS</strong> 18 modifies the effect of the <strong>EEA territorial scope rule</strong>.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>The Single Market Directives and other directives [deleted]</td>
</tr>
<tr>
<td>2.1</td>
<td>This guidance provides a general overview only and is not comprehensive.</td>
</tr>
<tr>
<td>2.2</td>
<td>When considering the impact of a directive on the territorial application of a rule, a firm will first need to consider whether the relevant situation involves a non-UK element. The <strong>EEA territorial scope rule</strong> is unlikely to apply if a UK firm is doing business in a UK establishment for a client located in the United Kingdom in relation to a United Kingdom product. However, if there is a non-UK element, the firm should consider whether:</td>
</tr>
<tr>
<td></td>
<td>(1) it is subject to the directive (in general, directives only apply to UK firms and EEA firms, but the implementing provisions may not treat non-EEA firms more favourably than EEA firms);</td>
</tr>
<tr>
<td></td>
<td>(2) the business it is performing is subject to the directive; and</td>
</tr>
<tr>
<td>2.3</td>
<td>G</td>
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<td>---</td>
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</tr>
<tr>
<td>3.</td>
<td>MiFID: effect on territorial scope</td>
</tr>
<tr>
<td>3.1</td>
<td>G</td>
</tr>
<tr>
<td>3.2</td>
<td>G</td>
</tr>
<tr>
<td>3.3</td>
<td>G</td>
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<tr>
<td>3.4</td>
<td>G</td>
</tr>
<tr>
<td>3.5</td>
<td>G</td>
</tr>
<tr>
<td>3.6</td>
<td>G</td>
</tr>
<tr>
<td>4.</td>
<td>Insurance Mediation Directive: effect on territorial scope</td>
</tr>
<tr>
<td>4.1</td>
<td>G</td>
</tr>
</tbody>
</table>
the provision of advice on the basis of a fair analysis. The rules implementing the minimum information and other requirements in articles 12 and 13 of the Directive are set out in COBS 7 (Insurance mediation) and COBS 9 (Suitability (including basic advice)).

<p>| | |</p>
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<tbody>
<tr>
<td>4.2</td>
<td>In the FCA’s view, the responsibility for these minimum requirements rests with the Home State, but a Host State is entitled to impose additional requirements within the Directive’s scope in the ‘general good’. Accordingly, the general rules on territorial scope are modified so that:</td>
</tr>
<tr>
<td>(1)</td>
<td>for a UK firm providing passported activities through a branch in another EEA State under the Directive, the rules implementing the Directive’s minimum requirements apply but the territorial scope of the additional rules within the Directive’s scope is not modified;</td>
</tr>
<tr>
<td>(2)</td>
<td>for an EEA firm providing passported activities under the Directive in the United Kingdom, the rules implementing the Directive’s minimum requirements do not apply, but the additional rules within the Directive’s scope have their unmodified territorial scope unless the Home State imposes measures of like effect. (See recital 19 and article 12(5) of the Insurance Mediation Directive)</td>
</tr>
</tbody>
</table>

5. Solvency II Directive: effect on territorial scope [deleted]

| 5.1 | The Solvency II Directive’s scope covers long-term insurers. The rules in this sourcebook within the Directive’s scope are the cancellation rules (COBS 15) and those rules requiring the provision of pre-contract information or information during the term of the contract concerning the insurer or the contract of insurance. The Directive specifies minimum information and cancellation requirements and permits EEA States to adopt additional information requirements that are necessary for a proper understanding by the policyholder of the essential elements of the commitment. |
| 5.2 | If the State of the commitment is an EEA State, the Directive provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the State of the commitment is the United Kingdom, the relevant rules in this sourcebook apply. Those rules do not apply if the State of the commitment is another EEA State. The territorial scope of other rules, in particular the financial promotion rules, is not affected since the Directive explicitly permits EEA States to apply rules, including advertising rules, in the ‘general good’. (See articles 156, 180, 185 and 186 of the Solvency II Directive) |
6.1 | G | In broad terms, a firm is within the Distance Marketing Directive’s scope when conducting an activity relating to a distance contract with a consumer. The rules in this sourcebook within the Directive’s scope are those requiring the provision of pre-contract information, the cancellation rules (COBS 15) and the other specific rules implementing the Directive contained in COBS 5 (Distance communications).

6.2 | G | In the FCA’s view, the Directive places responsibility for requirements within the Directive’s scope on the Home State except in relation to business conducted through a branch, in which case the responsibility rests with the EEA State in which the branch is located (this is sometimes referred to as a ‘country of origin’ or ‘country of establishment’ basis). (See article 16 of the Distance Marketing Directive)

6.3 | G | This means that relevant rules in this sourcebook will, in general, apply to a firm conducting business within the Directive’s scope from an establishment in the United Kingdom (whether the firm is a national of the UK or of any other EEA or non-EEA state).

6.4 | G | Conversely, the territorial scope of the relevant rules in this sourcebook is modified as necessary so that they do not apply to a firm conducting business within the Directive’s scope from an establishment in another EEA state if the firm is a national of the United Kingdom or of any other EEA state.

6.5 | G | In the FCA’s view:

(1) the ‘country of origin’ basis of the Directive is in line with that of the Electronic Commerce Directive; (See recital 6 of the Distance Marketing Directive)

(2) for business within the scope of both the Distance Marketing Directive and the Solvency II Directive, the territorial application of the Distance Marketing Directive takes precedence; in other words, the rules requiring pre-contract information and cancellation rules (COBS 15) derived from the Solvency II Directive apply on a ‘country of origin’ basis rather than being based on the State of the commitment; (See articles 4(1) and 16 of the Distance Marketing Directive)

(3) for business within the scope of both the Distance Marketing Directive and the Insurance Mediation Directive, the minimum information and other requirements in the Insurance Mediation Directive continue to be those applied by the ‘Home State’, but the
minimum requirements in the *Distance Marketing Directive* and any additional pre-contract information requirements are applied on a ‘country of origin’ basis. (The basis for this is that the *Insurance Mediation Directive* was adopted after the *Distance Marketing Directive* and is not expressed to be subject to it.)

<p>| | |</p>
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<tbody>
<tr>
<td>7.</td>
<td><strong>Electronic Commerce Directive: effect on territorial scope</strong> [deleted]</td>
</tr>
<tr>
<td>7.1</td>
<td><strong>G</strong> The <em>Electronic Commerce Directive</em>’s scope covers every firm carrying on an electronic commerce activity. Every rule in this sourcebook is within the Directive’s scope.</td>
</tr>
<tr>
<td>7.2</td>
<td><strong>G</strong> A key element of the Directive is the ability of a person from one EEA state to carry on an electronic commerce activity freely into another EEA state. Accordingly, the territorial application of the rules in this sourcebook is modified so that they apply at least to a firm carrying on an electronic commerce activity from an establishment in the United Kingdom with or for a person in the United Kingdom or another EEA state. Conversely, a firm that is a national of the UK or another EEA State, carrying on an electronic commerce activity from an establishment in another EEA State with or for a person in the United Kingdom need not comply with the rules in this sourcebook. (See article 3(1) and (2) of the <em>Electronic Commerce Directive</em>)</td>
</tr>
<tr>
<td>7.3</td>
<td><strong>G</strong> The effect of the Directive on this sourcebook is subject to the ‘insurance derogation’, which is the only ‘derogation’ in the Directive that the FCA has adopted for this sourcebook. The derogation applies to an insurer that is authorised under and carrying on an electronic commerce activity within the scope of the <em>Solvency II Directive</em> and permits EEA States to continue to apply their advertising rules in the ‘general good’. Where the derogation applies, the financial promotion rules continue to apply for incoming electronic commerce activities (unless the firm’s ‘country of origin’ applies rules of like effect) but do not apply for outgoing electronic commerce activities. (See article 3(3) and Annex, fourth indent of the <em>Electronic Commerce Directive</em>; Annex to European Commission Discussion Paper MARKT/2541/03)</td>
</tr>
<tr>
<td>7.4</td>
<td><strong>G</strong> In the FCA’s view, the Directive’s effect on the territorial scope of this sourcebook (including the use of the ‘insurance derogation’):</td>
</tr>
<tr>
<td></td>
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<tr>
<td>7.5</td>
<td><strong>G</strong> The ‘derogations’ in the Directive may enable other EEA States to adopt a different approach to the United Kingdom in certain fields.</td>
</tr>
</tbody>
</table>

8. Investor Compensation Directive [deleted]

<table>
<thead>
<tr>
<th>Section</th>
<th>Notes</th>
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</table>
| 8.1 | The Investor Compensation Directive generally requires MiFID investment firms to belong to a compensation scheme established in accordance with the Directive. The rules in this sourcebook that implement the Directive are those (i) requiring MiFID investment firms, including their branches, to make available specified information about the compensation scheme to which they belong and specifying the language in which such information must be provided (COBS 6.1.16 R) and (ii) restricting mention of the compensation scheme in advertising to factual references (COBS 4.2.5G).

(2) In the FCA’s view, these matters are a Home State responsibility although a Host State may continue to apply its own rules in the ‘general good’. Accordingly, these rules apply to the establishments of a UK MiFID investment firm in the United Kingdom and another EEA State but also apply in accordance with their standard territorial scope to an EEA MiFID investment firm providing services in the UK unless its Home State applies rules of like effect.

9. UCITS Directive: effect on territorial scope [deleted]

<table>
<thead>
<tr>
<th>Section</th>
<th>Notes</th>
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</thead>
</table>
| 9.1 | The UCITS Directive covers undertakings for collective investment in transferable securities (UCITS) meeting the requirements of the Directive, and their management companies and depositaries. The rules in this sourcebook within the Directive’s scope (all of which will apply to a management company) are those in:

(1) COBS 2.1 (Acting honestly, fairly and professionally);
(2) COBS 2.3 (Inducements);
(3) COBS 4.2.1R (The fair, clear and not misleading rule);
(4) COBS 4.3.1R (Financial promotions to be identifiable as such);
(5) COBS 4.13 (UCITS);
(6) COBS 11.2B (Best execution for UCITS management companies);
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<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td><strong>COBS 11.3 (Client order handling):</strong></td>
</tr>
<tr>
<td></td>
<td><strong>COBS 11.7 (Personal account dealing):</strong></td>
</tr>
<tr>
<td></td>
<td><strong>COBS 14 (Providing product information to clients) relating to the provision of key investor information by the management company (in addition to applying to a management company. COBS 14.2 also applies to an ICVC that is a UCITS scheme); and</strong></td>
</tr>
<tr>
<td></td>
<td><strong>COBS 16.2 (Occasional reporting):</strong></td>
</tr>
</tbody>
</table>

**9.1 A** The majority of the **COBS rules** referred to in paragraph 9.1 are rules of conduct which each **EEA State** must draw up under article 14.1 of the **UCITS Directive** which **management companies** authorised in that State must observe at all times. The exceptions are **COBS 4 and COBS 14** in so far as they relate to a **UCITS** scheme, which form part of the FCA’s fund application rules and which are the responsibility of the **UCITS Home State** (for a **UCITS** scheme, the FCA – see **COLL 12.3.5R** (**COLL** fund rules under the management company passport: the fund application rules) and article 19 of the **UCITS Directive**).

**9.1B** Where a **management company** is providing **collective portfolio management services** for a **UCITS** established in a different **EEA State**, responsibility for its compliance with the applicable rules of conduct drawn up under article 14 will generally be for the management company’s **Home State**, but when a branch is established it will be the responsibility of the **Host Member State (UCITS Home State)** (see articles 17(4) and 17(5) of the **UCITS Directive**).

**9.1C** Under the **UCITS Directive** certain **Host State marketing and MiFID-specific rules** might also apply to a **management company providing collective portfolio management services** for a **UCITS** established in a different **EEA State**. Consequently, an **EEA UCITS management company** should note that, under **COBS** certain of the FCA’s rules apply to it, including the **financial promotion rules. COBS 4.13 (UCITS)** is concerned with marketing communications for **UCITS schemes** and **EEA UCITS schemes**.

**9.1D** **EEA UCITS management companies** should be aware that there is a special narrower application of **COBS** for **scheme management activity** provided for by **COBS 18.5B (UCITS management companies).**

**9.2** [deleted]
9.3 G The Directive does not affect the territorial scope of rules as they apply to an intermediary (that is not a management company) selling units of a UCITS.

[Note: articles 12, 14, 17, 18, 19 and 94 of the UCITS Directive]

10. AIFMD: effect on territorial scope [deleted]

10.1 G PERG-16 contains general guidance on the businesses to which AIFMD applies. FUND-1 contains guidance on the types of AIFM.

10.2 G The only rule in this sourcebook which implements AIFMD is COBS 2.1.4R, which applies to:

(1) a full-scope UK AIFM operating from an establishment in the UK or a branch in another EEA State; and

(2) an incoming EEA AIFM branch.

10.3 G The other rules in COBS which apply to a full-scope UK AIFM or incoming EEA AIFM (including an AIFM qualifier) fall outside the scope of AIFMD and are, therefore, not affected by its territorial scope.

10.4 G Incoming EEA AIFM branches should be aware that there is a special narrower application of COBS for AIFM investment management functions provided for by COBS 18.5A (Full-scope UK AIFMs and incoming EEA AIFM branches).

2 Conduct of business obligations

2.1 Acting honestly, fairly and professionally

The client's best interests rule

2.1.1 R …

(3) For a management company, this rule applies in relation to any UCITS scheme or EEA UCITS scheme the firm manages.

[Note: article 24(1) of MiFID and article 14(1)(a) and (b) of the UCITS Directive]

…

AIFMs' best interests rules

2.1.4 R A full-scope UK AIFM and an incoming EEA AIFM branch must, for all AIFs it manages:
[Note: article 12(1)(a), (b) and (f) and article 12(1) last paragraph of AIFMD]

2.3 Inducements relating to business other than MiFID, equivalent third country or optional exemption business

Rule on inducements

2.3.1 R A firm must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to designated investment business carried on for a client other than:

... 

(2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, if:

... 

(b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, before the provision of the service;

(i) this requirement only applies to business other than the carrying on by a UK UCITS management company or EEA UCITS management company of the collective portfolio management activities of investment management and administration for the relevant scheme if it includes:

... 

(ii) where this requirement applies to business other than the carrying on by a UK UCITS management company or EEA UCITS management company of the collective portfolio management activities of investment management and administration for the relevant scheme, a firm is not required to make a disclosure to the client in relation to a non-monetary benefit permitted under (a) and which falls within the table of reasonable non-
monetary benefits in COBS 2.3.15G as though that table were part of this rule for this purpose only;

…

(c) in relation to the carrying on by a UK UCITS management company or EEA UCITS management company of the collective portfolio management activities of investment management and administration for the relevant scheme or when carrying on a regulated activity in relation to a retail investment product, or when advising on P2P agreements, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the client; or

…

[Note: articles 29(1) and 29(2) of the UCITS implementing Directive]

2.3.1A R COBS 2.3.1R applies to a UK UCITS management company and EEA UCITS management company when providing collective portfolio management services, as if references to a client, were references to any UCITS it manages.

[Note: article 29(1) of the UCITS implementing Directive]

…

2.3.2A R COBS 2.3.2R applies to a UK UCITS management company and EEA UCITS management company when providing collective portfolio management services, as if references to a client were references to a Unitholder of the scheme.

[Note: article 29(2) of the UCITS implementing Directive]

…

2.3A Inducements relating to MiFID, equivalent third country or optional exemption business

…

2.3A.1 R 3 In implementing the requirements of COBS 2.3A.10R to COBS 2.3A.12R, a firm must take into account the costs and charges rules set out in article 24(4)(c) of MiFID COBS 6.1ZA.11R and COBS 6.1ZA.12R and article 50 of the MiFID Org Regulation (see COBS 6.1ZA.11R to COBS 6.1ZA.13R and COBS 6.1ZA.14EU 6.1ZA.14UK).

[Note: article 11(5) of the MiFID Delegated Directive]
Acceptable minor non-monetary benefits

2.3A.1 R An acceptable minor non-monetary benefit is one which:

(1) is clearly disclosed prior to the provision of the relevant service to the client, which the firm may describe in a generic way (where applicable, in accordance with article 11(5)(a) of the MiFID Delegated Directive (see COBS 2.3A.10R));

...

2.3C Research and execution services

Application

2.3C.1 R This section applies to an investment firm providing execution services to:

...

(2) an investment firm authorised under the UK provisions which implemented MiFID that is not within (1); or

...

(7) an incoming EEA AIFM branch; or [deleted]

...

2.4 Agent as client and reliance on others

...

2.4.2 G This section is not relevant to, nor does it affect:

...

(3) any obligation imposed on a firm by article 26 of MiFIR or RTS 22 MiFID RTS 22.

...

Reliance on other investment firms: MiFID and equivalent business

2.4.4 R (1) This rule applies if a firm (F1), in the course of performing MiFID or equivalent third country business, receives an instruction to
provide an investment or ancillary service on behalf of a client (C) through another firm (F2), if F2 is:

…

(b) an investment firm that is:

(i) a firm or authorised in another EEA State; and

(ii) subject to equivalent relevant requirements.

2.4.5 G (1) If F1 is required to perform a suitability assessment or an appropriateness assessment under COBS 9A or COBS 10A, it may rely upon a suitability assessment performed by F2, if F2 was subject to the requirements for assessing suitability in COBS 9A (excluding the basic advice rules) or equivalent requirements in another EEA State in performing that assessment.

(2) If F1 is required to perform an appropriateness assessment under COBS 10A, it may rely upon an appropriateness assessment performed by F2, if F2 was subject to the requirements for assessing appropriateness in COBS 10A.2 or equivalent requirements in another EEA State in performing that assessment.

3 Client categorisation

3.1 Application

…

3.1.2A R Subject to COBS 3.1.3R and COBS 3.6.4CR, in this chapter provisions marked “EU” “UK” apply to a firm’s business other than MiFID business as if they were rules.

3.2 Clients

General definition

3.2.1 R …

(4) A client of an appointed representative or, if applicable, a tied agent is a “client” of the firm for whom that appointed representative, or tied agent, acts or intends to act in the course of business for which that firm has accepted responsibility under the Act or MiFID (see sections 39 and 39A of the Act and SUP 12.3.5R).
3.3 General notifications

3.3.1A EU UK Articles 45(1) and (2) of the MiFID Org Regulation require firms to provide clients with specified information concerning client categorisation.

45(1) Investment firms shall notify new clients, and existing clients that the investment firm has newly categorised as required by Directive 2014/65/EU UK law on markets in financial instruments, of their categorisation as a retail client, a professional client or an eligible counterparty in accordance with that Directive.

3.3.1B R The information referred to in article 45(2) of the MiFID Org Regulation (as reproduced at COBS 3.3.1A EU 3.3.1A UK) must be provided to clients prior to any provision of services.

[Note: paragraph 2 of section I of annex II to MiFID]

3.5 Professional clients

Per se professional clients

3.5.2 R Each of the following is a per se professional client unless and to the extent it is an eligible counterparty or is given a different categorisation under this chapter:

(1) an entity required to be authorised or regulated to operate in the financial markets. The following list includes all authorised entities carrying out the characteristic activities of the entities mentioned, whether authorised by an EEA State in the UK or a third country and whether or not authorised by reference to a directive:

...
(2) The relevant “quantitative test” under this rule is either:

   (a) where the local public authority or municipality is established in an EEA State and the EEA State has adopted alternative or additional criteria to those listed in the fifth paragraph to section II.1 of annex II to MiFID, those criteria as set out in the law or measures of that EEA State;

   or

   (b) in any other case the same “quantitative test” that is applied in relation to MiFID or equivalent third country business under COBS 3.5.3R(2). [deleted]

...

3.5.5 G The fitness test applied to managers and directors of entities licensed under directives in the financial field relevant firms is an example of the assessment of expertise and knowledge involved in the qualitative test.

[Note: fourth paragraph of section II.1 of annex II to MiFID]

...

3.6 Eligible counterparties

...

Per se eligible counterparties

3.6.2 R Each of the following is a per se eligible counterparty (including an entity that is not from an EEA State the UK that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:

   ...

   (4) a collective investment scheme authorised under the UK provisions which implemented the UCITS Directive or its management company;

   ...

   (6) another financial institution authorised or regulated under EU legislation or the national law of an EEA State under the law of the United Kingdom;

   ...

...

Elective eligible counterparties
3.6.4 R A firm may treat a client as an elective eligible counterparty in relation to business other than MiFID or equivalent third country business if:

…

(2) the firm adheres to the procedure set out at COBS 3.6.4BEU 3.6.4BUK.

3.6.4A R Provided that it adheres to the procedure set out at COBS 3.6.4BEU 3.6.4BUK, a firm may treat a client as an elective eligible counterparty in relation to MiFID or equivalent third country business if the client:

…

3.6.4B EU UK Article 71(5) of the MiFID Org Regulation sets out the procedure to be followed where a client requests to be treated as an eligible counterparty.

71(5) Where a client requests to be treated as an eligible counterparty, in accordance with Article 30(3) of Directive 2014/65/EU [COBS 3.6.4AR], the following procedure shall be followed:

…

3.6.5 G The categories of elective eligible counterparties include an equivalent undertaking that is not from an EEA State the United Kingdom provided the above conditions and requirements are satisfied.

Client and firm located in different jurisdictions

3.6.7 R In the case of MiFID or equivalent third country business, in the event of a transaction where the prospective counterparties are located in different EEA States, the firm shall defer to the status of the other undertaking as determined by the law or measures of the EEA State in which that undertaking is established. [deleted]

[Note: first paragraph of article 30(3) of MiFID]

3.7 Providing clients with a higher level of protection

…

3.7.3A EU UK Article 45(3) of the MiFID Org Regulation sets out provisions in respect of giving clients a higher level of protection.

45(3) Investment firms may, either on their own initiative or at the request of the client concerned treat a client in the following manner:
(a) as a professional or retail client where that client might otherwise be classified as an eligible counterparty pursuant to Article 30(2) of Directive 2014/65/EU [COBS 3.6.2R];

(b) a retail client where that client that is considered a professional client pursuant to Section I of Annex II to Directive 2014/65/EU Part 2 of Schedule 1 to Regulation (EU) No 600/2014.

3.7.3B EU UK Article 71(2) to (4) of the MiFID Org Regulation sets out provisions applying to eligible counterparties requesting a higher level of protection.

71(2) Where, pursuant to the second subparagraph of Article 30(2) of that Directive 2014/65/EU [COBS 3.7.1R], an eligible counterparty requests treatment as a client whose business with an investment firm is subject to Articles 24, 25, 27 and 28 of that Directive rules in the Conduct of Business; Market Conduct; Senior Management Arrangements, Systems and Controls and the Product Intervention and Product Governance sourcebooks which were relied on immediately before exit day to implement Articles 24, 25, 27 and 28 of Directive 2014/65/EU (“the relevant rules”), the request should be made in writing, and shall indicate whether the treatment as retail client or professional client refers to one or more investment services or transactions, or one or more types of transaction or product.

(3) Where an eligible counterparty requests treatment as a client whose business with an investment firm is subject to Articles 24, 25, 27 and 28 of Directive 2014/65/EU the relevant rules, but does not expressly request treatment as a retail client, the firm shall treat that eligible counterparty as a professional client.

(4) Where the eligible counterparty expressly requests treatment as a retail client, the investment firm shall treat the eligible counterparty as a retail client, applying the provisions in respect of requests of non-professional treatment specified in the second, third and fourth sub paragraphs of Section I of Annex II to Directive 2014/65/EU paragraph 3(b), (c), (d) and 4 of Schedule 1 to Regulation (EU) No 600/2014.

4 Communicating with clients, including financial promotions

4.1 Application

...
with European law. This means that in a number of cases, the rules in this chapter will apply to communications made by UK firms to persons located outside the United Kingdom and will not apply to communications made to persons inside the United Kingdom by EEA firms. Further guidance on this is located in COBS 1 Annex 1.

(2) One effect of the EEA territorial scope rule is that the rules in this chapter will not generally apply to an EEA key investor information document but will, for example, apply to a firm (including an EEA UCITS management company) when marketing in the United Kingdom the units of an EEA UCITS scheme that is a recognised scheme.

(3) The financial promotion rules do not apply to incoming communications in relation to the MiFID business of an investment firm from another EEA State that are, in its home member state, regulated under MiFID other than to the extent COBS 4.12 (Restrictions on the promotion of non-mainstream pooled investments) applies. [deleted]

4.5A Communicating with clients (including past, simulated past and future performance) (MiFID provisions)

4.5A.2 R Provisions in this section marked “EU” “UK” apply in relation to MiFID optional exemption business as if they were rules (see COBS 1.2.2G).

4.5A.2 G The effect of GEN 2.2.22AR is that provisions in this section marked “EU” “UK” also apply in relation to the equivalent business of a third country investment firm as if they were rules.

General requirements

| 4.5A.3 | EU | … |
| 4.5A.3 | UK | … |

Comparative information

| 4.5A.7 | EU | … |
| 4.5A.7 | UK | … |

Referring to tax

| 4.5A.8 | EU | … |
| 4.5A.8 | UK | … |
Consistent financial promotions

4.5A.9 EU ... 

UK

Past performance

4.5A.1 EU 44(4) Where the information contains an indication of past performance of a financial instrument, a financial index or an investment service, investment firms shall ensure that the following conditions are satisfied:

(a) that indication is not the most prominent feature of the communication;

(b) the information must include appropriate performance information which covers the preceding 5 years, or the whole period for which the financial instrument has been offered, the financial index has been established, or the investment service has been provided where less than five years, or such longer period as the firm may decide, and in every case that performance information is based on complete 12-month periods;

(c) the reference period and the source of information is clearly stated;

(d) the information contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;

(e) where the indication relies on figures denominated in a currency other than that of the Member State in which the retail client or potential retail client is resident pounds sterling, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

(f) where the indication is based on gross performance, the effect of commissions, fees or other charges are disclosed.

[Note: article 44(4) of the MiFID Org Regulation]

... 

Simulated past performance

4.5A.1 EU ... 

UK
For the purposes of COBS 4.5A.12EU 4.5A.12UK, the conditions referred to in article 44(5)(b) can be found reproduced in COBS 4.5A.10EU 4.5A.10UK.

Future performance

A firm should not provide information on future performance if it is not able to obtain the objective data needed to comply with the requirements regarding information on the future performance in COBS 4.5A.14EU 4.5A.14UK. For example, objective data in relation to EIS shares may be difficult to obtain.

Information that uses the name of any competent authority

Past, simulated past and future performance (non-MiFID provisions)

Past performance

A firm must ensure that information that contains an indication of past performance of relevant business, a relevant investment or a financial index, satisfies the following conditions:

(5) if the indication relies on figures denominated in a currency other than that of the EEA State in which the retail client is resident pounds sterling, the currency is clearly stated, together with a warning that the return may increase or decrease as a result of currency fluctuations;

4.7 Direct offer financial promotions

Application

(1) COBS 4.7.1AEU 4.7.1AUK to COBS 4.7.1R contain provisions on the communication of direct offer financial promotions.

(2) In broad terms:
(a)  

**COBS 4.7.1AEU 4.7.1AUK** is relevant to a firm communicating a direct offer financial promotion in relation to its MiFID, equivalent third country or optional exemption business; and

(b)  …

(3)  However, a MiFID investment firm, third country investment firm or MiFID optional exemption firm which is subject to the requirements in **COBS 4.7.1AEU 4.7.1AUK** may be subject to the rule in **COBS 4.7.1R** to the extent that it communicates a direct offer financial promotion:

…

Direct offer financial promotions relating to MiFID, equivalent third country or optional exemption business

4.7.-1A EU 46(6) UK  …

Effect of provisions marked “EU” UK for third country investment firms and MiFID optional exemptions firms

4.7.-1B R  Provisions in this section marked “EU” “UK” apply in relation to MiFID optional exemption business as if they were rules (see COBS 1.2.2G).

4.7.-1C G  The effect of GEN 2.2.22AR is that provisions in this section marked “EU” “UK” also apply in relation to the equivalent business of a third country investment firm as if they were rules.

4.7.-1D G  For the purposes of **COBS 4.7.1AEU 4.7.1AUK**, the provisions of articles 47 to 50 of the MiFID Org Regulation can be found reproduced in COBS 6.1ZA and COBS 14.3A.

…

4.7.5A G  **COBS 4.13.2R** (Marketing communications relating to UCITS schemes or EEA UCITS schemes) and **COBS 4.13.3R** (Marketing communications relating to feeder UCITS) contain additional disclosure requirements for firms in relation to marketing communications (other than key investor information) that concern particular investment strategies of a UCITS scheme or EEA UCITS scheme.

…

**4.13 UCITS**

Application
4.13.1 R (1) This section applies to a firm in relation to a communication to a client, including an excluded communication, that is a marketing communication within the meaning of the UCITS Directive.

(2) This section does not apply to:

(a) image advertising; or

(b) the instrument constituting the fund, the prospectus, the key investor information or the periodic reports and accounts of either a UCITS scheme or an EEA UCITS scheme.

…

Marketing communications relating to UCITS schemes or EEA UCITS schemes

4.13.2 R (1) A firm must ensure that a marketing communication that comprises an invitation to purchase units in a UCITS scheme or EEA UCITS scheme and that contains specific information about the scheme:

(a) makes no statement that contradicts or diminishes the significance of the information contained in the prospectus and the key investor information document or EEA key investor information document for the scheme;

(b) indicates that a prospectus exists for the scheme and that the key investor information document or EEA key investor information document is available; and

(c) specifies where and in which language such information or documents may be obtained by investors or potential investors or how they may obtain access to them.

(2) Where a UCITS scheme or an EEA UCITS scheme may invest more than 35% of its scheme property in transferable securities and money market instruments issued or guaranteed by the United Kingdom or an EEA State, one or more of its local authorities, a third country or a public international body to which the United Kingdom or one or more EEA States belong, the firm must ensure that a marketing communication relating to the scheme contains a prominent statement drawing attention to the investment policy and indicating the particular EEA States countries, local authorities, third countries or public international bodies in the securities of which the scheme intends to invest or has invested more than 35% of its scheme property.

(3) Where a UCITS scheme or EEA UCITS scheme invests principally in units in collective investment schemes, deposits or derivatives, or replicates a stock or debt securities index in accordance with COLL 5.2.31R (Schemes replicating an index) or equivalent national measures implementing article 53 of the UCITS Directive, the firm
must ensure that a marketing communication relating to the scheme contains a prominent statement drawing attention to the investment policy.

(4) Where the net asset value of a UCITS scheme or EEA UCITS scheme has, or is likely to have, high volatility owing to its portfolio composition or the portfolio management techniques that are or may be used, the firm must ensure that a marketing communication relating to the scheme contains a prominent statement drawing attention to that characteristic.

[Note: articles 54(3), 70(2), 70(3) and 77 of the UCITS Directive]

Marketing communications relating to a feeder UCITS

4.13.3 R A firm must ensure that a marketing communication (other than a key investor information document or EEA key investor information document) relating to a feeder UCITS contains a statement that the feeder UCITS permanently invests at least 85% in value of its assets in units of its master UCITS.

[Note: article 63(4) of the UCITS Directive]

…

6 Information about the firm, its services and remuneration

6.1 Information about the firm and compensation information (non-MiFID provisions)

…

Information about a firm and its services

6.1.4 R A firm must provide a client with the following general information, if relevant:

…

(4) a statement of the fact that the firm is authorised and the name of the competent authority that has authorised it by the FCA or the PRA, as applicable:

…

Information concerning safeguarding of designated investments belonging to clients and client money

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6.1.7  R  (1)  A firm that holds designated investments or client money for a client subject to the custody chapter or the client money chapter must provide that client with the following information:

…

(d) if applicable, that accounts that contain designated investments or client money belonging to that client are or will be subject to the law of a jurisdiction other than that of a EEA State the United Kingdom, an indication that the rights of the client relating to those instruments or money may differ accordingly;

(e) …

…

6.1ZA  Information about the firm and compensation information (MiFID provisions)

…

Effect of provisions marked “EU” “UK” for third country investment firms and MiFID optional exemption firms

6.1ZA.  R  Provisions in this section marked “EU” “UK” apply in relation to MiFID optional exemption business as if they were rules (see COBS 1.2.2G).

6.1ZA.  G  The effect of GEN 2.2.22AR is that provisions in this section marked “EU” “UK” also apply in relation to the equivalent business of a third country investment firm as if they were rules.

[Note: ESMA has issued guidelines under article 16(3) of the ESMA Regulation on cross-selling practices, 11 July 2016/ESMA/2016/574 (EN). See https://www.esma.europa.eu/sites/default/files/library/2016-574_en_guidelines_on_cross-selling_practices.pdf]

Information about a firm and its services

6.1ZA.  EU 47(1) Investment firms shall provide clients or potential clients with the following general information, where relevant:

…

(e) where the investment firm is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered;

(f) the nature, frequency and timing of the reports on the performance of the service to be provided by the investment
firm to the client in accordance with Article 25(6) of Directive 2014/65/EU [COBS 9A.3.2R and COBS 16A.2.1R];

(g) where the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in a Member State the United Kingdom;

...
agree to a limited application of the detailed requirements set out in this Article with these clients. Investment firms shall not be allowed to agree such limitations when the services of investment advice or portfolio management are provided or when, irrespective of the investment service provided, the financial instruments concerned embed a derivative.

Without prejudice to the obligations set out in Article 24(4) of Directive 2014/65/EU the relevant rule, investment firms providing investment services to eligible counterparties shall have the right to agree to a limited application of the detailed requirements set out in this Article, except when, irrespective of the investment service provided, the financial instruments concerned embed a derivative and the eligible counterparty intends to offer them to its clients. …

50(5) The obligation to provide in good time a full ex-ante disclosure of information about the aggregated costs and charges related to the financial instrument and to the investment or ancillary service provided shall apply to investment firms in the following situations:

(a) …

(b) where the investment firm providing any investment services is required to provide clients with a UCITS KIID or PRIIPs KID in relation to the relevant financial instruments, in accordance with relevant Union legislation.

50(6) Investment firms that do not recommend or market a financial instrument to the client or are not obliged to provide the client with a KID/KIID in accordance with relevant Union legislation shall inform their clients about all costs and charges relating to the investment and/or ancillary service provided.

…

Timing of disclosure

6.1ZA. EU 17

6.1ZA. UK

6.1ZA. G 18

The following provisions of COBS reproduce the information requirements contained in Articles 47 to 50 of the MiFID Org Regulation: COBS 6.1ZA.5EU 6.1ZA.5UK, COBS 6.1ZA.8EU 6.1ZA.8UK, COBS 6.1ZA.9EU 6.1ZA.9UK, COBS 6.1ZA.2.14EU 6.1ZA.14UK, and COBS 14.3A.5EU 14.3A.5UK.
Medium of disclosure

6.1ZA. EU UK ...

Keeping the client up to date

6.1ZA. EU UK ...

...

6.2B Describing advice services

...

Introduction

6.2B.5 G This section transposes transposed provisions in MiFID on describing advice services relating to financial instruments and structured deposits for all clients and reproduces a number of provisions of the directly applicable MiFID Org Regulation as explained in COBS 1.2. The requirements apply in relation to MiFID, equivalent third country or optional exemption business. The requirements are extended to apply to other investment advice and cover other retail investment products when the client is a retail client in the United Kingdom.

...

Interpretation of EU provisions marked “UK”: MiFID business

6.2B.7 R A firm must treat obligations in relation to financial instruments as extending to other retail investment products when complying with the provisions in this section marked “EU” “UK” in the course of MiFID business with a retail client in the United Kingdom.

6.2B.8 G References to financial instruments include structured deposits (but not other retail investment products) when a firm is complying with the provisions in this section marked “EU” “UK” in the course of MiFID business with a retail client outside the United Kingdom or with a professional client.

...

Interpretation of EU provisions marked “UK”: non-MiFID business

6.2B.9 R In relation to business that is not MiFID business, a firm must comply with provisions in this section marked “EU” “UK” as if they were rules but:

(1) ...

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(2) (for business that is not equivalent business of a third country investment firm or MiFID optional exemption business) the firm need not comply with the following provisions of the MiFID Org Regulation:

(a) the requirement in paragraph 2 of article 52(1) of the MiFID Org Regulation (reproduced in COBS 6.2B.32EU 6.2B.32UK) not to give undue prominence to their independent advice services;

(b) the requirement in article 52(4) of the MiFID Org Regulation (reproduced in COBS 6.2B.36EU 6.2B.36UK) to distinguish the range of financial instruments issued or provided by entities not being closely linked with the firm; and

(c) the requirement in article 53(3)(c) of the MiFID Org Regulation (reproduced in COBS 6.2B.29EU 6.2B.29UK) that a firm does not allow a natural person to provide both independent advice and restricted advice.

6.2B.1 EU 5

6.2B.1 UK

6.2B.1 G (1) COBS 6.2B.15EU 6.2B.15UK means that a firm providing independent advice need not provide advice on all relevant products. A firm may market itself as, for example, an independent stockbroker that provides independent advice on shares only. A firm might alternatively market itself on the basis of providing independent advice on a particular product market such as ethical and socially responsible investments. The requirements in COBS 6.2B.15EU 6.2B.15UK apply to ensure that clients of a firm that provides independent advice on a focused basis properly understand the nature of the advice that they will receive and that the service is appropriate.

Sufficient range

6.2B.1 G 7

The extent of the assessment which a firm is required to undertake in order to meet the requirement to assess a sufficient range of relevant products will depend on:

(1) the nature of the independent advice service provided by the firm (general or focused) for the purposes of COBS 6.2B.15EU 6.2B.15UK.
Investment firms providing investment advice on an independent basis shall define and implement a selection process to assess and compare a sufficient range of financial instruments available on the market in accordance with Article 24(7)(a) of Directive 2014/65/EU [COBS 6.2B.11R]. The selection process shall include the following elements:

(2) Notwithstanding (1), since the assessment conducted by the firm must be such as to ensure the client’s investment objectives can be suitably met, a firm providing independent advice should be in a position to advise on all types of relevant product within the scope of the market (for the purposes of COBS 6.2B.15EU 6.2B.15UK) on which it provides advice. When the client is a retail client in the United Kingdom, this means being in a position to advise on all types of financial instrument, structured deposit and other retail investment products.

The fact that a firm is owned by, or owns, in whole or in part, the issuer or provider of relevant products does not prevent that firm from providing independent advice, provided that the firm’s assessment of relevant products is:

(3) not biased (COBS 6.2B.18EU 6.2B.18UK).

An investment firm offering investment advice on both an independent basis and on a non-independent basis shall comply with the following obligations:

(a) in good time before the provision of its services, the investment firm has informed its clients, in a durable medium, whether the advice will be independent or non-independent in accordance with Article 24(4)(a) of Directive 2014/65/EU [COBS 6.2B.33R] and the relevant implementing measures:
6.2B.3 EU …
6.2B.3 EU …
6.2B.3 EU …

6.4 Disclosure of charges, remuneration and commission

6.4.2 G Under the territorial application rules in COBS 1, the rules in this section apply to:

(1) a UK firm’s business carried on from an establishment in an EEA State other than the United Kingdom for a retail client in the United Kingdom unless, if the office from which the activity is carried on were a separate person, the activity:

(a) would fall within the overseas persons exclusion in article 72 of the Regulated Activities Order; or

(b) would not be regarded as carried on in the United Kingdom.

(2) a firm’s business carried on from an establishment in the United Kingdom carried on for a client in an other EEA State. [deleted]

Disclosure of commission (or equivalent) for packaged products

6.4.3 R …

(4) This rule does not apply if:

…

(b) the retail client is not present in the EEA United Kingdom at the time of the transaction; or

…
8A Client agreements (MiFID provisions)

8A.1 Client agreements (MiFID, equivalent third country or optional exemption business)

Application and purpose provisions

8A.1.2 Provisions in this chapter marked “EU” “UK” apply to MiFID optional exemption firms as if they were rules.

Providing a client agreement: retail and professional clients

8A.1.4 EU 58 Investment firms providing any investment service or the ancillary service referred to in Section B(1) of Annex I to Directive 2014/65/EC paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order to a client after the date of application of this Regulation shall enter into a written basic agreement with the client, in paper or another durable medium, with the client setting out the essential rights and obligations of the firm and the client. Investment firms providing investment advice shall comply with this obligation only where a periodic assessment of the suitability of the financial instruments or services recommended is performed.

(c) a description of the main features of any services referred to in Section B(1) of Annex I to Directive 2014/65/EC paragraph 1 of Part 3A of Schedule 2 to the Regulated Activities Order to be provided, including where applicable the role of the firm with respect to corporate actions relating to client instruments and the terms on which securities financing transactions involving client securities will generate a return for the client.

[Note: article 58 of the MiFID Org Regulation]

General requirement for information to clients

8A.1.5 58...
9 Suitability (including basic advice) (non-MiFID provisions)

9.4 Suitability reports

9.4.3 The obligation to provide a suitability report does not apply:

(1) …

(2) if the client is habitually resident outside the EEA United Kingdom and the client is not present in the United Kingdom at the time of acknowledging consent to the proposal form to which the personal recommendation relates;

…

9A Suitability (MiFID provisions)

9A.1 Application and purpose

Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on certain aspects of the MiFID suitability requirements, 21 August 2012/ESMA/2012/387 (EN). See https://www.esma.europa.eu/sites/default/files/library/2015/11/2012-387_en.pdf.

Effect of provisions marked “EU” “UK” for third country investment firms and MiFID optional exemption firms

9A.2 Assessing suitability: the obligations
Assessing the extent of the information required

9A.2.4 EU …

UK

Professional clients

9A.2.5 EU 54(3) …

UK

Where that investment service consists in the provision of investment advice to a professional client covered by Section 1 of Annex II to Directive 2014/65/EU Part 2 of Schedule 1 to Regulation (EU) No 600/2014, the investment firm shall be entitled to assume for the purposes of point (b) of paragraph 2 that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

[Note: article 54(3) of the MiFID Org Regulation]

Obtaining information about knowledge and experience

9A.2.6 EU …

UK

Obtaining information about a client’s financial situation

9A.2.7 EU …

UK

Obtaining information about a client’s investment objectives

9A.2.8 EU …

UK

Reliability of information

9A.2.9 EU …

UK

Maintaining adequate and up-to-date information

9A.2.10 EU …

UK

Discouraging the provision of information
9A.2.1 EU UK 55(2) An investment firm shall not discourage a client or potential client from providing information required for the purposes of Article 25(2) and (3) of Directive 2014/65/EU [COBS 9A.2.1R and COBS 10A.2.1R].

Reliance on information

9A.2.1 EU UK …

Insufficient information

9A.2.1 EU UK 54(8) Where, when providing the investment service of investment advice or portfolio management, an investment firm does not obtain the information required under Article 25(2) of Directive 2014/65/EU [COBS 9A.2.1R], the firm shall not recommend investment services or financial instruments to the client or potential client.

[Note: article 54(8) of the MiFID Org Regulation]

…

Identifying the subject of a suitability assessment

9A.2.1 EU UK 54(6) …

Where a natural person is represented by another natural person or where a legal person having requested treatment as professional client in accordance with Section 2 of Annex II to Directive 2014/65/EU Part 3 of Schedule 1 to Regulation (EU) No 600/2014 is to be considered for the suitability assessment, the financial situation and investment objectives shall be those of the legal person or, in relation to the natural person, the underlying client rather than of the representative. The knowledge and experience shall be that of the representative of the natural person or the person authorised to carry out transactions on behalf of the underlying client.

[Note: article 54(6) of the MiFID Org Regulation]

…

Switching

9A.2.1 EU UK …

Adequate policies and procedures

9A.2.1 EU …
Unsuitability

Automated or semi-automated systems

Information to be provided to the client

Explaining the reasons for assessing suitability

[54(1)] Investment firms shall not create any ambiguity or confusion about their responsibilities in the process when assessing the suitability of investment services or financial instruments in accordance with Article 25(2) of Directive 2014/65/EU [COBS 9A.2.1R]. When undertaking the suitability assessment, the firm shall inform clients or potential clients, clearly and simply, that the reason for assessing suitability is to enable the firm to act in the client’s best interest.

[Note: first paragraph of article 54(1) of the MiFID Org Regulation]

Providing a suitability report

Appropriateness (for non-MiFID non-advised services) (non-MiFID provisions)
10.5 Assessing appropriateness: guidance

Independent valuation systems

10.5.5 G The circumstances in which valuation systems will be independent of the issuer (see COBS 10.4.1R(3)(b)) include where they are overseen by a depositary that is regulated as a provider of depositary services in an EEA State the United Kingdom.

...

10A Appropriateness (for non-advised services) (MiFID provisions)

10A.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation on complex debt instruments and structured deposits, 4 February 2016/ESMA/2015/1787 (EN).] See 

[https://www.esma.europa.eu/sites/default/files/library/2015-1787_-_guidelines_on_complex_debt_instruments_and_structured_deposits.pdf]

...

Effect of provisions marked EU “UK”

10A.1.3 R The effect of GEN 2.2.22AR is that provisions in this chapter marked “EU” “UK” also apply in relation to the equivalent business of a third country investment firm as if they were rules.

10A.2 Assessing appropriateness: the obligations

...

Assessing a client’s knowledge and experience

10A.2.3 EU 56(1) UK Investment firms, shall determine whether that client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or investment service offered or demanded when assessing whether an investment service as referred to in Article 25(3) of Directive 2014/65/EU [COBS 10A.1.1R] is appropriate for a client.

...

Information regarding a client’s knowledge and experience

10A.2.4 EU UK ...

Discouraging the provision of information
10A.2.5 EU UK 55(2) An investment firm shall not discourage a client or potential client from providing information required for the purposes of Article 25(2) and (3) of Directive 2014/65/EU [COBS 9A.2.1R and COBS 10A.2.1R].

Reliance on information

10A.2.6 EU UK …

10A.4 Assessing appropriateness: when it need not be done

…

Non-complex financial instruments

10A.4.2 EU UK 57 A financial instrument which is not explicitly specified in Article 25(4)(a) of Directive 2014/65/EU [COBS 10A.4.1R(2)] shall be considered as non-complex for the purposes of Article 25(4)(a)(vi) of Directive 2014/65/EU paragraph (2)(f) of that rule if it satisfies the following criteria:

(a) it does not fall within Article 4(1)(44)(c) of, or points (4) to (11) of Section C of Annex I to Directive 2014/65/EU it does not fall within Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order;

…

10A.7 Record keeping and retention periods for appropriateness records

…

11 Dealing and managing

11.1 Application

General application
11.1.2 R Save as may be provided in the relevant sections, in this chapter, provisions marked “EU” “UK” apply to a firm which is not a MiFID investment firm as if they were rules.

11.1.5 G The EEA territorial scope rule modifies the default territorial scope of the section on personal account dealing (see COBS 11.7 and COBS 11.7A) to the extent necessary to be compatible with European law (see paragraph 1.1G5 of Part 3 of COBS 1 Annex 1). This means that the section on personal account dealing also applies to passported activities carried on by a UK MiFID investment firm or a UK UCITS management company from a branch in another EEA state, but does not apply to the UK branch of an EEA MiFID investment firm in relation to its MiFID business or of an EEA UCITS management company in relation to activities it is entitled to carry on in the United Kingdom under the UCITS Directive. [deleted]

11.2 Best execution for AIFMs and residual CIS operators

Application

11.2-7 G This section applies to:

(1) a small authorised UK AIFM and a residual CIS operator in accordance with COBS 18.5.2R; and

(2) a full-scope UK AIFM and an incoming EEA AIFM branch, in accordance with COBS 18.5A.3R.

11.2-5 G In accordance with COBS 18.5A.8R, only the following provisions of this section apply to a full-scope UK AIFM and an incoming EEA AIFM branch:

Obligation to execute orders on terms most favourable to the client

11.2.1 R A firm must take all reasonable steps to obtain, when executing orders, the best possible result for its clients taking into account the execution factors.

[Note: The Committee of European Securities Regulators (CESR) has issued a Question and Answer paper on best execution under the first Markets in Financial Instruments Directive (MiFID I, 2004/39/EU). This paper also incorporates the European Commission’s response to CESR’s questions regarding the scope of the best execution obligations under]
MiFID I. The paper can be found at:
See ‘CESR Questions & Answers: Best Execution under MiFID’, May 2007, Ref: CESR/07-320]

11.2.23A A full-scope UK AIFM and an incoming EEA AIFM branch must make available appropriate information on its execution policy required under article 27(3) of the AIFMD level 2 regulation (Execution of decisions to deal on behalf of the managed AIF) and on any material changes to that policy to the investors in of each AIF it manages.

11.2A Best execution – MiFID provisions

11.2A.1 Subject to (2) to (4), the following provisions apply to a firm’s business other than MiFID business as if they were rules:

(a) provisions within this chapter marked “EU” “UK”; and

(b) COBS 11 Annex 1EU COBS 11 Annex 1UK (Regulatory Technical Standard (RTS 28)).

(2) The following provisions do not apply to MiFID optional exemption firm’s business:

(a) the part of the first sub-paragraph of article 65(6) to the MiFID Org Regulation (reproduced at COBS 11.2A.34EU COBS 11.2A.34UK) that reads:

“In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the technical standards developed under Article 27(10)(b) of Directive 2014/65/EU Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 27(b) of Schedule 1 to Regulation (EU) 2014/600,”; and
(b) \textit{COBS} 11.2B EU, \textit{COBS} 11.2B UK (Regulatory Technical Standard (RTS 28)).

(3) This chapter does not apply (but \textit{COBS} 11.2B applies) to \textit{UCITS management companies} when carrying on scheme management activity.

(4) This chapter does not apply (but \textit{COBS} 11.2 applies) to \textit{AIFMs} when carrying on \textit{AIFM investment management functions} and \textit{residual CIS operators}.

Best execution criteria

11.2A.8 EU, UK

\textbf{Article 64 of the MiFID Org Regulation sets out best execution criteria.}

\textit{Article 64 (1)} When executing client orders, investment firms shall take into account the following criteria for determining the relative importance of the factors referred to in \textbf{Article 27(1) of Directive 2014/65/EU} [\textit{COBS 11.2A.2R}]:

\textit{…}

(2) An investment firm satisfies its obligation under \textbf{Article 27(1) of Directive 2014/65/EU} [\textit{COBS 11.2A.2R, COBS 11.2A.3G, COBS 11.2A.9R, COBS 11.2A.12R and COBS 11.2A.15R}] to take all sufficient steps to obtain the best possible result for a client to the extent that it executes an order or a specific aspect of an order following specific instructions from the client relating to the order or the specific aspect of the order.

Execution policies

11.2A.25 EU, UK

\textbf{Article 66 of the MiFID Org Regulation sets out requirements concerning execution policies.}

\textit{Article 66 (1)} Investment firms shall review, at least on an annual basis, execution policy established pursuant to \textbf{Article 27(4) of Directive 2014/65/EU} [\textit{COBS 11.2A.20R}], as well as their order execution arrangements.

\textit{…}

(3) Investment firms shall provide clients with the following details on their execution policy in good time prior to the provision of the service:

\textit{(a)} an account of the relative importance the investment firm assigns, in accordance with the criteria specified in Article 59(1), to the factors referred to in \textbf{Article 27(1) of Directive 2014/65/EU} [\textit{COBS 11.2A.2R}], or the process by which the firm determines the relative importance of those factors.
(6) Investment firms shall only receive third-party payments that comply with Article 24(9) of Directive 2014/65/EU [COBS 2.3A.5R, COBS 2.3A.6R and COBS 2.3A.7E] and shall inform clients about the inducements that the firm may receive from the execution venues. The information shall specify the fees charged by the investment firm to all counterparties involved in the transaction, and where the fees vary depending on the client, the information shall indicate the maximum fees or range of the fees that may be payable.

(7) Where an investment firm charges more than one participant in a transaction, in compliance with Article 24(9) of Directive 2014/65/EU and its implementing measures [COBS 2.3A.5R, COBS 2.3A.6R and COBS 2.3A.7E], the firm shall inform its client of the value of any monetary or non-monetary benefits received by the firm.

(9) Where an investment firm executes orders for retail clients, it shall provide those clients with a summary of the relevant policy, focused on the total cost they incur. The summary shall also provide a link to the most recent execution quality data published in accordance with Article 27(3) of Directive 2014/65/EU [COBS 11.2C.1R, MAR 5.3.1AR(5), MAR 5A.4.2R(3) and MAR 6.3A.1R] and paragraph 4C of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 for each execution venue listed by the investment firm in its execution policy.

In order to obtain the best execution for a client, a firm should compare and analyse relevant data, including that made public in accordance with COBS 11.2A.38G, COBS 11.2C and article 27(3) of MiFID and respective implementing measures.

Duty of portfolio managers, receivers and transmitters to act in client’s best interest

Article 65 of the MiFID Org Regulation sets out the duty of firms carrying out certain activities to act in the best interests of the client. 65 (1) Investment firms, when providing portfolio management, shall comply with the obligation under Article 24(1) of Directive 2014/65/EU [COBS 2.1.1R] to act in accordance with the best interests of their clients when placing orders with other entities for execution that result from decisions by the investment firm to deal in financial instruments on behalf of its client.

(2) Investment firms, when providing the service of reception and transmission of orders, shall comply with the obligation under Article 24(1) of Directive 2014/65/EU [COBS 2.1.1R] to act in accordance with
the best interests of their clients when transmitting client orders to other entities for execution.

... (6) Investment firms shall provide information to their clients on the policy established in accordance with paragraph 5 and paragraphs 2 to 9 of Article 66. Investment firms shall provide clients with appropriate information about the firm and its services and the entities chosen for execution. In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the technical standards developed under Article 27(10)(b) of Directive 2014/65/EU Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 20(b) of Schedule 3 to Regulation (EU) 600/2014.

...

(8) This Article shall not apply where the investment firm that provides the service of portfolio management or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client’s portfolio. In those cases, Article 27 of Directive 2014/65/EU Articles 64 and 66 of this Regulation, technical standards made under Article 27(10) of Directive 2014/65/EC and rules in [COBS] which were relied on immediately before exit to implement Article 27 of Directive 2014/65/EU shall apply.

...

11.2B Best execution for UCITS management companies

...

11.2B.3 G References in this chapter to a scheme are to a UCITS scheme or an EEA UCITS scheme.

...

11.2B.26 R (1) A management company of an ICVC that is a UCITS scheme, or an EEA UCITS scheme that is structured as an investment company, must obtain the prior consent of the ICVC or investment company to the execution policy.

...
11.2B.36  R  …

(2) The information must be consistent with the information published in accordance with COBS 11 Annex 1EU COBS 11 Annex 1UK (Regulatory technical standard 28) (which applies as rules in accordance with COBS 18.5B.2R).

11.2C  Quality of execution

11.2C.2  R  …

[Note: article 27(3) of MiFID and MiFID RTS 27]

11.3  Client order handling

General principles

11.3.1  R  …

(3) A UCITS management company providing collective portfolio management services, must establish and implement procedures and arrangements in respect of all client orders it carries out which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the UCITS scheme or EEA UCITS scheme it manages.

11.3.1A  R  (1) Subject to (2) and (3) in this chapter provisions marked “EU” “UK” apply to a firm’s business other than MiFID business as if they were rules.

(2) Provisions marked “EU” which derive from recitals to MiFID or the MiFID Org Regulation apply to all firms as guidance.

(3) COBS 11.3.4AEU COBS 11.3.4AUK, which reproduces article 67(2) of the MiFID Org Regulation, does not apply to a UCITS management company.

Carrying out client orders
11.3.2A EU UK Article 67(1) of the MiFID Org Regulation requires firms to satisfy conditions when carrying out client orders.

... Settlement of executed orders

11.3.4A EU UK Article 67(2) of the MiFID Org Regulation places requirements on firms which are responsible for overseeing and arranging the settlement of an executed order.

... Use of information relating to pending client orders

11.3.5A EU UK Article 67(3) of the MiFID Org Regulation sets out requirements concerning the use of information relating to pending client orders.

... Aggregation and allocation of orders

11.3.7A EU UK Article 68(1) of the MiFID Org Regulation sets out requirements to be met where a firm carries out a client order or a transaction for own account in aggregation with another client order.

... 11.3.7B R A management company must ensure that the order allocation policy referred to in article 68(1)(c) of the MiFID Org Regulation, reproduced at COBS 11.3.7A EU COBS 11.3.7A UK, is in sufficiently precise terms.

... Partial execution of aggregated client orders

11.3.8A EU UK Article 68(2) of the MiFID Org Regulation sets out requirements concerning partial execution of aggregated client orders.

... Aggregation and allocation of transactions for own account
Article 69(1) of the MiFID Org Regulation sets out requirements concerning aggregated transactions.

... 

Article 69(2) of the MiFID Org Regulation sets out allocation priorities where a firm aggregates a client order in accordance with its allocation policy referred to in article 68(1)(c) (see COBS 11.3.7A EU). 

... 

Article 69(3) of the MiFID Org Regulation introduces requirements for order allocation policy, referred to in article 68(1)(c) (see COBS 11.3.7A EU), where transactions for own account are executed in combination with client orders.

... 

Provisions which implemented the Transposition of client order handling provisions in the UCITS Implementing Directive

11.3.14 G ... 

(3) Some of these provisions have been used to transpose provisions of the UCITS implementing Directive, as set out in the table below:

<table>
<thead>
<tr>
<th>MiFID Org Regulation Provision</th>
<th>COBS 11.3 provision</th>
<th>UCITS implementing Directive transposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>article 67(1)</td>
<td>COBS 11.3.2A EU</td>
<td>article 27(1) second paragraph</td>
</tr>
<tr>
<td></td>
<td>COBS 11.3.2A UK</td>
<td></td>
</tr>
<tr>
<td>article 67(3)</td>
<td>COBS 11.3.5A EU</td>
<td>article 27(2)</td>
</tr>
<tr>
<td></td>
<td>COBS 11.3.5A UK</td>
<td></td>
</tr>
<tr>
<td>article 68(1)</td>
<td>COBS 11.3.7A EU</td>
<td>article 28(1)</td>
</tr>
<tr>
<td></td>
<td>COBS 11.3.7A UK, as</td>
<td></td>
</tr>
<tr>
<td></td>
<td>modified by COBS</td>
<td></td>
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<tr>
<td></td>
<td>11.3.7BR</td>
<td></td>
</tr>
<tr>
<td>article 68(2)</td>
<td>COBS 11.3.8A EU</td>
<td>article 28(2)</td>
</tr>
<tr>
<td></td>
<td>COBS 11.3.8A UK</td>
<td></td>
</tr>
</tbody>
</table>
11.4 Client limit orders

Obligation to make unexecuted client limit orders public

11.4-1 R In this chapter provisions marked “EU” “UK” apply to a firm’s business other than MiFID business as if they were rules.

How client limit orders may be made public

11.4.3A EU UK Article 70(1) of the MiFID Org Regulation provides when client limit orders shall be considered as being available to the public.

70 (1) A client limit order in respect of shares admitted to trading on a regulated market or traded on a trading venue which have not been immediately executed under prevailing market condition as referred to in Article 28(2) of Directive 2014/65/EU [COBS 11.4.1R] shall be considered available to the public when the investment firm has submitted the order for execution to a regulated market or a MTF or the order has been published by a data reporting services provider located in one Member State a person authorised to provide data reporting services under the Data Reporting Services Regulations 2017 and can be easily executed as soon as market conditions allow.

Orders that are large in scale

11.4.5 R The obligation in COBS 11.4.1R to make public a limit order is disapplied in respect of transactions that are large in scale compared with normal market as determined under article 4 of MiFIR.

11.5A Record keeping: client orders and transactions

11.5A.1 R (1) Subject to (2), in this chapter provisions marked “EU” “UK” apply to a firm’s business other than MiFID business as if they were rules.

(2) Provisions in this chapter which are marked “EU” “UK” do not apply to corporate finance business carried on by a firm which is not a MiFID investment firm.
Recording initial orders received from clients

11.5A.2 EU UK

Article 74 of the MiFID Org Regulation, together with Section 1 of Annex IV to that Regulation which is reproduced at COBS 11.5A.4EU, makes provision for record keeping of initial orders from clients.

74 An investment firm shall, in relation to every initial order received from a client and in relation to every initial decision to deal taken, immediately record and keep at the disposal of the competent authority at least the details set out in Section 1 of Annex IV [reproduced below at COBS 11.5A.4EU COBS 11.5A.4UK] to this Regulation to the extent they are applicable to the order or decision to deal in question.

Where the details set out in Section 1 of Annex IV to this Regulation are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, these details should be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014.

Record keeping in relation to transactions and order processing

11.5A.3 EU UK

Article 75 of the MiFID Org Regulation, together with Section 2 of Annex IV to that Regulation which is reproduced at COBS 11.5A.5EU, makes provision for record keeping in relation to transactions and order processing.

75 Investment firms shall, immediately after receiving a client order or making a decision to deal to the extent they are applicable to the order or decision to deal in question, record and keep at the disposal of the competent authority at least the details set out in Section 2 of Annex IV [reproduced below at COBS 11.5A.5EU COBS 11.5A.5UK].

Where the details set out in Section 2 of Annex IV are also prescribed under Articles 25 and 26 of Regulation No (EU) 600/2014, they shall be maintained in a consistent way and according to the same standards prescribed under Articles 25 and 26 of Regulation (EU) No 600/2014.

Minimum details to be recorded in relation to client orders and decisions to deal

11.5A.4 EU UK

Annex IV Section 1 of the MiFID Org Regulation makes provision for record keeping of client orders and decisions to deal.

…

16. The date and exact time of the receipt of the order or the date and exact time of when the decision to deal was made. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) Directive 2014/65/EU in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical
Minimum details to be recorded in relation to transactions and order processing

11.5A.5 EU

Annex IV Section 2 of the MiFID Org Regulation makes provision for record keeping of transactions and order processing.

11.5A.5 UK

... 32. The date and exact time of submission of the order or decision to deal. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3.

... 34. The date and exact time any message that is transmitted to and received from another investment firm in relation to events affecting an order. The exact time must be measured according to the methodology prescribed under the standards on clock synchronisation under Article 50(2) of Directive 2014/65/EU in Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks or in technical standards made by the Financial Conduct Authority under paragraph 26 of Schedule 3.

... 11.7 Personal account dealing

... Rule on personal account dealing

11.7.1 R

... 11.7.3 G For the purposes of COBS 11.7.1R (1)(c), any other obligation of the firm under the UK provisions which implemented MiFID refers to a firm’s obligations under the regulatory system that are not owed to a customer and any of the firm’s obligations under another EEA States’ implementation of MiFID where it operates a branch in the EEA.
Disapplication of rule on personal account dealing

11.7.5 R

...

11.7A Personal account dealing relating to MiFID, equivalent third country or optional exemption business

...

11.7A.2 R  (1) Subject to (2), in this chapter provisions marked “EU” “UK” apply to a firm in relation to its equivalent third country or optional exemption business as if they were rules.

(2) In this chapter, provisions marked “EU” which derive from recitals to MiFID or the MiFID Org Regulation apply to a firm in relation to its business which is the equivalent business of a third country investment firm or MiFID optional exemption business as guidance.

...

Scope of personal transactions

11.7A.4 EU Article 28 of the MiFID Org Regulation sets out the scope of personal transactions.

UK

...

Requirements relating to personal transactions

11.7A.5 EU Article 29 of the MiFID Org Regulation sets out detailed provision concerning personal transactions.

UK

...

(2) Investment firms shall ensure that relevant persons do not enter into a personal transaction which meets at least one of the following criteria:

(a) that person is prohibited from entering into it under Regulation (EU) No 596/2014;

(b) it involves the misuse or improper disclosure of that confidential information;

(c) it conflicts or is likely to conflict with an obligation of the investment firm under Directive 2014/65/EU UK law on markets in financial instruments.

...

(6) Paragraphs 1 to 5 shall not apply to the following personal transactions:
(b) personal transactions in undertakings for collective investments in transferable securities (UCITS) or AIFs that are subject to supervision under the law of a Member State of the United Kingdom which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

...  

11 EU Regulatory Technical Standard 28 (RTS 28)  

Annex UK  


...  

HAS ADOPTED THIS REGULATION  

Article 2 Application  

This Regulation applies to:  

a MiFID investment firm and a UK RIE and ‘MiFID investment firm’ and ‘UK RIE’ are defined in accordance with the Glossary to the Handbook of Rules and Guidance published by the Financial Conduct Authority.  

Article 1 Interpretation  

(1) Where a term is defined in Article 4 of Directive 2014/65/EU, the same definition applies for this Regulation except where it is defined in Article 2 Regulation 600/2014/EU, as amended by the [Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], in which case that definition applies;  

(2) Article 2(1)(57) and (58) of Regulation 600/2014/EU apply for the purposes of this Regulation; and  

(3) References to tick size bands are to those in Commission Delegated Regulation 2017/588, as amended by FCA Instrument [.].  

...  

Article 3 Information on the top five execution venues and quality of
3. Investment firms shall publish for each class of financial instruments, a summary of the analysis and conclusions they draw from their detailed monitoring of the quality of execution venues where they executed all client orders in the previous year. The information shall include:

…

(h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider established under Article 65 of Directive 2014/65/EU authorised in accordance with the Data Reporting Services Regulations 2017.

…

11A Underwriting and placing

11A.1 Underwriting and placing

General application

11A.1.1 This chapter applies only to MiFID or equivalent third country business.

(2) Subject to (3), in this chapter provisions marked “EU” “UK” apply to the equivalent business of a third country investment as if they were rules.

(3) In this chapter, provisions marked “EU” which derive from recitals to MiFID or the MiFID Org Regulation apply to the equivalent business of a third country investment firm as guidance.

Requirements to provide specific information to issuer clients

11A.1.2 Article 38(1) of the MiFID Org Regulation sets out requirements for firms to provide specified information to issuer clients before accepting a mandate to manage an offering.

38 (1) Investment firms which provide advice on corporate finance strategy, as set out in Section B(3) of Annex 4 Paragraph 3 of Part 3A of Schedule 2 to the Regulated Activities Order, and provide the service of underwriting or placing of financial instruments, shall, before accepting a mandate to manage the offering, have arrangements in place to inform the issuer client of the following:

…

Requirements to identify underwriting and placing operations and to ensure that adequate controls are in place to manage conflicts of interest
11A.1.3 EU UK Article 38(2) and (3) of the MiFID Org Regulation sets out requirements to identify all underwriting and placing operations of a firm and to ensure that adequate controls are in place to manage any potential conflicts of interest.

Additional requirements in relation to pricings of offerings in relation to the issuance of financial instruments

11A.1.4 EU UK Article 39(1) of the MiFID Org Regulation sets out additional requirements in relation to pricing of offerings in relation to issuance of financial instruments.

Further requirements concerning the provision of information

11A.1.5 EU UK Article 39(2) of the MiFID Org Regulation sets out additional requirements concerning the provision of information.

Further requirements in relation to placing

11A.1.6 EU UK Article 40 of the MiFID Org Regulation sets out additional requirements in relation to placing.

(3) Investment firms shall not accept any third-party payments or benefits unless such payments or benefits comply with the inducements requirements rules made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 which were relied on before exit day to implement requirements laid down in Article 24 of Directive 2014/65/EU. In particular, the following practices shall be considered not compliant with those requirements and shall therefore be considered not acceptable:

Further requirements in relation to advice, distribution and self-placement

11A.1.7 EU UK Article 41 of the MiFID Org Regulation sets out additional requirements in relation to advice, distribution and self-placement.

41 (1) Investment firms shall have in place systems, controls and procedures to identify and manage the conflicts of interest that arise when providing investment service to an investment client to participate in a new issue, where the investment firm receives commissions, fees or any monetary or non-monetary benefits in relation to arranging the issuance. Any commissions, fees or monetary or non-monetary benefits shall comply with the requirements in Article 24(7), 24(8) and 24(9) of
Further requirements in relation to lending on provision of credit in the context of underwriting or placement

11A.1.8 EU Article 42 of the MiFID Org Regulation sets out additional requirements in relation to lending on provision of credit in the context of underwriting or placement.

11A.1.9 EU Article 43 of the MiFID Org Regulation sets out record keeping requirements in relation to underwriting or placing.

12 Investment research

12.1 Purpose and application

Application: Where?

12.1.3 G The EEA territorial scope rule modifies the general rule of application to the extent necessary to be compatible with European law (see paragraph 1.1 of Part 2 of COBS 1 Annex 1). This means that COBS 12.2 also applies to passported activities carried on by a UK MiFID investment firm from a branch in another EEA state, but does not apply to the United Kingdom branch of an EEA MiFID investment firm in relation to its MiFID business. [deleted]
12.2 Investment research and non-independent research

... 

12.2.15 R Where this section applies to a firm in relation to business other than its MiFID business, provisions in this section marked “EU” section marked “UK” shall apply as if they were rules, other than those that copy out recitals, which shall apply as if they were guidance.

... 

Investment research and non-independent research

12.2.17 EU Article 36(1) of the MiFID Org Regulation defines investment research.

36(1) For the purposes of Article 37 investment research shall be research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:

... 

(b) if the recommendation in question were made by an investment firm to a client, it would not constitute the provision of investment advice for the purposes of Directive 2014/65/EU UK law on markets in financial instruments.

Non-independent research with reference to investment recommendations as defined in the Market Abuse Regulation

12.2.18 EU Article 36(2) of the MiFID Org Regulation deals with the treatment of non-independent research with reference to investment recommendations as defined in the Market Abuse Regulation (see COBS 12.4) and in contrast to investment research as defined in article 36(1) (see COBS 12.2.17EU).

36(2) A recommendation of the type covered by point (35) of Article 3(1) of Regulation (EU) 596/2014 that does not meet the conditions set out in paragraph 1 shall be treated as a marketing communication for the purposes of Directive 2014/65/EU UK law on markets in financial instruments and investment firms that produce or disseminate that recommendation shall ensure that it is clearly identified as such.

... 

Conflicts of interest
12.2.19 EU Article 37(1) of the MiFID Org Regulation requires firms to apply the conflicts requirements set out in article 34(3) of the MiFID Org Regulation to persons involved in the production of investment research and non-independent research. Recitals 51, 52 and 55 to the MiFID Org Regulation relate to the required measures and arrangements.

12.2.20 G …

(2) COBS 12.2.19EU 12.2.19UK relates to the management of conflicts of interest in relation to investment research.

Measures and arrangements required for investment research

12.2.21 EU Article 37(2) of the MiFID Org Regulation requires firms to put arrangements in place around the production of investment research to ensure the conditions set out in that article are satisfied. Recitals 53, 54 and 56 relate to those arrangements and the article 37(2) conditions.

…

Recital 54

Fees, commissions, monetary or non-monetary benefits received by the firm providing investment research from any third party should only be acceptable when they are provided in accordance with requirements specified in Article 24(9) of Directive 2014/65/EU and Article 13 of Commission Delegated Directive (EU) 2017/593 [to be inserted before adoption of XXX supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits].

…

Exemptions from article 37(1) of the MiFID Org Regulation

12.2.22 EU Article 37(3) of the MiFID Org Regulation provides for exemptions from article 37(1) of the MiFID Org Regulation (COBS 12.2.19EU).

37(3) Investment firms which disseminate investment research produced by another person to the public or to clients shall be exempt from complying with paragraph 1 if the following criteria are met:

…

12.4 Investment recommendations
12.4.1A EU UK [article 20 of the Market Abuse Regulation]

12.4.4A EU UK [article 20(1) of the Market Abuse Regulation]

12.4.8 G The disclosures required under article 20(3) of the Market Abuse Regulation may, if the person so chooses, be made by graphical means (for example by use of a line graph).

16 Reporting information to clients (non-MiFID provisions)

16.2 Occasional reporting

Execution of orders other than when managing investments

16.2.1 R ...

(6) In relation to subscription and redemption orders for units in a UCITS scheme or EEA UCITS scheme executed by an authorised fund manager, paragraphs (1), (3) and (5) of this rule apply as if references to:

(a) a client and to a retail client were references to a Unitholder in the scheme; and

(b) trade confirmation information in paragraphs (1)(b) and (5)(b) were to the information in paragraph (7).

(7) The notice referred to in paragraph (1)(b) must, where applicable, for subscription and redemption orders for units in a UCITS scheme or EEA UCITS scheme executed by an authorised fund manager, include the following information:

...
Communication to clients – life insurance, long-term care insurance and income withdrawals

Disclosure for life insurance contracts: information to be provided during the term of the contract

16.6.1 R (1) This section applies to a long-term insurer, unless, at the time of application, the client, other than an EEA ECA recipient, was habitually resident:

(a) in an EEA State other than the United Kingdom; or

(b) outside the EEA and he was not present in the United Kingdom.

(2) In addition, COBS 16.6.8R applies to an operator of a personal pension scheme or stakeholder pension scheme in relation to a retail client who elects to make income withdrawals.

Reporting information to clients (MiFID provisions)

16A.1 Application

Effect of provisions marked “EU” “UK” for third country investment firms and MiFID optional exemption firms

16A.1.2 R Provisions in this chapter marked “EU” “UK” apply in relation to MiFID optional exemption business as if they were rules (see COBS 1.2.2G).

16A.1.2 G The effect of GEN 2.2.22AR is that provisions in this chapter marked “EU” “UK” also apply in relation to the equivalent business of a third country investment firm as if they were rules.

Occasional reporting

Execution of orders other than when undertaking portfolio management

16A.3.1 EU …

UK
Reporting obligations in respect of eligible counterparties

16A.3.5 EU ...

16A.4 Periodic reporting

Provision by a firm and contents

16A.4.1 EU ...

60(3) ...

The exception provided for in point (b) shall not apply in the case of transactions in financial instruments covered by Article 4(1)(44)(c) of, or any of points 4 to 11 of Section C in Annex I to Directive 2014/65/EU Article 2(1)(24)(c) of Regulation (EU) No 600/2014 or paragraphs 4 to 11 of Part 1 of Schedule 2 to the Regulated Activities Order.

...

16A.4.2 G In accordance with COBS 2.4.9R, a firm may dispatch a periodic statement (as required by article 60(1) of the MiFID Org Regulation, see COBS 16A.4.1EU 16A.4.1UK to an agent, other than the firm or an associate of the firm, nominated by the client in writing.

Additional reporting obligations for portfolio management or contingent liability transactions

16A.4.3 EU ...

...

16A.5 Statements of client financial instruments or clients funds

16A.5.1 EU 63(1) Investment firms that hold client financial instruments or client funds shall send at least on a quarterly basis, to each client for whom they hold financial instruments or funds, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in any other periodic statement. Upon client request, firms shall provide such statement more frequently at a commercial cost.

requirements for credit institutions and investment firms in respect of deposits within the meaning of Article 2(1)(23A) of Regulation (EU) No 600/2014 held by that institution.

63(2) The statement of client assets referred to in paragraph 1 shall include the following information:

... 
(d) a clear indication of the assets or funds which are subject to the rules of Directive 2014/65/EU and its implementing measures UK law on markets in financial instruments and those that are not, such as those that are subject to Title Transfer Collateral Agreement;

...

18 Specialist Regimes

18.8A OPS firms

Interpretation and general modifications

18.8A.2 R Where a COBS rule specified in this section applies to an OPS firm, the following modifications apply:

...

(3) subject to the modifications in COBS 18.8A.6R, COBS 18.8A.15R(4) and COBS 18.8A.16R(4), COBS 1.2.3R (References in COBS to the MiFID Org Regulation) applies where a COBS provision marked “EU” “UK” applies to an OPS firm.

...
The provisions in COBS 11.2A (Best execution – MiFID provisions) marked “EU” “UK” and COBS 11 Annex 1EU UK (Regulatory Technical Standard 28) apply to an OPS firm to which (1) applies as if they were rules.

Modification of best execution rules

(2) The requirement in COBS 11.2A.34EU 11.2A.34UK (see article 65(6) of the MiFID Org Regulation) to make public for each class of financial instruments:

…

…

(4) In COBS 11.2A, a reference to:

…

(b) “portfolio management” in COBS 11.2A.34EU 11.2A.34UK (see article 65(1) of the MiFID Org Regulation) is to be construed as a reference to OPS activity falling within the scope of COBS 18.8A.13R and which involves the OPS firm placing orders with other entities for execution that result from decisions by the OPS firm to deal in financial instruments on behalf of its client; and

…

Client order handling

(2) The provisions in COBS 11.3 (Client order handling) marked “EU” “UK” apply to an OPS firm as if they were rules.

…

…

20 With-profits

20.1 Application

…

20.1.3 R For an EEA insurer
(4) 

(a) the rules and guidance on the with-profits fund (COBS 20.1A), on treating with-profits policyholders fairly (COBS 20.2.1G to COBS 20.2.41G and COBS 20.2.53R to COBS 20.2.60G), and the governance provisions in COBS 20.5. apply only in so far as responsibility for the matter in question has not been reserved to the firm’s Home State regulator by an EU instrument;

notwithstanding the above:

(b) COBS 20.2.26AR (financial penalties and the with-profits fund) applies;

(c) the rules and guidance on the notification of policyholders where there is a change in the percentage allocation of distributions (COBS 20.2.19AR to COBS 20.2.19CG) apply but only to the extent that the UK is the State of the commitment;

(2) COBS 20.3 (Principles and Practices of Financial Management) does not apply;

(3) the rule on providing information to with-profits policyholders where the United Kingdom is the State of the commitment (COBS 20.4.4R) applies, but the rest of COBS 20.4 (Communications with with-profits policyholders) does not; and

(4) [deleted]

(5) references in COBS 20 to a with-profits fund or to terms derived from the Solvency II Directive requiring transposition in the Home State, apply as if they were references to the relevant fund or terms established in accordance with the requirements of the Home State.

[deleted]

20.4 Communications with with-profits policyholders

Requirements on EEA insurers

20.4.4 R In relation to any with-profits policyholder where the state of the commitment is the United Kingdom, an EEA insurer must:

(1) provide the information necessary to enable that policyholder properly to understand the insurer’s commitment under the policy;
(2) ensure that the information provided is not narrower in scope or less
detailed in content than the information required to be provided in
the PPFM produced by a firm subject to COBS 20.3; and

(3) send the 

policyholder who is affected by any information being
changed written notice, setting out:

(a) any proposed changes to information that is equivalent to the

with-profits principles, three months in advance of the
effective date; and

(b) any changes to information that is equivalent to the with-

profits practices, within a reasonable time. [deleted]

…

21 Permitted Links

21.1 Application

21.1.1 R The rules in this section apply on an ongoing basis to insurers who effect
linked long-term contracts, that are effected by:

(1) insurers other than EEA insurers; and

(2) EEA insurers in the United Kingdom.

…

21.2 Rules for firms engaged in linked long-term insurance business

…

21.2.1B R Insurers other than EEA insurers effecting linked long-term contracts of
insurance are obliged to comply with the requirements on investments in
the PRA Rulebook Solvency II Firms Investments.

…

21.3 Further rules for firms engaged in linked long-term insurance business

…

21.3.8 G A firm should assess the liquidity of a money-market instrument in
accordance with CESR’s UCITs eligible assets guidelines, with respect to
UK provisions which implemented article 4(1) of the UCITs eligible
assets Directive.

…

Stock lending: requirements
21.3.1 R (1) The stock lending arrangement is of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), and:

(a) all the terms of the agreement under which securities are to be reacquired by the firm for the account of the unit-linked fund are in a form which is acceptable to the firm and in accordance with good market practice;

(b) the counterparty is:

(i) an authorised person; or

(ii) a person authorised by a Home State regulator in an EEA State; or

...  

...  

22 Restrictions on the distribution of certain regulatory capital instruments

...  

22.2 Restrictions on the retail distribution of mutual society shares

22.2.1 R (1) The requirements in this section apply to a firm when dealing in or arranging a deal in a mutual society share with or for a retail client in the EEA United Kingdom where the retail client is to enter into the deal as buyer.

...  

22.2.4 R ...

<table>
<thead>
<tr>
<th>Title</th>
<th>Type of retail client</th>
<th>Additional conditions</th>
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<tbody>
<tr>
<td>Certified high net worth investor</td>
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<td>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.6R; or</td>
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<td>(c) (b) a person (or persons) legally empowered to make investment decisions on behalf of an individual who meets the</td>
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<td><strong>Certified sophisticated investor</strong></td>
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<td>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.7R; or</td>
<td>(c) (b) an individual who meets the requirements for either (a) or (b) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm’s client.</td>
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<th><strong>Self-certified sophisticated investor</strong></th>
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<tr>
<td>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.8R; or</td>
<td>(c) (b) an individual who meets the requirements for either (a) or (b) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm’s client.</td>
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### 22.3 Restrictions on the retail distribution of contingent convertible instruments and CoCo funds

Restrictions

#### 22.3.1 R (1) …

(2) A firm must not:

(a) sell an investment to a retail client in the EUA United Kingdom; or

(b) communicate or approve an invitation or inducement to participate in, acquire or underwrite an investment where that invitation or
inducement is addressed to or disseminated in such a way that it is likely to be received by a retail client in the EEA United Kingdom.

Exemptions

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<th>Title</th>
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<td>Certified high net worth investor</td>
<td>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.6R; or (e) (b) a person (or persons) legally empowered to make investment decisions on behalf of an individual who meets the earnings or net asset requirements in (a) or (b) above.</td>
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<td>Certified sophisticated investor</td>
<td>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.7R; or (e) (b) an individual who meets the requirements for either (a) or (b) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm’s client.</td>
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<td>Self-certified sophisticated investor</td>
<td>(b) an individual in an EEA State other than the UK who meets requirements which are broadly equivalent to those set out in COBS 4.12.8R; or (e) (b) an individual who meets the requirements for either (a)</td>
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or (b) above and who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another person who is the firm’s client.

Sch 1  Record keeping requirements

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Annex B

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)

... 5.3A Systems and controls for algorithmic trading

... 5.3A.8 R A firm must have systems and procedures to notify the FCA if:

(1) an MTF operated by the firm is material in terms of the liquidity of trading of a financial instrument in the EEA; and

... Direct electronic access

5.3A.9 R A firm which permits direct electronic access to an MTF it operates must:

(1) not permit members or participants of the MTF to provide such services unless they are:

(a) MiFID investment firms authorised under MiFID; or

... (g) firms that come within article 2.1(a), (e), (i), or (j) of MiFID regulation 30(1A) of the MiFIR Regulations and have a Part 4A permission relating to investment services or activities;

...

5.3A.14 R A firm must adopt tick size regimes in:

... (2) any other financial instrument which is traded on that trading venue, as required by a regulatory technical standard made under article 49.3 or 49.4 of MiFID powers conferred by MiFIR.

...
5.3A.16 G Nothing in MAR 5.3A.14R or MAR 5.3A.15R requires a firm to act inconsistently with MiFID RTS 11 or any regulatory technical standards made under article 49.3 or 49.4 of MiFID powers conferred by MiFIR.

...

5.3A.18 G For the purpose of MAR 5.3A.17R, the regulatory technical standards made under article 50 of MiFID MiFID RTS 25 provide further requirements.

...

5.7 Pre- and post-trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

5.7.1B G According to article 4(7) of MiFIR, waivers granted by competent authorities in accordance with articles 29(2) and 44(2) of Directive 2004/39/EC and articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2018 shall be reviewed by ESMA by 3 January 2020. ESMA shall issue an opinion to the competent authority, assessing the continued compatibility of those waivers with the requirements established in MiFIR and any regulations made pursuant to it. The FCA will cooperate with ESMA in relation to the continued effect of existing waivers. [deleted]

...

5A Organised trading facilities (OTFs)

...

5A.3 Specific requirements for OTFs

...

5A.3.2 R The discretion which the firm must exercise in executing a client order must be either, or both, of the following:

...

(2) the second discretion is whether to match a specific client order with other orders available on the OTF at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the client and in accordance with the firm's obligations under article 27 of MiFID COBS 11.2A (Best execution – MiFID provisions).
5A.5 Systems and controls for algorithmic trading

5A.5.8 R A firm must have systems and procedures to notify the FCA if:

(1) an OTF operated by it is material in terms of the liquidity of trading of a financial instrument in the EEA; and

Direct electronic access

5A.5.9 R A firm which permits direct electronic access to an OTF it operates must:

(1) not permit members or participants of the OTF to provide such services unless they are:

(a) MiFID investment firms authorised under MiFID; or

The firm must adopt tick size regimes for financial instruments as required by a regulatory technical standard made under article 49.3 or 49.4 of MiFID powers conferred by MiFIR.

Nothing in MAR 5A.5.14R or MAR 5A.5.15R requires a firm to act inconsistently with any regulatory technical standards made under article 49.3 or 49.4 of MiFID powers conferred by MiFIR.

For the purpose of MAR 5A.5.17R, the regulatory technical standards made under article 50 of MiFID MiFID RTS 25 provide further requirements.

7A Algorithmic trading
7A.3  Requirements for algorithmic trading

Notifications

7A.3.6  R  A firm which is a member or participant of a trading venue must immediately notify the following FCA if it is engaging in algorithmic trading in the UK or in an EEA State:

(1) the FCA; and
(2) any competent authority of a trading venue in another EEA State where the firm engages in algorithmic trading.

7A.4  Requirements when providing direct electronic access

Notifications

7A.4.4  R  A firm must immediately notify the following FCA if it is providing DEA services:

(1) the FCA; and
(2) the competent authority of an trading venue in the EEA to which the firm provides DEA services.

9  Data reporting service

9.1  Application, introduction, approach and structure

Application

9.1.1  G  This chapter applies to:

(2) A UK branch of a third country person seeking authorisation to provide a data reporting service;
(3) a **UK MiFID investment firm** operating a **trading venue** seeking verification of its rights to provide a **data reporting service** under regulation 5(b) or (c) of the **DRS Regulations**;

...

**Introduction**

9.1.2  
G The original purpose of this chapter was to implement Title V of **MiFID** which sets out harmonised market data services authorisation and supervision requirements. These are designed to ensure a necessary level of quality of trading activity information across **EU** financial markets for users, and for **competent authorities** the regulator to receive accurate and comprehensive information on relevant transactions. These requirements provide for:

...

**Approach to transposition onshoring**

9.1.3  
G The market data services authorisation and supervision requirements in Title V of **MiFID** are **implemented in the UK onshored** through a combination of:

(1)

...

(b) the **MiFI Regulations** which set out additional provisions addressing requirements imposed by **MiFIR** and **EU regulations onshored regulations**;

...

(3) **EU regulations onshored regulations** including:

...

9.1.3A  
G See **M2G** for further **guidance** on how the measures referred to in **MAR 9.1.13G** have been **amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018** and **FCA instruments made pursuant to the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018**.

...

**9.2 Authorisation and verification**

Application form and notification form for members of the management body

9.2.1  
D (1) Each of the following must complete the forms in (2):
(b) a UK MiFID investment firm operating a trading venue seeking verification of its rights to provide a data reporting service under regulation 5(b) and (c) of the DRS Regulations; and

…

9.5 Frequently Asked Questions

9.5.1 G Q. Are there any grandfathering arrangements for ARMs or trade data monitors operating prior to MiFID?
A. No. Persons wishing to provide a data reporting service must apply to be authorised as a data reporting services provider. [deleted]

9.5.2 G Q. We are a trading venue operator. Can you please clarify how we can provide a data reporting service under the derogation from needing authorisation in article 59(2) of MiFID regulation 5(b) to (d) of the DRS Regulations?
A.

(1) The derogation (or exception) in article 59(2) of MiFID allows Member States to allow a trading venue operator to provide a data reporting service without prior authorisation, if the operator has verified that they comply with Title V of MiFID.

(2) The United Kingdom has adopted this derogation in regulation 5(b) to (d) of the DRS Regulations.

…

9.5.6 G Q. Does an investment firm need to be authorised as an ARM to send transaction reports to the FCA?
A. No. If you are a MiFID investment firm that wishes to send transaction reports to us to satisfy your own transaction reporting obligations under MiFIR or a third country investment firm subject to a similar obligation pursuant to GEN 2.2.22AR, you do not need to become authorised as an ARM. You are permitted to connect directly to us although there will be a requirement to sign a MIS confidentiality agreement with us, to satisfy connectivity requirements and to undertake testing associated with connecting to our systems. For the associated costs please see FEES 3.2.7R for relevant on-boarding costs. If you want to connect to us to send reports on behalf of other investment firms then you must become authorised as an ARM.
9.5.7 Q. Where can I find a list of data reporting services providers?

A. Article 59(3) of MiFID requires ESMA to establish a list of all data reporting services providers. Further, regulation Regulation 6 of the DRS Regulations requires the FCA to maintain a register of data reporting services providers.

...

10 Commodity derivative position limits and controls, and position reporting

10.1 Application

Introduction

10.1.1 G ...

(2) In particular, this chapter sets out the FCA’s requirements in respect of provisions derived from:

(a) articles 57(1) and 57(6) of MiFID, which require competent authorities or central competent authorities to establish limits, on the basis of a methodology determined by ESMA, on the size of a net position which a person can hold, together with those held on the person’s behalf at an aggregate group level, at all times, in commodity derivatives traded on trading venues and economically equivalent OTC contracts to those commodity derivatives;

...

(d) article 58(2) of MiFID, which requires investment firms trading in commodity derivatives or emission allowances outside a trading venue to provide the competent authority or central competent authority with reports containing a complete breakdown of their positions held through such contracts traded on a trading venue and economically equivalent OTC contracts, as well as of those of their clients and the clients of those clients until the end client is reached.

...

Scope and territoriality

10.1.2 G ...

(2) In respect of position management controls requirements:

(a) the requirements contained or referred to in MAR 10.3 apply to persons operating a trading venue which trades commodity derivatives in respect of which the FCA is the Home State competent authority; and
(3) In respect of position reporting requirements:

(a) the position reporting requirements in MAR 10.4 apply to:

(i) a UK-regulated market; and

10.2 Position limit requirements

Establishing, applying and resetting position limits

10.2.1 G (1) The following provisions of the MiFi Regulations regulate the establishment, application and resetting of position limits:

(h) Regulation 20(2) imposes an obligation on the FCA, where it receives an ESMA opinion stating that the establishment of a position limit would be, or is, incompatible with that opinion, to modify the position limit in accordance with ESMA’s opinion or to notify ESMA as to why amendment to the limit is considered to be unnecessary; [deleted]

(i) Regulation 21(1) imposes an obligation on the FCA to not establish a position limit in respect of a commodity derivative traded on trading venues in the United Kingdom, where there is a central competent authority for that commodity derivative other than the FCA; [deleted]

(k) Regulation 25(1) prohibits the FCA from establishing position limits which are more restrictive than permitted under ESMA’s methodology MiFID RTS 21, unless in exceptional cases where more restrictive position limits are objectively justified and proportionate;

(l) Regulation 25(2) to Regulation 25(5) impose obligations on the FCA where it establishes position limits which are more restrictive than permitted under ESMA’s methodology MiFID RTS 21 in accordance with Regulation 25(1) of the MiFi Regulations. The obligations are that the FCA must publish that position limit on its website, and not apply that position limit for more than six months from the date of publication.
unless further subsequent six-month application periods for that limit are objectively justified and proportionate, and must notify ESMA of the position limit and the justification for establishing it; and

(m) Regulation 20(5) and Regulation 25(6) impose obligations on the FCA to publish a notice on its website explaining the reasons for its decision when, under Regulation 20(2) and Regulation 25(5) of the MiFID Regulations respectively, it does not modify a position limit following an ESMA opinion incompatible with the limit; and [deleted]

…

…

Application of position limits

10.2.2 D …

(2) A direction made under (1) applies where a commodity derivative is traded on a trading venue in the United Kingdom, provided that there is not a central competent authority established in an EEA State other than the United Kingdom.

…

10.2.5 G Where a position limit is established by a competent authority or central competent authority other than the FCA, a non-financial entity should submit its application for exemption, in relation to the position limit, to that competent authority or central competent authority in the manner it specifies; [deleted]

[Note: article 8 of MiFID RTS 21]

…

10.4 Position reporting

Application

10.4.1 G The application of this section is set out in the following table:

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Applicable provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK regulated market Regulated market</td>
<td>MAR 10.4.2G</td>
</tr>
<tr>
<td>…</td>
<td></td>
</tr>
</tbody>
</table>
Position reporting by UK regulated markets

10.4.2  A **UK regulated market** which trades commodity derivatives or emission allowances must provide position reports in accordance with paragraph 7BB of the Schedule to the Recognition Requirements Regulations, as inserted by the MiFI Regulations.

**[Note: article 58(1) of MiFID]**

Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: Reports

10.4.3  A **firm** must make public and provide to the FCA and ESMA a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives or emission allowances traded on the trading venue, where those instruments meet the criteria of article 83 of the MiFID Org Regulation, specifying:

...  

**[Note: article 58(1) of MiFID, MiFID ITS 4 on position reporting and MiFID ITS 5 on the format and timing of weekly position reports to ESMA]**

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Procedure for reporting to the FCA

10.4.5  A **firm** shall report to the FCA:

(2)  (where it meets the minimum threshold as specified in article 83 of the MiFID Org Regulation) the weekly report referred to in MAR 10.4.3R(2), by using the form set out in Annex I of
MiFID ITS 4, and publish it on its website and provide the report to ESMA; and

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Duplication of reporting

10.4.6 G For the purposes of making the weekly report referred to under MAR 10.4.3R(2), the FCA will accept an email containing a link to the report, as published on the firm’s website. Emails should be sent to the FCA at COT_reports@fca.org.uk. This guidance does not affect the separate obligation for a firm to make the weekly report to ESMA.

Position reporting by members, participants or clients of UK trading venues: trading venue participant reporting

10.4.7 D ...

(3) Paragraph (2) above does not apply to a member, participant or a client of a trading venue that is an EEA person. [deleted]

... UK MiFID investment firms and UK branches of third country investment firms: OTC reporting to the FCA

10.4.8 D (1) This direction applies to:

(a) a UK MiFID investment firm; and

... UK MiFID investment firms and UK branches of third country investment firms: OTC reporting to EEA competent authorities other than the FCA

10.4.9 D (1) This direction applies to:

(a) a UK MiFID investment firm; and

(b) a UK branch of a third country investment firm.

(2) An investment firm in (1) trading in a commodity derivative or emission allowance outside a trading venue must, where an EEA competent authority other than the FCA is the competent authority of the trading venue where that commodity derivative or emission allowance is traded, or the central competent authority for the
purposes of that commodity derivative, provide that EEA competent authority with a report containing a complete breakdown of:

(a) their positions taken in those commodity derivatives or emission allowances traded on a trading venue;

(b) economically equivalent OTC contracts; and

(c) the positions of their clients and the clients of those clients until the end client is reached, in accordance with article 26 of MiFIR.

(3) The report in (2) must be submitted to the relevant EEA competent authority, for each business day, using the form set out in Annex II of MiFID-ITS 4, by the time specified by that EEA competent authority.

(4) The obligation in (2) does not apply where the FCA is the central competent authority for that commodity derivative. [deleted]

[Note: 58(2) of MiFID, and MiFID-ITS 4 on position reporting]

EEA MiFID investment firms who are members, participants or clients of UK trading venues: trading venue participant reporting and OTC reporting to the FCA

10.4.10 D (1) This direction applies to an EEA MiFID investment firm which is a member, participant or a client of a UK trading venue.

(2) MAR 10.4.7D applies to an EEA MiFID investment firm under (1), as if it were a UK MiFID investment firm.

(3) MAR 10.4.8D applies to an EEA MiFID investment firm under (1), as if it were a UK MiFID investment firm, where the EEA MiFID investment firm trades in a commodity derivative or emission allowance outside a trading venue, and the FCA is the competent authority of the trading venue where that commodity derivative or emission allowance is traded, or the central competent authority for the purposes of that commodity derivative.

(4) Paragraphs (2) and (3) above only apply where the EEA MiFID investment firm is not subject to a corresponding rule or other requirement imposed by its Home State competent authority. [deleted]

10.4.11 G (1) This guidance applies to persons subject to MAR 10.4.8D(2) or MAR 10.4.10D(3).

(2) A firm subject to MAR 10.4.8D(2) or MAR 10.4.10D(3) may use a third party technology provider to submit to the FCA the report referred to in MAR 10.4.8D(2) provided that it does so in a manner consistent with MiFID. It will retain responsibility for the completeness, accuracy and timely submission of the report and
should populate field 5 of MiFID ITS 4 Annex II with its own reporting entity identification. It should be the applicant for, and should complete and sign, the FCA MDP on-boarding application form.

…

(4) A firm subject to MAR 10.4.8D(2) or MAR 10.4.10D(3) may arrange for the trading venue where that commodity derivative or emission allowance is traded to provide the FCA with the report provided that it does so in a manner consistent with MiFID. The firm will retain responsibility for the completeness, accuracy and timely submission of the report, submitted on its behalf. The firm should populate field 5 of MiFID ITS 4 Annex II with its own reporting entity identification.

10.5 Other reporting, notifications and information requirements

…

Power to intervene

10.5.2 G The following provisions of the MiFIR Regulations regulate the power of the FCA to intervene in respect of position limits:

(1) Regulation 28 provides that the FCA may, if it considers necessary, limit the ability of any person to enter into a contract for a commodity derivative, restrict the size of positions a person may hold in such a contract, or require any person to reduce the size of a position held, notwithstanding that the restriction or reduction would be more restrictive than the position limit established by the FCA or another competent authority in accordance with article 57 of MiFID to which the contract relates; and

…

Breaches of MAR 10 by unauthorised persons

10.5.4 G (1) …

(b) a breach of a directly applicable provision imposed by MiFIR or any EU regulation onshored regulation adopted under MiFID or MiFIR; and

…
Breaches of MAR 10 by authorised persons

10.5.6 G …

(2) a breach of a directly applicable provision imposed by MiFIR or EU regulation onshored regulation adopted under MiFID or MiFIR; and …

Territoriality

10.5.7 G The powers of the FCA referred to in MAR 10.5.1G to MAR 10.5.3G can be applied to a person regardless of whether the person is situated or operating in the UK or abroad, where the relevant position relates to a commodity derivative or emission allowance of which the FCA is the competent authority or central competent authority responsible for setting a position limit, or economically equivalent OTC contracts.
Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of:

(1) regulation 3 of the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018; and

(2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

B. This instrument comes into force on [29 March 2019 at 11 p.m].

Amendments to the FCA Handbook

C. 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.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collective Investment Schemes (COLL)</td>
<td>Annex A</td>
</tr>
<tr>
<td>Investment Funds sourcebook (FUND)</td>
<td>Annex B</td>
</tr>
<tr>
<td>Regulated Covered Bonds (RCB)</td>
<td>Annex C</td>
</tr>
</tbody>
</table>

Revocation


Citation

E. This instrument may be cited as the Exiting the European Union: Specialist Sourcebooks (Amendments) Instrument 201[X].

By order of the Board
[date]
Editor’s notes

(1) The amendments proposed in this instrument relate to the statutory instruments set out in Annex 2 of the accompanying paper and other matters arising from the UK’s withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.

(2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 2 of the consultation paper.

(3) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day, rather than the text of the Handbook in force on 1 July 2018.

(4) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.
Annex A

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

1 Introduction

1.1 Applications and purpose

Application

1.1.1 G (1) This sourcebook, except for COLL 9 (Recognised schemes), applies to:

... (c) managers and trustees of authorised unit trust schemes (AUTs); and

(cA) authorised fund managers, depositaries and nominated partners of authorised contractual schemes (ACSs); and

(d) to the extent indicated, UK UCITS management companies operating EEA UCITS schemes. [deleted]

... (4) This sourcebook also applies to EEA UCITS management companies of UCITS schemes to the extent required by the UCITS Directive. [deleted]

... EEA territorial scope: compatibility with European law

1.1.1B R (4) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law.

(2) This rule overrides every other rule in this sourcebook. [deleted]

EEA UCITS management companies of UCITS schemes

1.1.1C G An EEA UCITS management company that is providing collective portfolio management services for a UCITS scheme from a branch in the United Kingdom, or under the freedom to provide cross border services, is advised that where it operates a UCITS scheme as its designated management company, it meets the Glossary definition of an “ACD” of an ICVC or a “manager” of an AUT or an authorised contractual scheme manager of an ACS, which in either case is a UCITS scheme. Such firms should be aware that provisions in this sourcebook that apply to an ACD, a manager or an
authorised fund manager of a UCITS scheme accordingly apply to them, unless otherwise indicated: see COLL 12.3 (EEA UCITS management companies) for further details. [deleted]

Purpose

1.1.2 G …

(2) In addition, this sourcebook implements implemented part of the requirements of the UCITS Directive to meet EU law obligations relevant to authorised funds and management companies, along with other requirements implemented in other parts of the Handbook.

UCITS management company and product passport

1.1.2A G COLL 12 provides for the application of COLL in relation to the management company passport under the UCITS Directive. It explains how the passporting regime applies to both UK UCITS management companies and EEA UCITS management companies when providing collective portfolio management services on a cross-border basis. It also explains how the product passport (for UCITS) operates and how UCITS schemes may be marketed in other EEA States. [deleted]

…

1.2 Types of authorised fund

…

Types of authorised fund - explanation

1.2.2 G (1) UCITS schemes have to comply with the conditions necessary in order to enjoy the rights available under the UCITS Directive. Such schemes must in particular comply with:

…

(2) (a) Non-UCITS retail schemes are schemes that do not comply with all the conditions set out in the UCITS Directive necessary to be a UCITS scheme.

…

(c) Under The UK may, under the legislation which implemented article 43 of AIFMD, where an AIF can be marketed to retail clients impose stricter requirements on the an AIFM or the an AIF marketed to retail clients than the requirements that apply to an AIF marketed only to professional clients.

(d) This sourcebook contains the stricter requirements for an AIF which is a non-UCITS retail scheme.
(f) Non-UCITS retail schemes could become UCITS schemes, provided they are changed, so as to comply with the necessary conditions set out in the UCITS Directive.

(3) Under article 43 of AIFMD, where an AIF can be marketed to retail clients, Member States may impose stricter requirements on the AIFM or the AIF than the requirements that apply to an AIF marketed only to professional clients. [deleted]

(d) This sourcebook contains the stricter requirements for an AIF which is a qualified investor scheme.

Pension feeder funds

1.2.5 G …

(2) A pension feeder fund may not invest in units of an EEA UCITS scheme unless that scheme is a recognised scheme under section 264 of the Act (see COLL 5.6.27R and COLL 5.8.2AR).

2 Authorised fund applications

2.1 Authorised fund applications

Application by an EEA UCITS management company to manage a UCITS scheme

2.1.5 G An EEA UCITS management company that proposes to act as the authorised fund manager of an AUT, ACS or ICVC that is a UCITS scheme, should be aware that it is required under paragraph 15A(1) of Schedule 3 to the Act to apply to the appropriate regulator for approval to do so. The form that the firm must use for this purpose is set out in SUP 13A Annex 3R (EEA UCITS management companies: application for approval to manage a
UCITS scheme established in the United Kingdom). In addition, those firms are required to provide to the appropriate regulator certain fund documentation, as specified by COLL 12.3.4R (Provision of documentation to the FCA: EEA UCITS management companies). [deleted]

[Note: article 20(1) of the UCITS Directive]

4 Investor Relations

4.2 Pre-sale notifications

Provision and filing of the prospectus

4.2.3 R (1) The authorised fund manager of an AUT, ACS or an ICVC must:

…

(b) file a copy of the scheme’s original prospectus, together with all revisions thereto, with the FCA and, where a UCITS scheme is managed by an EEA UCITS management company, with that company’s Home State regulator on request.

…

Table: contents of the prospectus

4.2.5 R This table belongs to COLL 4.2.2R (Publishing the prospectus).

<table>
<thead>
<tr>
<th>Document status</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Authorised fund manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>The following particulars of the authorised fund manager:</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>…</td>
</tr>
<tr>
<td>(f) if neither its registered office nor its head office is in the United Kingdom, the address of its principal place of business in the United Kingdom; [deleted]</td>
</tr>
<tr>
<td>…</td>
</tr>
</tbody>
</table>

Page 6 of 94
Depositary

<table>
<thead>
<tr>
<th>8</th>
<th>The following information and particulars concerning the <em>depositary</em>:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td>(e)</td>
<td>if neither its registered office nor its head office is in the <em>United Kingdom</em>, the address of its principal place of business in the <em>United Kingdom</em>; [deleted]</td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
</tbody>
</table>

Contracts and other relationships with parties

<table>
<thead>
<tr>
<th>11</th>
<th>The following relevant details:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td>(g)</td>
<td>a list of:</td>
</tr>
<tr>
<td>(i)</td>
<td>the functions which the <em>authorised fund manager</em> has delegated in accordance with <em>FCA rules</em> or, for an <em>EEA UCITS management company</em>, in accordance with applicable <em>Home State</em> measures implementing article 13 of the <em>UCITS Directive</em>; and</td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
</tbody>
</table>

Marketing in another EEA state

<table>
<thead>
<tr>
<th>26</th>
<th>A <em>prospectus of a UCITS scheme</em> which is prepared for the purpose of marketing units in a <em>EEA State</em> other than the <em>United Kingdom</em>, must give details as to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>what special arrangements have been made:</td>
</tr>
<tr>
<td>(i)</td>
<td>for paying in that <em>EEA State</em> amounts distributable to <em>unitholders</em> resident in that <em>EEA State</em>;</td>
</tr>
<tr>
<td>(ii)</td>
<td>for redeeming in that <em>EEA State</em> the units of <em>unitholders</em> resident in that <em>EEA State</em>;</td>
</tr>
</tbody>
</table>
Information to be provided on securities financing transactions and total return swaps

4.2.5B [Editor’s note: We will consider whether amendments are needed to the copy out text in this provision when the relevant statutory instrument onshoring the Securities Financing Transactions Regulations is published.]

Guidance on contents of the prospectus

4.2.6

(6) The authorised fund manager of a UCITS scheme should consider the appropriateness of including additional matters in its prospectus as a result of the ESMA Guidelines on ETFs and other UCITS issues (ESMA 2012/832), which can be found at


4.3 Approvals and notifications

...
Appointment of a new authorised fund manager

4.3.6A R (1) In the case of a UCITS scheme, the appointment of a new ACD of an ICVC under COLL 6.5.3R (Appointment of an ACD) or the replacement of the authorised fund manager of an AUT or ACS who proposes to retire under COLL 6.5.8R (Retirement of an authorised fund manager of an AUT or ACS) must, if in either case the new authorised fund manager is established in a different EEA State to the outgoing authorised fund manager, be treated as a significant change in accordance with COLL 4.3.6AR.

(2) Paragraph (1) does not apply:

(a) if the appointment of the new authorised fund manager is the subject of an extraordinary resolution approved by a meeting of unitholders; or

(b) following the termination of the appointment of the ACD of an ICVC under COLL 6.5.4R(2) or COLL 6.5.4R(3) (Termination of appointment of an ACD), if the directors of the ICVC other than the ACD, or the depositary if there are no such directors, consider that it would be in the best interests of unitholders to appoint a new ACD without delay. [deleted]

Guidance on significant changes

4.3.7 G ... (4) The requirement in COLL 4.3.6AR(1) applies in all cases where the outgoing authorised fund manager (whether established in the United Kingdom or in another EEA State) is to be replaced by an authorised fund manager established in any other EEA State (including the United Kingdom). [deleted]

... Appointment of an AFM without prior written notice to Unitholders

4.3.10 R (1) In the case of a UCITS scheme, the appointment of a new authorised fund manager as a result of:

(a) in the case of an ICVC, the termination of the appointment of the previous ACD under COLL 6.5.4R(2) or COLL 6.5.4R(3) (Termination of appointment of an ACD); or

(b) in the case of an AUT or ACS, the replacement of the authorised fund manager under COLL 6.5.7R(2) (Replacement of an authorised fund manager of an AUT or ACS);
must, if the new authorised fund manager is established in a different EEA State to the outgoing authorised fund manager, be notified to unitholders. [deleted]

…

4.5 Reports and accounts

…

Information to be included in annual and half-yearly reports on securities financing transactions and total return swaps

…

4.5.8AB EU [Editor’s note: We will consider whether amendments are needed to the copy out text in this provision when the relevant statutory instrument onshoring the Securities Financing Transactions Regulations is published.]

…

Publication and availability of annual and half-yearly long report

4.5.14 R …

(2) The reports referred to in (1) must:

…

(c) for a UCITS scheme, be available for inspection by the public at a place designated by the authorised fund manager in each EEA State other than the United Kingdom in which units in the authorised fund were marketed before exit day, in English and in at least one of that other EEA State’s official languages; and

(d) be sent to the FCA and, if the UCITS scheme is managed by an EEA UCITS management company, to that company’s Home State regulator on request.

[Note: article 74 of the UCITS Directive]

…

4.7 Key investor information and marketing communications

…

Key investor information
4.7.2 R …

(8) Key investor information for a UCITS scheme must be used without alterations or supplements, except translation, in each EEA State where a UCITS marketing notification has been made so as to enable the marketing of the scheme’s units in that State. [deleted]

[Note: article 78 of the UCITS Directive]

Form and content of a key investor information document

4.7.3 G The KII Regulation sets out the form and content of a key investor information document. This Regulation is directly applicable in the United Kingdom and accordingly its articles (but not the preceding recitals) are binding on all firms to which it applies. Under the Regulation an authorised fund manager must ensure that each key investor information document it produces for a UCITS scheme complies with the requirements of the Regulation. For ease of reference the Regulation is reproduced in COLL Appendix 1EU Appendix 1UK (The KII Regulation).

…

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

4.7.8 G …

(3) Firms should note that these methodologies may in due course become directly applicable obligations in the light of the European Securities and Markets Authority’s powers to develop implementing technical standards in this area. [deleted]

…

4.8 Notifications for UCITS master-feeder arrangements

…

Information to be provided to Unitholders

4.8.3 R …

(2) Where a UCITS marketing notification has been made in relation to a feeder UCITS before exit day, the authorised fund manager of the feeder UCITS must ensure that an accurate translation of the information in (1) is provided to unitholders in:

(a) the official language, or one of the official languages, of the feeder UCITS’ Host State where the UCITS marketing notification was made; or
(b) a language approved by the Host State regulator overseas regulator in the state where the UCITS marketing notification was made.

[Note: article 64 first and second paragraphs of the UCITS Directive]

5 Investment and borrowing powers

5.2 General investment powers and limits for UCITS schemes

Application

5.2.1 R ...

(2) COLL 5.2.23CR (Valuation of OTC derivatives) also applies to a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services. [deleted]

Eligible markets: requirements

5.2.10 R (1) A market is eligible for the purposes of the rules in this sourcebook if it is:

... 

(b) a market in the UK or an EEA State which is regulated, operates regularly and is open to the public; or

...

...

Issuers and guarantors of money-market instruments

5.2.10B R (1) A UCITS scheme may invest in an approved money-market instrument if it is:

(a) issued or guaranteed by any one of the following:

(i) a central authority of the UK or an EEA State or, if the EEA State is a federal state, one of the members making up the federation;
(ii) a regional or local authority of the UK or an EEA State;

(iii) the Bank of England, the European Central Bank or a central bank of an EEA State;

…

(vi) a public international body to which the UK or one or more EEA States belong; or

…

(c) issued or guaranteed by an establishment which is:

(i) subject to prudential supervision in accordance with criteria defined by UK or EU law; or

(ii) subject to and complies with prudential rules considered by the FCA to be at least as stringent as those laid down by UK or EU law.

(2) An establishment shall be considered to satisfy the requirement in (1)(c)(ii) if it is subject to and complies with prudential rules, and fulfils one or more of the following criteria:

…

(d) on the basis of an in-depth analysis of the issuer, it can be demonstrated that the prudential rules applicable to that issuer are at least as stringent as those laid down by UK or EU law.

[Note: article 6 of the UCITS eligible assets Directive]

…

Other money-market instruments with a regulated issuer

5.2.10E G (1) In addition to instruments admitted to or dealt in on an eligible market, a UCITS scheme may also with the express consent of the FCA (which takes the form of a waiver under sections 138A and 138B of the Act as applied by section 250 of the Act or regulation 7 of the OEIC Regulations) invest in an approved money-market instrument provided:

…

(c) the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with the requirements of the Companies Act 2006 applicable to public companies limited
by shares or by guarantee, or private companies limited by
shares or by guarantee, or, for companies incorporated in the
**EEA Directive 2013/34/EU**, is an entity which, within a group of companies which includes one or several
listed companies, is dedicated to the financing of the group or
is an entity which is dedicated to the financing of
securitisation vehicles which benefit from a banking liquidity
line.

...

(3) A banking liquidity line is a banking facility secured by a financial
institution which is an establishment subject to prudential
supervision in accordance with criteria defined by **UK** or EU law or
an establishment which is subject to and complies with prudential
rules considered by the **FCA** (in accordance with **COLL
5.2.10BR(2)**) to be at least as stringent as those laid down by **UK** or
EU law.

[Note: article 50(1)(h)(iv) of the **UCITS Directive** and article 7 of the
**UCITS eligible assets Directive**]

Spread: general

5.2.11 R …

(2) For the purposes of this rule companies included in the same group
for the purposes of consolidated accounts as defined in accordance
with the **Seventh Council section 399 of Companies Act 2006**,
Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of
the **Treaty on consolidated accounts 2013/34/EU** or, in the same
group in accordance with international accounting standards, are
regarded as a single body.

…

Spread: government and public securities

5.2.12 R (1) This rule applies in respect of a **transferable security** or an **approved
money-market instrument** ("such securities") that is issued by:

(a) **the UK** or an **EEA State**;

(b) a local authority of **the UK** or an **EEA State**;

…

(d) a public international body to which **the UK** or one or more
**EEA States** belong.
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:

(a) be a UCITS scheme or satisfy the conditions necessary for it to enjoy the rights conferred by the UCITS Directive as implemented in the EEA; or

(b) be a recognised scheme under the provisions of section 272 of the Act (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 COLL 5.2.13AR are met); or

(c) be authorised as a non-UCITS retail scheme (provided the requirements of article 50(1)(e) of the UCITS Directive COLL 5.2.13AR(1)(a), (3) and (4) are met); or

(d) be authorised in another EEA State (provided the requirements of article 50(1)(e) of the UCITS Directive COLL 5.2.13AR are met); or

(e) be authorised by the competent authority of an OECD member country (other than another an EEA State) which has:

(i) signed the IOSCO Multilateral Memorandum of Understanding; and

(ii) approved the scheme’s management company, rules and depositary/custody arrangements;

(provided the requirements of article 50(1)(e) of the UCITS Directive COLL 5.2.13AR are met);

5.2.13A R The requirements referred to in COLL 5.2.13R(1) are that:

(1) the second scheme is an undertaking:

(a) with the sole object of collective investment in transferable securities or in other liquid financial assets, as referred to in
this chapter, of capital raised from the public and which operate on the principle of risk-spreading; and

(b) with units which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings’ assets (action taken by a scheme to ensure that the price of its units on an investment exchange does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption);

(2) the second scheme is authorised under laws which provide that they are subject to supervision considered by the FCA to be equivalent to that laid down in the law of the United Kingdom, and that cooperation between the FCA and the supervisory authorities of the second scheme is sufficiently ensured;

(3) the level of protection for unitholders in the second scheme is equivalent to that provided for unitholders in a UCITS scheme, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and approved money market instruments are equivalent to the requirements of this chapter; and

(4) the business of the second scheme is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period.

Qualifying non-UCITS collective investment schemes

5.2.14 G …

(2) Article 50 of the UCITS Directive sets out the general investment limits. So, a scheme which has the power to invest in gold or immovables would not meet the criteria set out in COLL 5.2.13AR(1).

(3) In determining whether a scheme (other than a UCITS) meets the requirements of article 50(1)(e) of the UCITS Directive COLL 5.2.13AR for the purposes of COLL 5.2.13AR(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:

…

…

(4) The requirement for supervisory equivalence, as described in article 50(1)(e) (first indent) of the UCITS Directive COLL 5.2.13AR(2), also applies to schemes (that are not EEA UCITS schemes) established in other EEA States. In considering whether the second scheme satisfies this requirement, the authorised fund manager
should have regard to the first section of article 26 of CESR’s UCITS eligible assets guidelines.

Valuation of OTC derivatives

5.2.23C R  (1) For the purposes of COLL 5.2.23R(2), an authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must:

(a) establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of the exposures of a UCITS scheme or an EEA UCITS scheme to OTC derivatives; and

(2) Where the arrangements and procedures referred to in (1) involve the performance of certain activities by third parties, the authorised fund manager or UK UCITS management company must comply with the requirements in SYSC 8.1.13R (Additional requirements for a management company) and COLL 6.6A.4R(5) and (6) (Due diligence requirements of AFMs of UCITS schemes) and EEA UCITS schemes) or, where appropriate, the equivalent requirements of the UCITS Home State regulator implementing article 5(2) and article 23(4), second subparagraph, of the UCITS implementing Directive.

Disclosure requirements in relation to UCITS schemes or EEA UCITS schemes that employ particular investment strategies

5.2.34 G  (1) Authorised fund managers of UCITS schemes or EEA UCITS schemes should bear in mind that where a UCITS scheme, or an EEA UCITS scheme that is a recognised scheme under section 264 of the Act, employs particular investment strategies such as those in (2), COBS 4.13.2R (Marketing communications relating to UCITS schemes or EEA UCITS schemes) and COBS 4.13.3R (Marketing communications relating to a feeder UCITS) contain additional disclosure requirements in relation to marketing communications that concern those investment strategies.

Guidance on syndicated loans

5.2.35 R  …
To determine whether an interest in a syndicated loan would be an eligible investment for a UCITS scheme in accordance with COLL 5.2, an authorised fund manager should first consider whether it constitutes a transferable security within the meaning of COLL 5.2.7R (Transferable securities) and COLL 5.2.7AR (which implemented then consider the additional eligibility criteria arising out of the UCITS eligible assets Directive that relate to liquidity, valuations and negotiability (see COLL 5.2.7AR (Investment in transferable securities)).

5.6 Investment powers and borrowing limits for non-UCITS retail schemes

Explanation of COLL 5.6

5.6.2 G (1) This section contains rules on the types of permitted investments and any relevant limits with which non-UCITS retail schemes must comply. These rules allow for the relaxation of certain investment and borrowing powers from the requirements of the UCITS Directive applicable to UCITS schemes. Consequently, a scheme authorised as a non-UCITS retail scheme will not qualify for the cross border passporting rights conferred by the UCITS Directive on a UCITS scheme.

(2) Some examples of the different investment and borrowing powers under the rules in this section for non-UCITS retail schemes are the power to:

(c) invest in a wider range of schemes which do not comply with the requirements of the UCITS Directive alternative investment funds;

Spread: government and public securities

5.6.8 R (1) This rule applies in respect of a transferable security or an approved money-market instrument (“such securities”) that is issued or guaranteed by:

(a) the UK or an EEA State; or
(b) a local authority of the UK or an EEA State; or

... 

(d) a public international body to which the UK or one or more EEA States belong.

... 

Investment in collective investment schemes

5.6.10 R A non-UCITS retail scheme, except for a feeder NURS (which must instead comply with COLL 5.6.26R), must not invest in units in a collective investment scheme (second scheme) unless the second scheme meets each of the requirements at (1) to (5):

(1) the second scheme:

(a) is a UCITS scheme or satisfies the conditions necessary for it to enjoy the rights conferred by the UCITS Directive as implemented in the EEA; or

... 

... 

Qualifying collective investment schemes for feeder NURS

5.6.26 R The authorised fund manager of a feeder NURS must ensure that the feeder NURS does not invest in the qualifying master scheme, unless the qualifying master scheme meets the requirements in (1) to (3):

(1) the qualifying master scheme:

(a) is a UCITS scheme or satisfies the conditions necessary for it to enjoy the rights conferred by the UCITS Directive as implemented in the EEA; or

... 

... 

(3) the qualifying master scheme:

(a) is not:

(i) a feeder UCITS or an EEA UCITS scheme or a sub-fund of an EEA UCITS scheme which has been
approved by the overseas regulator of the UCITS Home State to invest at least 85% of its assets in the units of a single EEA master UCITS; or

... 

(b) does not hold units in:

(i) a feeder UCITS or an EEA UCITS scheme or a sub-fund of an EEA UCITS scheme which has been approved by the overseas regulator of the UCITS Home State to invest at least 85% of its assets in the units of a single EEA master UCITS; or

... 

5.6.27 R An EEA UCITS scheme that is not a recognised scheme under section 264 of the Act is not a qualifying master scheme for COLL 5.6.26R(3) for a pension feeder fund that is a feeder NURS.

... 

5.8 Investment powers and borrowing limits for feeder UCITS

... 

Permitted types of scheme property

... 

5.8.2A R The authorised fund manager of a pension feeder fund that is a feeder UCITS must ensure that the single master UCITS is:

(1) a UCITS scheme; or

(2) an EEA UCITS scheme that is a recognised scheme under section 264 of the Act.

... 

[Editor’s note: the changes proposed in this instrument reflect the Handbook as at 1 July 2018. However, COLL 5.9 was deleted with effect from 20 July 2018 by the Money Market Funds Regulation Instrument 2018 (FCA 2018/37). We have therefore not shown the changes to COLL 5.9 that would have been necessary in relation to the version of the Handbook in force on 1 July 2018.]

6 Operating duties and responsibilities

...
6.3 Valuation and pricing

Application

6.3.1 R ...

(2) COLL 6.3.3AR to COLL 6.3.3DR (Accounting procedures):

(a) apply to:

(i) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services; and

(ii) an EEA UCITS management company providing collective portfolio management services for a UCITS scheme from a branch in the United Kingdom; in addition to applying in accordance with (1); but

(b) do not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services. [deleted]

...

Accounting procedures

6.3.3A R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure the employment of the accounting policies and procedures referred to in SYSC 4.1.9R (Accounting policies), so as to ensure the protection of unitholders.

...

6.3.3B R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the UCITS Home State United Kingdom, so as to ensure that the calculation of the net asset value of each scheme it manages is accurately effected, on the basis of the accounting, and that subscription and redemption orders can be properly executed at that net asset value.

[Note: article 8(2) of the UCITS implementing Directive]
6.3.3D  R  An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of each scheme it manages.

[Note: article 8(3) of the UCITS implementing Directive]

...

6.6  Powers and duties of the scheme, the authorised fund manager, and the depositary

...

Maintenance of records

...

6.6.6A  R  …

  (2)  COLL 6.6A.6R ((Strategies for the exercise of voting rights) also applies to a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State, as well as applying in accordance with (1). [deleted])

...

Committees and delegation

...

6.6.15A  R  (1)  This rule applies to:

  (a)  an authorised fund manager (other than an EEA UCITS management company) of an AUT, ACS or an ICVC where such AUT, ACS or ICVC is a UCITS scheme; and

  (aa)  a small authorised UK AIFM that is the authorised fund manager of an AUT, ACS or an ICVC that is a non-UCITS retail scheme; and

  (b)  a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services. [deleted]

(2)  The authorised fund manager has the power to retain the services of any person to assist it in the performance of its functions, provided that:


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(a) a mandate in relation to managing investments of the scheme is not given to:

\dots

(iv) any other person operating from an establishment in a country other than the United Kingdom unless such person:

\dots

(B) is subject to prudential supervision in such country;

and in addition if that person is not an EEA a UK firm, co-operation is ensured between the FCA and the overseas regulator of that person;

\dots

Delegation: guidance

6.6.16 G …

(3) For the purpose of COLL 6.6.15AR (2)(a)(iv), adequate co-operation will be ensured where the FCA has entered into a co-operation agreement of the kind referred to in article 102(3) of the UCITS Directive providing for the exchange of information with the relevant overseas regulator which is subject to guarantees of professional secrecy that prevent recipients of any confidential information divulging it to any person whatsoever, save in summary or aggregate form such that UCITS schemes, management companies and depositaries cannot be individually identified, without prejudice to cases covered by criminal law.

\dots

6.6A Duties of AFMs in relation to UCITS schemes and EEA UCITS schemes

Application

6.6A.1 R (1) This section applies to:

(a) an authorised fund manager of a UCITS scheme, a depositary, an ICVC and any other director of an ICVC which is a UCITS scheme;
subject to (2), a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme under the freedom to provide cross-border services. [deleted]

(2) COLL 6.6A.6R (Strategies for the exercise of voting rights) also applies to a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State, as well as applying in accordance with (1). [deleted]

(3) This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross-border services. [deleted]

Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholder

6.6A.2 R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must:

...

Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes

6.6A.4 R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must:

...

(3) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of any UCITS scheme or EEA UCITS scheme it manages are carried out in compliance with the objectives and the investment strategy and risk limit system of the scheme;

...

Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company

6.6A.5 R The authorised fund manager of a UCITS scheme or the UK UCITS management company of an EEA UCITS scheme must comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

[Note: article 14(1)(e) of the UCITS Directive]
Strategies for the exercise of voting rights

6.6A.6 R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must develop adequate and effective strategies for determining when and how voting rights attached to ownership of scheme property, or the instruments held by an EEA UCITS scheme, are to be exercised, to the exclusive benefit of the scheme concerned.

... (3) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must make available to unitholders:

...

Appointment of a single depositary

6.6A.7 R An authorised fund manager of a UCITS scheme, or a UK UCITS management company of an EEA UCITS scheme, must (for each scheme it manages) ensure that:

...

(2) the assets of the UCITS UCITS scheme are entrusted to the depositary for safekeeping in accordance with: COLL 6.6B.18R and COLL 6.6B.19R.

(a) for a UCITS scheme, COLL 6.6B.18R and COLL 6.6B.19R; and

(b) for an EEA UCITS scheme, the national laws and regulations in the Home State of the EEA UCITS scheme that implement article 22(5) of the UCITS Directive.

[Note: article 22(1) and (5) of the UCITS Directive]

Eligible depositaries for UCITS schemes

...

6.6A.9 G For a depositary to be established in the United Kingdom, it must have its registered office or branch in the United Kingdom.

Eligible depositaries for EEA UCITS schemes

6.6A.10 R A UK UCITS management company must ensure the depositary it appoints for each EEA UCITS scheme it manages is established in the Home State of
Written contract

6.6A.11 R (1) An authorised fund manager of a UCITS scheme, or a UK UCITS management company of an EEA UCITS scheme, must ensure that the appointment of the depositary is evidenced by a written contract.

…

6.6A.13 G Article 2 of the UCITS level 2 regulation sets out the minimum information that must be included in the written contract between:

(1) (a) the authorised fund manager of a UCITS scheme; or and

(b) a UK UCITS management company of an EEA UCITS scheme; and [deleted]

(2) the depositary.

6.6B UCITS depositaries

…

Eligible depositaries for UCITS schemes

…

6.6B.6 G For a depositary to be established in the United Kingdom, it must have its registered office or branch in the United Kingdom.

Depositaries appointed under COLL 6.6A.8R(3) (non-bank depositaries): Capital requirements

6.6B.7 G A depositary appointed in accordance with COLL 6.6A.8R(3) needs to satisfy the capital requirements in either:

(1) IPRU(INV) 5; or

(2) IFPRU and the EU CRR UK CRR.

…

6.6B.9 G (1) If the depositary is a full-scope IFPRU investment firm, it is subject to the capital requirements of IFPRU and the EU CRR UK CRR.
However, these requirements are not in addition to COLL 6.6B.8R and therefore that firm may use the own funds required under IFPRU and the EU CRR UK CRR to meet the £4 million requirement.

6.6B.10 G If the depositary appointed in accordance with COLL 6.6A.8R(3) is an incoming EEA firm that has a top-up permission for acting as trustee or depositary of a UCITS, it must comply with the applicable capital requirements set out in IPRU(INV) 5. [deleted]

Depositary functions: cash monitoring

6.6B.17 R The depositary must ensure that the cash flows of each UCITS scheme are properly monitored and that:

... all cash of the scheme has been booked in cash accounts which are:

... at:

... (iii) a bank authorised in a country other than a third country an EEA State; and

(c) maintained in accordance with the principles in article 2 (safeguarding of client financial instruments and funds) of the MiFID Delegated Directive; and

... Limitation on delegation

... The use of services provided by securities settlement systems, as specified in the Settlement Finality Directive Financial Markets and Insolvency (Settlement Finality) Regulations 1999, or similar services provided by third-country securities settlement systems in other countries, does not constitute a delegation by the depositary of its functions for the purposes of COLL 6.6B.22R.

[Note: article 22a(4) of the UCITS Directive]
(2) Paragraph (1) also applies where the depositary is the UK branch of an EEA firm and it performs part of its functions:

(a) through a branch in another EEA State; or

(b) from the EEA State where it has its registered office. [deleted]

(3) (a) A depositary that performs part of its functions through a branch or registered office in another an EEA State should ensure that those arrangements do not impede the depositary's ability to meet the threshold conditions.

…

Delegation: safekeeping

6.6B.25 R A depositary may delegate the functions in COLL 6.6B.18R and COLL 6.6B.19R to one or more third parties if:

(1) the tasks are not delegated with the intention of avoiding the requirements of the UCITS Directive, as implemented in this chapter;

…

Delegation: third countries

6.6B.26 R A depositary may delegate custody tasks in relation to UCITS custodial assets to an entity in a third country even though that entity does not satisfy the conditions in COLL 6.6B.25R(4)(b)(i) if:

(1) the law of that third country requires those UCITS custodial assets to be held in custody by a local entity;

…

(3) the depositary delegates its functions to such a local entity only:

(a) to the extent required by the law of that third country; and

…

(4) the investors of the relevant UCITS scheme are informed before their investment:

(a) that such delegation is required due to legal constraints in the third other country;

…
Reporting of breaches

6.6B.30 R A depositary must have appropriate procedures for its employees to report internally, through a specific, independent and autonomous channel, potential or actual breaches of those national provisions transposing which transposed the [UCITS Directive] internally through a specific, independent and autonomous channel before exit day.

[Note: article 99d(5) of the [UCITS Directive]]

6.9 Independence, names and UCITS business restrictions

Undesirable or misleading names

6.9.6 G …

(3) The FCA is unlikely to approve a name of an authorised fund that includes the word “guaranteed” unless:

(a) the guarantee is given by:

(i) an authorised person;

(ii) a person authorised by a Home State regulator which is established in an EEA State and equivalent to an authorised person; or

(iii) a person subject to prudential supervision in accordance with criteria defined by EU UK law or prudential rules at least as stringent as those laid down by EU UK law;

other than the authorised fund manager or the depositary.

…

…

Use of the term ‘UCITS ETF’

6.9.8B G …

(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.

...

Connected activities: guidance

6.9.10  G  …

(2) The restrictions of business imposed by COLL 6.9.9R reflect the position under Article 6 of the UCITS Directive. In accordance with recital (12) of the Directive the activities referred to at COLL 6.9.9R(3)(a) to COLL 6.9.9R(3)(c) may be performed on behalf of EEA UCITS management companies.

...

6.10  Senior personnel responsibilities

Application

6.10.1  R  (1) This section applies to an authorised fund manager of a UCITS scheme:

(a) an authorised fund manager of a UCITS scheme; and

(b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

(2) This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services. [deleted]

Senior personnel responsibilities

6.10.2  R  In complying with SYSC 4.3.1R (Responsibility of senior personnel), an authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure that its senior personnel:

...

(3) are responsible for ensuring that the authorised fund manager or UK UCITS management company has a permanent and effective compliance function as referred to in SYSC 6.1 (Compliance), even if this function is performed by a third party;

…
6.10.3 R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure that its senior personnel receive, on a regular basis, reports on the implementation of investment strategies and of the internal procedures for taking the investment decisions referred to in COLL 6.10.2R(2) to COLL 6.10.2R(5).

[Note: article 9(5) of the UCITS implementing Directive]

6.11 Risk control and internal reporting

Application

6.11.1 R (1) This section applies to an authorised fund manager of a UCITS scheme:

(a) an authorised fund manager of a UCITS scheme; and

(b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

(2) This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services. [deleted]

Permanent risk management function

6.11.2 R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must establish and maintain a permanent risk management function.

(2) The function referred to in (1) must be hierarchically and functionally independent from operating units, except where such independence would not be appropriate and proportionate in view of the nature, scale and complexity of the authorised fund manager’s or UK UCITS management company’s business and of each scheme it manages.

(3) The authorised fund manager or UK UCITS management company must be able to demonstrate that:

…

(b) its risk management process satisfies the requirements of COLL 6.12.3R (Risk management process) or, where appropriate, the relevant UCITS Home State measures implementing article 51 of the UCITS Directive.

[Note: articles 12(1) and 12(2) of the UCITS implementing Directive]
Where the risk management function required under COLL 6.11.2R(1) is not hierarchically and functionally independent, the authorised fund manager or UK UCITS management company should nevertheless be able to demonstrate that its risk management process satisfies the requirements of COLL 6.12.3R (Risk management process) and that, in particular, the appropriate safeguards have been adopted.

[Note: article 12(2) third paragraph and recital (12) of the UCITS implementing Directive]

Duties of the permanent risk management function

The permanent risk management function must:

…

(b) ensure compliance with the risk limit system, including statutory limits concerning global exposure and counterparty risk, as required by COLL 5.2 (General investment powers and limits for UCITS schemes) and COLL 5.3 (Derivative exposure) or, where appropriate, the relevant UCITS Home State measures implementing articles 41, 42 and 43 of the UCITS implementing Directive;

…

(f) review and support, where appropriate, the arrangements for the valuation of OTC derivatives, as referred to in COLL 5.2.23R (OTC transactions in derivatives), COLL 5.2.23CR (Valuation of OTC derivatives) and in this rule or, where appropriate, the relevant UCITS Home State measures implementing article 44 of the UCITS implementing Directive.

…

Risk management policy and risk measurement

Application

This section applies to an authorised fund manager and a depositary of a UCITS scheme:

(1) an authorised fund manager and a depositary of a UCITS scheme; and

(2) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.
In the FCA’s view the requirements relating to risk management policy and risk measurement set out in this section are the regulatory responsibility of the management company’s Home State regulator but to the extent that they constitute fund application rules, are also the responsibility of the UCITS’ Home State regulator. As such, these responsibilities may overlap between the competent authorities of the Home and Host States. EEA UCITS management companies providing collective portfolio management services for a UCITS scheme, whether from a branch in the United Kingdom or under the freedom to provide cross border services, are therefore advised that they will be expected to comply with the requirements of this section, except for COLL 6.12.3R(2) which, as a notification requirement, is a matter reserved for the rules of the management company’s Home State. [deleted]

Risk management process

6.12.3 R (1) (a) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must use a risk management process enabling it to monitor and measure at any time the risk of the scheme’s positions and their contribution to the overall risk profile of the scheme.

(b) In particular, an authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must not solely or mechanistically rely on credit ratings issued by credit rating agencies, as defined in article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies the CRA Regulation, for assessing the creditworthiness of the scheme’s assets.

(2) An authorised fund manager (excluding the EEA UCITS management company of a UCITS scheme) or a UK UCITS management company of an EEA UCITS scheme must regularly notify the following information to the FCA and at least on an annual basis:

…

6.12.3A R An authorised fund manager of a UK UCITS management company of an EEA UCITS scheme subject to COLL 6.12.3R(2) must notify the FCA of the information specified in points (a) and (b) of that rule:

(1) annually, within 30 business days of 31 October, with information that is accurate as of 31 October of that year;

…

6.12.3B G (1) In addition, an authorised fund manager of a UK UCITS management company of an EEA UCITS scheme subject to COLL 6.12.3R(2) should submit a notification to the FCA if there has been a significant change to the fund’s risk profile since its last report, by
sending the form in COLL 6 Annex 2R, completed as applicable, to fundsupervision@fca.org.uk.

6.12.4 G …

(3) An authorised fund manager or a UK UCITS management company is expected to demonstrate more sophistication in its risk management process for a scheme with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.

(4) An authorised fund manager or a UK UCITS management company should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by SYSC 4.1 (General requirements).

…

(6) An authorised fund manager or a UK UCITS management company of an EEA UCITS scheme should undertake the risk assessment required by COLL 5.2.20R (7)(d) (Permitted transactions (derivatives and forwards)) with the highest care when the counterparty to the derivative transaction is an associate of the authorised fund manager, the UK UCITS management company or the credit issuer.

[Note: CESR’s UCITS eligible assets guidelines with respect to article 8(2)(d) of the UCITS eligible assets Directive]

Risk management policy

6.12.5 R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must establish, implement and maintain an adequate and documented risk management policy for identifying the risks to which that scheme is or might be exposed.

(2) The risk management policy must comprise such procedures as are necessary to enable the authorised fund manager or UK UCITS management company to assess the exposure of each UCITS it manages to market risk, liquidity risk and counterparty risk, and to all other risks, including operational risk, that might be material for that scheme.

(3) The risk management policy must address at least the following elements:

(a) the techniques, tools and arrangements that enable the authorised fund manager or UK UCITS management
company to comply with the obligations set out in this section and COLL 5.3 (Derivative exposure);

(b) the allocation of responsibilities within the authorised fund manager or UK UCITS management company pertaining to risk management; and

…

(4) To meet its obligations in (1), (2) and (3) an authorised fund manager or a UK UCITS management company must take into account the nature, scale and complexity of its business and of the UCITS it manages.

[Note: article 38 of the UCITS implementing Directive]

6.12.6 G UK UCITS management companies operating EEA UCITS schemes are advised that to the extent that the matters referred to in COLL 6.12.5R(3)(a) are viewed by the UCITS Home State regulator as falling under its responsibility, they will be expected to comply with the UCITS Home State measures implementing articles 40 and 41 of the UCITS implementing Directive. [deleted]

Monitoring of risk management policy

6.12.7 R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must assess, monitor and periodically review:

…

(b) the level of compliance by the authorised fund manager of the UK UCITS management company with the risk management policy and with those arrangements, processes and techniques referred to in COLL 6.12.5R; and

…

(2) The authorised fund manager (excluding an EEA UCITS management company of a UCITS scheme) or a UK UCITS management company of an EEA UCITS scheme must notify the FCA of any material changes to the risk management process.

[Note: article 39(1) and 39(2) of the UCITS implementing Directive]

6.12.8 G UK UCITS management companies Authorised fund managers are advised that when they applied for authorisation from the FCA under the Act, their ability to comply with the requirements in COLL 6.12.7R would have been assessed by the FCA as an aspect of their fitness and properness in determining whether the threshold conditions set out in Schedule 6 (Threshold conditions) of the Act were met. Firms are further advised that their compliance with these requirements is subject to review by the FCA on
an ongoing basis in determining whether they continue to meet the threshold conditions.

[Note: article 39(3) of the UCITS implementing Directive]

Measurement and management of risk

6.12.9 R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must adopt adequate and effective arrangements, processes and techniques in order to:

…

(2) For the purposes of (1), the authorised fund manager or a UK UCITS management company must take the following actions for each UCITS it manages:

…

(3) The arrangements, processes and techniques referred to in (1) should be proportionate in view of the nature, scale and complexity of the business of the authorised fund manager or the UK UCITS management company and the UCITS it manages and be consistent with the UCITS’ risk profile.

[Note: articles 40(1) and 40(2) of the UCITS implementing Directive]

6.12.10 G UK UCITS management companies operating EEA UCITS schemes are advised that to the extent that the matters referred to in COLL 6.12.9R(1)(b) are viewed by the UCITS Home State regulator as falling under its responsibility, they will be expected to comply with the UCITS Home State measures implementing articles 41 and 43 of the UCITS implementing Directive. [deleted]

6.12.11 R (1) An authorised fund manager or a UK UCITS management company of an EEA UCITS scheme must employ an appropriate liquidity risk management process in order to ensure that each UCITS it manages is able to comply at any time with COLL 6.2.16R (Sale and redemption) or the equivalent UCITS Home State measures implementing article 84(1) of the UCITS Directive.

(2) Where appropriate, the authorised fund manager or UK UCITS management company must conduct stress tests to enable it to assess the liquidity risk of the UCITS under exceptional circumstances.

[Note: article 40(3) of the UCITS implementing Directive]

6.12.12 R An authorised fund manager or a UK UCITS management company of an EEA UCITS scheme must ensure that, for each UCITS it manages, the liquidity profile of the investments of the scheme is appropriate to the redemption policy laid down in the instrument constituting the fund or the prospectus.
6.13 Record keeping

Application

6.13.1 R (1) This section applies to an authorised fund manager of a UCITS scheme:

(a) an authorised fund manager of a UCITS scheme; and

(b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

(2) This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services. [deleted]

Recording of portfolio transactions

6.13.2 R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure, for each portfolio transaction relating to a scheme it manages, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.

Recording of subscription and redemption orders

6.13.3 R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must take all reasonable steps to ensure that every subscription and redemption order it receives relating to units in any such scheme it manages are centralised and recorded immediately after receipt of that order.

Record keeping requirements

6.13.4 R (1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure the retention of the records referred to in COLL 6.13.2R and COLL 6.13.3R for a period of at least five years or, in exceptional circumstances and where directed by the FCA, for a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the FCA to exercise its supervisory functions under the UCITS Directive in respect of UCITS schemes.
(2) Following the termination of its authorisation, an authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must retain its records referred to in (1) for the outstanding term of the five year period or, if it transfers its responsibilities in relation to the UCITS scheme to another authorised fund manager or management company, arrange for those records for the past five years to be accessible to that other manager.

(3) The authorised fund manager or the UK UCITS management company must retain the records referred to in COLL 6.13.2R and COLL 6.13.3R in a medium that allows the storage of information in a way accessible for future reference by the FCA, and in such a form and manner that the following conditions are met:

Electronic data processing

6.13.5 R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or redemption order, in order to be able to comply with COLL 6.13.2R (Recording of portfolio transactions) and COLL 6.13.3R (Recording of subscription and redemption orders).

[Note: article 7(1) of the UCITS implementing Directive]

6.13.6 R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure a high level of security during the electronic data processing referred to in COLL 6.13.5R as well as the integrity and confidentiality of the recorded information, as appropriate.

[Note: article 7(2) of the UCITS implementing Directive]

…

6 Annex UK UCITS management company of UCITS schemes and EEA UCITS schemes: Derivative Use Report (FSA042: UCITS)

…

6 Annex Guidance notes on UK UCITS management company of UCITS schemes and EEA UCITS schemes: Derivative Use Report (FSA042: UCITS)
<table>
<thead>
<tr>
<th>Fund name</th>
<th>This is the name of the scheme or, where applicable, of the sub-fund as it appears on the FS Register or, for an EEA UCITS scheme, in the prospectus.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund authorisation</td>
<td>Whether the scheme is authorised and regulated in the United Kingdom or in another EEA State.</td>
</tr>
</tbody>
</table>
| PRN or LEI | For a UCITS scheme, this is the product reference number of the scheme or, where applicable, of the sub-fund which appears on the FS Register.  
EEA UCITS schemes are not assigned a PRN. Instead, the legal entity identifier (LEI) of the scheme or, where applicable, of the sub-fund, should be indicated. Where the LEI is not available, please leave the cell blank. |

7 Suspension of dealings and termination of authorised funds

7.1 Introduction

Application

7.1.1 R …

(2) COLL 7.7 (UCITS mergers) applies only to a domestic UCITS merger or a cross-border UCITS merger.

…

7.2 Suspension and restoration of dealings

Requirement

7.2.1 R …

(2) On suspension, the authorised fund manager, or the depositary if it has required the authorised fund manager to suspend dealings in units, must:

…

(b) as soon as practicable give written confirmation of the suspension and the reasons for it to:

(i) the FCA; and

(ii) the Home State regulator in each EEA State in which the authorised fund manager holds itself out as willing
... 

(5) The *authorised fund manager* must inform the FCA of the proposed restart of *dealings in units* and immediately after the restart must confirm this by giving notice to the FCA and the authorities mentioned in (2)(b)(ii). 

... 

7.6 Schemes of arrangement 

Schemes of arrangement: explanation 

7.6.1 G ... 

(3) COLL 7.6.2R(3) to (6) apply to a *domestic UCITS merger* and cross-border *UCITS merger*. Arrangements constituting any such merger are in addition subject to the requirements of COLL 7.7 (UCITS mergers), implementing the requirements of the *UCITS Directive*. 

Schemes of arrangement: requirements 

7.6.2 R ... 

(2) For a *UCITS scheme* or a *sub-fund of a UCITS scheme*, (1) applies as if the reference to a *regulated collective investment scheme* also excludes any *recognised scheme* but includes any scheme which is authorised in the EEA under the *UCITS Directive* and which was other than a scheme *recognised scheme* under section 264 of the *Act* (Schemes constituted in other EEA States) immediately before exit day. 

... 

7.7 UCITS mergers 

Application 

7.7.1 R This section applies to an *ICVC*, an *authorised fund manager* of an *AUT*, *ACS* or *ICVC*, any other *director of an ICVC* and the *depositary* of any such *scheme* where, in each case, the *AUT, ACS* or *ICVC* is a *UCITS scheme* that is a party to: 

(1) a *domestic UCITS merger*; or 

(2) a cross-border *UCITS merger*. [deleted]
7.7.2 G (1) The effect of COLL 7.7.1R, and in particular the narrow Glossary definition of domestic UCITS merger which is drafted in accordance with article 2.1(r) of the UCITS Directive, is that this section will not apply to a merger in the United Kingdom between two or more UCITS schemes unless one of them has been the subject of a UCITS marketing notification before exit day.

(2) For arrangements to constitute a cross-border UCITS merger, at least two of the relevant UCITS must be:

(a) established in different EEA States; or

(b) established in the same EEA State and be merging into a newly constituted UCITS established in another EEA State. [deleted]

References to a UCITS scheme

7.7.3 R In this section references to:

(1) a UCITS scheme, a merging UCITS; or to a receiving UCITS or to an EEA UCITS scheme include the sub-fund of any such scheme; 5

(2) the management company of an EEA UCITS scheme are to the operator of the scheme. [deleted]

[Note: article 37 of the UCITS Directive]

UCITS mergers

7.7.4 R A domestic UCITS merger between two or more UCITS schemes, or a cross-border UCITS merger between one or more UCITS schemes which is or are the merging UCITS and one or more EEA UCITS schemes, is permissible provided:

…

(2) in the case of a UCITS scheme that is:

(a) a merging UCITS in a domestic or cross-border UCITS merger, an extraordinary resolution is approved by unitholders in accordance with COLL 7.6.2R(3) and (4) (Schemes of arrangement: requirements); and

(b) a receiving UCITS in a domestic or cross-border UCITS merger, the authorised fund manager and depositary of the AUT or ACS and the directors of the ICVC comply with COLL 7.6.2R(5) and (6).

[Note: articles 39(1), 39(4) and 44 first paragraph of the UCITS Directive]
The requirements and the process which must be followed to give effect to a proposal for a **UCITS merger** as specified by Chapter VI of the **UCITS Directive** (see articles 37 to 48) have been implemented in the United Kingdom by the provisions of Part 4 of the **UCITS Regulations 2011**. The main features of the regime as set out in those provisions include:

(a) the different types of merger operation that will be recognised for a **UCITS merger** the merger must be a **domestic UCITS merger** which takes the form of a scheme of arrangement;

(b) the need for the **FCA** to give prior approval to the proposed merger under regulation 9 (Application for authorisation) of the **UCITS Regulations 2011**, where the arrangements proposed constitute either:

(i) a **domestic UCITS merger**; or

(ii) a **cross-border UCITS merger** in which the merging **UCITS** is a **UCITS scheme** (a **UK UCITS**);

... Common draft terms of merger

7.7.7 R (1) The **authorised fund manager** of a **UCITS scheme** that is a **merging UCITS** or a **receiving UCITS** in a proposed **UCITS merger**, must in conjunction with any other **authorised fund manager** or, as the case may be, management company of an **EEA UCITS scheme** that is a party to the proposed merger, draw up common draft terms of the proposed **UCITS merger**.

(2) The common draft terms in (1) must set out the following particulars:

(a) an identification of the type of **UCITS merger** and of the **UCITS** involved;

... Information to be given to unitholders

7.7.10 R ...
(2) Where a **UCITS scheme** is the **merging UCITS** in a **domestic UCITS merger** or **cross-border UCITS merger**, its **authorised fund manager** must provide the information document in (1):

(a) to the **unitholders** of the **merging UCITS** and the **receiving UCITS** only after the FCA has given its approval to the **UCITS merger proposal** under regulation 9 of the **UCITS Regulations 2011**; and

(b) where the **receiving UCITS** (in the case of a **cross-border UCITS merger**) is an **EEA UCITS scheme**, to the unitholders of that scheme only after the **Home State regulator** of each **merging UCITS** has authorised the **UCITS merger proposal** under national measures implementing article 39 of the **UCITS Directive**; [deleted]

and in either case must do so at least 30 days before the last date by which **unitholders** may request repurchase or **redemption** of their **units** or, where applicable, conversion without additional charge.

(3) The information document to be provided to the **unitholders** of the **merging UCITS** and the **receiving UCITS** under (1) must include the following:

... 

(c) any specific rights **unitholders** have in relation to the proposed **UCITS merger**, including but not limited to:

... 

(ii) the right to obtain a copy of the report of the independent auditor or the **depositary** on request prepared for the purposes of regulation 11 of the **UCITS Regulations 2011** or, if applicable, the equivalent national implementing measure of the **UCITS Home State**;

(iii) the right to request the repurchase or **redemption** or, where applicable, the conversion of their **units** without charge under regulation 12 of the **UCITS Regulations 2011** or, if applicable, the equivalent national implementing measure of the **UCITS Home State**; and

... 

... 

(4) If a **UCITS marketing notification** in respect of the **merging UCITS** or **receiving UCITS** has been made, the information document referred to in (3) must be provided in the **official language**, or one of the official
languages, of the relevant Host EEA State in which units of the UCITS scheme are to be have been marketed, or in a language approved by its Host State regulator the overseas regulator in that EEA State. The authorised fund manager of the relevant UCITS scheme must provide an accurate translation of the information document.

[Note: article 43(1), 43(2), 43(3) and 43(4) of the UCITS Directive]

General rules regarding the content of merger information to be provided to unitholders

7.7.11 R …

(2) In the case of a proposed cross-border UCITS merger, the authorised fund manager of the UCITS scheme, being either the merging UCITS or the receiving UCITS respectively, must explain in plain language any terms or procedures relating to the EEA UCITS scheme which differ from those commonly used in the United Kingdom. [deleted] …

7.7.12 G …

(2) The reference to “conversion” in COLL 7.7.10R(2) means an exchange of units in the merging UCITS or receiving UCITS for units in another UCITS scheme or EEA UCITS scheme that has similar investment policies and that is managed by the same authorised fund manager or one of its affiliated companies.

[Note: recital (1) of the UCITS implementing Directive No 2]

Specific rules regarding the content of merger information to be provided to unitholders of the merging UCITS

7.7.13 R (1) Where the merging UCITS is a UCITS scheme, the information document that its the authorised fund manager of a merging UCITS must provide to its unitholders under COLL 7.7.10R(3)(b) must also include:

…

Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS

7.7.14 R (1) Where the receiving UCITS is a UCITS scheme, the information that its the authorised fund manager of a receiving UCITS must provide to its unitholders under COLL 7.7.10R(3)(b) must also include an explanation of whether the authorised fund manager expects the merger to have any material effect on the portfolio of the
receiving UCITS, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

...  

...  

Key investor information  

...  

7.7.17 R (4) Where a UCITS scheme is the receiving UCITS in a cross-border UCITS merger, its authorised fund manager must ensure that an up-to-date version of the key investor information document of the receiving UCITS is made available to the management company of the merging UCITS for the purpose of providing it to investors in that UCITS.

(2) Where the key investor information document of the receiving UCITS has been amended for the purpose of (1), the authorised fund manager of the receiving UCITS must also provide it to all its existing unitholders. [deleted]

[Note: article 5(2) of the UCITS implementing Directive No 2]  

...  

Effective merger date, exchange ratio calculation date and publication of merger  

7.7.21 G ...  

(2) For a UCITS scheme which is the receiving UCITS in a cross-border UCITS merger, the effective date of the merger will be the date agreed by the FCA and the merging UCITS’ Home State regulator. [deleted]

(3) For a UCITS scheme which is the receiving UCITS in a domestic UCITS merger or a cross-border UCITS merger:

...  

(4) For a UCITS scheme which is the merging UCITS in a cross-border UCITS merger, the dates referred to in (2) and (3)(a) will be determined by the laws of the receiving UCITS Home State. Those dates will be after the date on which the merger proposal has been approved in accordance with COLL 7.7.4 R (2)(a) (UCITS mergers). [deleted]

[Note: article 47 of the UCITS Directive]

Confirmation obligation on completion of a UCITS merger
7.7.22 R The authorised fund manager of a UCITS scheme that is the receiving UCITS in either a domestic or cross-border UCITS merger must confirm in writing to the depositary of the UCITS scheme and the FCA that the merger transfer is complete.

[Note: article 48(4) of the UCITS Directive]

9 Recognised schemes

9.2 Section 264 recognised schemes [deleted]

9.2.1 G (1) [deleted]
(2) [deleted]
(3) [deleted]
(4) [deleted]

Marketing of units of an EEA UCITS scheme

9.2.2 G (4) The units of an EEA UCITS scheme in respect of which a notification has been transmitted to the FSA by the competent authority of the UCITS Home State in accordance with article 93 of the UCITS Directive may be marketed in the United Kingdom. This is the effect of section 264 (Schemes constituted in other EEA States) read in conjunction with section 238(4)(c) (Restrictions on promotion) of the Act.

(2) Where a management company wishes to market the units of an EEA UCITS scheme it manages, without establishing a branch or providing any other services in the United Kingdom, a management company passport is not required for such marketing activities.

(3) In this Chapter references to an EEA UCITS scheme include its sub-funds.

[Note: article 16(1) second paragraph, article 91(1) and 91(4) of the UCITS Directive]

9.3 Section 272 recognised schemes

...
9.3.2 **R** An operator of a scheme recognised under section 272 of the Act **recognised scheme** must ensure the prospectus:

…”

Preparation and maintenance of prospectus

9.3.3 **R** (1) An operator of a scheme which is a recognised scheme by virtue of section 272 of the Act must comply with the requirements set out in **COLL 4.2 (Pre-sale notifications)**.

(2) Where a scheme recognised under sections 272 of the Act **recognised scheme** 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.

Preparation of a key information document in accordance with the PRIIPs regulation

9.3.4 **G** …

(3) As a result, when a recognised scheme under section 272 of the Act is made available to retail clients in the United Kingdom the operator must draw up a key information document in accordance with the PRIIPs Regulation, unless the operator of such a scheme is otherwise exempt from such a requirement under the PRIIPs Regulation for the time being.

9.4 **Facilities in the United Kingdom**

General

9.4.1 **R** (1) The operator of a recognised scheme under section 264 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**.

…”

Documents

9.4.2 **R** (1) The operator of a recognised scheme must maintain facilities in the United Kingdom for any person, for inspection (free of charge) and for the obtaining (free of charge, in the case of the documents at (c), (d) and (e), and otherwise at no more than a reasonable charge) of copies in English of:

…”

(c) the latest prospectus (which must include the address where the facilities are maintained and details of those facilities); and
(d) for a section 264 recognised scheme which is an EEA UCITS scheme, the EEA key investor information document; and

(e) …

(1A) For a section 264 recognised scheme, the requirement in (1) for documents to be in English applies only to the EEA key investor information document referred to in (1)(d). [deleted]

…

11 Master-feeder arrangements under the UCITS Directive for UCITS schemes

11.1 Introduction

Application

…

11.1.1A G It may be possible for a UCITS scheme to be the feeder UCITS of a master UCITS that is an EEA UCITS scheme. In such a case, the ability of the operator, AFM, depositary, and auditor of the feeder UCITS to comply with the applicable rules may depend upon whether appropriate agreements can be reached with the management company, depositary and auditor of the master UCITS. It is not possible for an EEA UCITS scheme to be a feeder of a master UCITS scheme.

…

Table of application

11.1.2 R This table belongs to COLL 11.1.1R.

<table>
<thead>
<tr>
<th>Reference</th>
<th>ICVC</th>
<th>ACD</th>
<th>Any other directors of an ICVC</th>
<th>Authorised fund manager of an AUT or ACS</th>
<th>Depositary of an ICVC, AUT or ACS</th>
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…

11.2 Approval of feeder UCITS
Explanations

11.2.1 G (1) Section 283A(1) (Master-feeder structures) of the Act, in implementation of article 59(1) of the UCITS Directive, provides that the operator of a UCITS scheme may not invest a higher proportion of scheme property in units of another UCITS than is permitted by rules made by the FCA implementing (which implemented article 55 of the UCITS Directive), unless the investment is approved by the FCA in accordance with that section.

(2) The relevant rule which implemented FCA has implemented article 55(1) of the UCITS Directive in is COLL 5.2.11R(9), which provides that not more than 20% in value of a scheme is to consist of the units of any one collective investment scheme.

Application for approval of an investment in a master UCITS

11.2.2 R …

(2) Where the master UCITS is an EEA UCITS scheme, the application for approval must also be accompanied by an attestation by the master UCITS’s Home State regulator from a person acceptable to the FCA that the master UCITS:

…

11.3 Co-ordination and information exchange for master and feeder UCITS

Authorised fund manager of a master UCITS: provision of documentation

11.3.1 R The authorised fund manager of a UCITS scheme that is a master UCITS must provide the management company of its feeder UCITS with all documents and information necessary for the latter to meet its regulatory obligations under the UCITS Directive provisions of COLL applicable in respect of a UCITS scheme under this chapter.

[Note: article 60(1) first paragraph first sentence of the UCITS Directive]

11.3.1A R The authorised fund manager of a UCITS scheme that is a feeder UCITS of a master UCITS which is an EEA UCITS scheme must make a binding arrangement with the management company of the master UCITS to obtain all documents and information necessary to meet its regulatory obligations under the Act.

[Note: article 60(1) first paragraph first sentence of the UCITS Directive]

Master-feeder agreement and internal conduct of business rules

…
11.3.3 G Where an **authorised fund manager** of a **feeder UCITS** enters into a **master-feeder agreement** or, if applicable, internal conduct of business rules, with the **management company** of an **EEA UCITS scheme**, references in **COLL 11 Annex 1R** and **COLL 11 Annex 2R** to **COLL rules implementing** that implemented provisions in the **UCITS Directive** which are the responsibility of the **EEA UCITS scheme’s Home State regulator** should be read as referring to the corresponding provisions in the laws and regulations of that **EEA State**.

... Law applicable to the master-feeder agreement

11.3.5 R ... 

(2) Where the **feeder UCITS** and the **master UCITS** are *established in different* **EEA States** or, the master-feeder agreement must provide that the applicable law shall be either **UK law**, 

(a) **the law of the EEA State in which the feeder UCITS is established**; *or*

(b) **the law of the EEA State in which the master UCITS is established**;

and that both parties agree to the exclusive jurisdiction of the courts of the **EEA State** whose law they have stipulated to be applicable to the agreement **UK**.

[**Note:** article 14 of the **UCITS implementing Directive No 2**]

11.3.5A R (1) Where paragraph (2) applies a **master-feeder agreement** that is effective prior to exit day need not comply with **COLL 11.3.5R(2)**.

(2) This paragraph applies where the applicable law of the **master-feeder agreement** was:

(a) **UK law before exit day**, and remains so; *or*

(b) **the law of the EEA State in which the master UCITS is established**, and remains so.

Avoidance of opportunities for market timing

11.3.6 R ... 

(2) Where either the **master UCITS** or **feeder UCITS** is an **EEA UCITS scheme** managed by an **EEA UCITS management company**, the **authorised fund manager** must co-ordinate with that **management company**.
11.3.10  
Where the FCA is informed in accordance with COLL 11.3.9R that a feeder UCITS which is an EEA UCITS scheme has invested in units of the master UCITS, section 261A and section 261Z4 (Information for home state regulator) of the Act and regulation 29A (Information for home state regulator) of the OEIC Regulations require the FCA to inform the Home State regulator of the feeder UCITS immediately. [deleted]  

[Note: article 66(1) second sentence of the UCITS Directive]  

11.3.12  
An authorised fund manager of a master UCITS must ensure the timely availability of all information that is required in accordance with its obligations under the regulatory system, the general law and the instrument constituting the fund, to:  

...  

(2) the competent authority of the feeder UCITS FCA;  

...  

11.4  
Depositaries  

...  

Contents of the information-sharing agreement between depositaries  

11.4.2  

(2) Where a master-feeder agreement exists in accordance with COLL 11.3.2R(1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the depositaries must provide that UK law applies to that agreement, and both depositaries agree to the exclusive jurisdiction of the UK courts in relation to that agreement;  

(a) the law of the EEA State applying to the master-feeder agreement will also apply to the information-sharing agreement; and
(b) both depositaries agree to the exclusive jurisdiction of the courts of that EEA State.

(3) Where the master-feeder agreement has been replaced by internal conduct of business rules in accordance with COLL 11.3.2R(2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the depositaries must provide that UK law applies to that agreement, and both depositaries agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information-sharing agreement.‡

(a) the law applying to the information-sharing agreement shall be either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established; and

(b) both depositaries agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information-sharing agreement.

[Note: articles 24 and 25 of the UCITS implementing Directive No 2]

11.4.2A R (1) Where paragraph (2) applies, an information-sharing agreement between the depositaries that is effective prior to exit day need not comply with COLL 11.4.2R.

(2) This paragraph applies where the applicable law of the information sharing agreement between the depositaries was:

(a) UK law before exit day, and remains so; or

(b) the law of a given EEA State in before exit day and remains so.

…

11.5 Auditors

…

Contents of the information-sharing agreement between auditors

11.5.2 R …

(3) Where a master-feeder agreement exists in accordance with COLL 11.3.2R(1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that UK law applies to that agreement, and both auditors agree to the exclusive jurisdiction of the UK courts in relation to that agreement.‡
(a) the law of the EEA State applying to the master-feeder agreement will also apply to the information-sharing agreement between auditors; and

(b) both auditors agree to the exclusive jurisdiction of the courts of that EEA State.

(4) Where the master-feeder agreement has been replaced by internal conduct of business rules in accordance with COLL 11.3.2R(2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that UK law applies to that agreement, and both auditors agree to the exclusive jurisdiction of the UK courts in relation to that agreement:

(a) the law applying to the information-sharing agreement shall be either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established; and

(b) both auditors agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information-sharing agreement.

[Note: articles 27 and 28 of the UCITS implementing Directive No 2]

11.5.2A R (1) An information-sharing agreement between the auditors that is effective prior to exit day need not comply with COLL 11.5.2R.

(2) This paragraph applies where the applicable law of the information-sharing agreement between the auditors was:

(a) UK law before exit day, and remains so; or

(b) the law of a given EEA State before exit day, and remains so.

…

11.6 Winding up, merger and division of master UCITS

Explanation

11.6.1 G (1) Section 258A(1) and (2) and section 261Z(1) and (2) (Winding up or merger of master UCITS) of the Act, in implementation of article 60 of the UCITS Directive, provide that where a master UCITS is wound up, for whatever reason, the FCA is to direct the manager and trustee of any AUT or the authorised contractual scheme manager and depositary of any ACS which is a feeder UCITS of the master UCITS to wind up the scheme, unless one of the following conditions is satisfied:

…
Winding up and liquidation of master UCITS: Time limit within which a master UCITS is to be wound up pursuant to FCA direction

11.6.2 R (1) The commencement of winding up of a UCITS scheme that is a master UCITS must take place no sooner than 3 months after a notification is made to its unitholders and, where applicable, the competent authorities of the feeder UCITS Home State, informing them of the binding decision to wind up the master UCITS.

Repurchase or redemption of units in a master UCITS

11.6.8 G Regulation 12(4) (Right of redemption) of the UCITS Regulations 2011 provides that where a UK master UCITS merges with another scheme, the master UCITS must enable its feeder UCITS to repurchase or redeem all the units of the master UCITS in which they have invested before the consequences of the merger become effective, unless the FCA approves the continued investment by the feeder UCITS in a master UCITS resulting from the merger.

COLL 12 (Management company and product passports under the UCITS Directive) is deleted in its entirety. The deleted text of the chapter is not shown but it is marked [deleted] as shown below.

12 Management company and product passports under the UCITS Directive [deleted]

Amend the following as shown.
CHAPTER I

SUBJECT MATTER AND GENERAL PRINCIPLES

…

Article 1A

Definitions

(a) ‘Collective Investment Schemes sourcebook’ means the Collective Investment Schemes sourcebook made by the Financial Conduct Authority under the Financial Services and Markets Act 2000 as in force on exit day.

(b) ‘feeder UCITS’ has the meaning given in section 237(3) of the Financial Services and Markets Act 2000;

(c) ‘management company’ has the meaning given in section 237(2) of the Financial Services and Markets Act 2000;

(d) ‘master UCITS’ has the meaning given in section 237(3) of the Financial Services and Markets Act 2000;

(e) ‘UCITS’ has the meaning given in section 236A of the Financial Services and Markets Act 2000; and

(f) ‘UK UCITS’ has the meaning given in section 237(3) of the Financial Services and Markets Act 2000.

Article 2

General principles

1. Requirements laid down in this Regulation shall apply to any management company with regard to each UCITS UK UCITS it manages.

2. This Regulation shall apply to any investment company which has not designated a management company authorised pursuant to Directive 2009/65/EC that has permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity specified in article 51ZA of the Regulated Activities Order 2001.

Article 3

Principles regarding the key investor information document

…
3. The key investor information document shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the UCITS UK UCITS and its risks and benefits.

CHAPTER II

FORM AND PRESENTATION OF KEY INVESTOR INFORMATION

SECTION 1

Title of document, order of contents and headings of sections

Article 4

Title and content of document

…

4. The identification of the UCITS UK UCITS, including the share class or investment compartment thereof, shall be stated prominently. In the case of an investment compartment or share class, the name of the UCITS UK UCITS shall follow the compartment or share class name. Where a code number identifying the UCITS UK UCITS, investment compartment or share class exists, it shall form part of the identification of the UCITS UK UCITS.

…

12. Authorisation details shall consist of the following statement:

‘This fund is authorised in [name of Member State] and regulated by [identity of competent authority] the United Kingdom and regulated by the Financial Conduct Authority’.

In cases where the UCITS is managed by a management company exercising rights under Article 16 of Directive 2009/65/EC, an additional statement shall be included:

‘[Name of management company] is authorised in [name of Member State] and regulated by [identity of competent authority]’.

…

CHAPTER III

CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT
SECTION 1

Objectives and investment policy

Article 7

Specific contents of the description

1. The description contained in the ‘Objectives and investment policy’ section of the key investor information document shall cover those essential features of the UCITS UK UCITS about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, including:

…

(b) the possibility that the investor may redeem units of UCITS UK UCITS on demand, qualifying that statement with an indication as to the frequency of dealing in units;

(c) whether the UCITS UK UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;

(d) whether the UCITS UK UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;

…

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the UCITS UK UCITS has an index-tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:

(a) where the UCITS UK UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;

(b) where the UCITS UK UCITS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary, to the details on the algorithm and its workings which appear in the prospectus;

…

(d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the UCITS UK UCITS;
(e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS UK UCITS, a statement that this is the case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;

(f) where a minimum recommended term for holding units in the UCITS UK UCITS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

‘Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]’.

…

4. The ‘Objectives and investment policy’ section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the UCITS UK UCITS’ investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the UCITS UK UCITS.

SECTION 2

Risk and reward profile

Article 8

Explanation of potential risks and rewards, including the use of an indicator

1. The ‘Risk and reward profile’ section of the key investor information document shall contain a synthetic indicator, supplemented by:

   …

   (b) a narrative explanation of risks which are materially relevant to the UCITS UK UCITS and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the UCITS UK UCITS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.

   …

4. The narrative explanation referred to in paragraph 1(a) shall include the following information:
(a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the UCITS UK UCITS;

(b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the UCITS UK UCITS may shift over time;

…

(d) a brief explanation as to why the UCITS UK UCITS is in a specific category;

(e) details of the nature, timing and extent of any capital guarantee or protection offered by the UCITS UK UCITS, including the potential effects of redeeming units outside of the guaranteed or protected period.

5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:

…

(b) liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the UCITS UK UCITS as a whole;

…

(e) impact of financial techniques as referred to in Article 50(1)(g) of Directive 2009/65/EC rule 5.2.19 of the Collective Investment Schemes sourcebook such as derivative contracts on the UCITS UK UCITS’ risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

Article 9

Principles governing the identification, explanation and presentation of risks

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by the UCITS UK UCITS’ management company as laid down in Directive 2010/43/EU section 6.12 of the Collective Investment Schemes sourcebook. Where a management company manages more than one UCITS UK UCITS, the risks shall be identified and explained in a consistent fashion.

SECTION 3

Charges
Article 10

Presentation of charges

…

2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:

(a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor’s capital commitment to the UCITS UK;

(b) a single figure shall be shown for charges taken from the UCITS UK over a year, to be known as the ‘ongoing charges,’ representing all annual charges and other payments taken from the assets of the UCITS UK over the defined period, and based on the figures for the preceding year;

(c) the table shall list and explain any charges taken from the UCITS UK under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

Article 11

Explanation of charges and a statement about the importance of charges

…

2. The ‘Charges’ section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the UCITS UK, including the costs of marketing and distributing the UCITS UK, and that these charges reduce the potential growth of the investment.

Article 12

Additional requirements

…

2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS UK, this shall be stated within the ‘Objectives and investment policy’ section, as indicated in Article 7(2)(e).

3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the UCITS UK’s last financial year shall be included as a percentage figure.

Article 13

Specific cases
1. Where a new UCITS UK UCITS cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.

…

Article 14

Cross-referencing

The ‘Charges’ section shall include, where relevant, a cross-reference to those parts of the UCITS UK UCITS prospectus where more detailed information on charges can be found, including information on performance fees and how they are calculated.

SECTION 4

Past performance

Article 15

Presentation of past performance

1. The information about the past performance of the UCITS UK UCITS shall be presented in a bar chart covering the performance of the UCITS UK UCITS for the last 10 years.

…

2. UCITS UK UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.

…

4. For a UCITS UK UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

5. The bar chart layout shall be supplemented by statements which appear prominently and which:

…

(d) indicate the currency in which past performance has been calculated.

The requirement laid down in point (b) shall not apply to UCITS UK UCITS which do not have entry or exit charges.

…

Article 16
Past performance calculation methodology

The calculation of past performance figures shall be based on the net asset value of the UCITS UK UCITS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

Article 17

Impact and treatment of material changes

1. Where a material change occurs to a UCITS UK UCITS’ objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the UCITS UK UCITS’ past performance prior to that material change shall continue to be shown.

…

Article 18

Use of a benchmark alongside the past performance

1. Where the ‘Objectives and investment policy’ section of the key investor information document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the UCITS UK UCITS’ past performance.

2. For UCITS UK UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the UCITS UK UCITS did not exist.

Article 19

Use of ‘simulated’ data for past performance

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:

   (a) a new share class of an existing UCITS UK UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the UCITS UK UCITS;

   …

   …

3. A UCITS UK UCITS changing its legal status but remaining established in the same Member State shall retain its performance record only where the competent authority of the Member State Financial Conduct Authority reasonably assesses that the change of status would not impact the UCITS UK UCITS’ performance.
4. In the case of mergers referred to in Article 2(1)(p)(i) and (iii) of Directive 2009/65/EC, as defined in regulation 7 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011, only the past performance of the receiving UCITS UK UCITS shall be maintained in the key investor information document.

SECTION 5

Practical information and cross-references

Article 20

Content of ‘practical information’ section

1. The ‘Practical information’ section of the key investor information document shall contain the following information relevant to investors in every Member State in which the UCITS is marketed the United Kingdom:

   …

   (b) where and how to obtain further information about the UCITS UK UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

   …

   (d) a statement that the tax legislation position of the UCITS UK UCITS home Member State may have an impact on the personal tax position of the investor;

   (e) the following statement:

   ‘[Insert name of investment company or management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the UCITS UK UCITS.’

2. Where the key investor information document is prepared for a UCITS UK UCITS investment compartment, the ‘Practical information’ section shall include the information specified in Article 25(2) including on investors’ rights to switch between compartments.

   …

Article 21

Use of cross-references to other sources of information

1. …
Cross-references shall be permitted to the website of the UCITS UK UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

...  

SECTION 6  

Review and revision of the key investor information document  

...  

Article 23  

Publication of the revised version  

...  

3. A key investor information document with duly revised presentation of past performance of the UCITS UK UCITS shall be made available no later than 35 business days after 31 December each year.

Article 24  

Material changes to the charging structure  

...  

2. Where the ‘ongoing charges’ calculated in accordance with Article 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for ‘ongoing charges’ that it believes on reasonable grounds to be indicative of the amount likely to be charged to the UCITS UK UCITS in future.

This change of basis shall be disclosed through the following statement:

‘The ongoing charges figure shown here is an estimate of the charges. [Insert short description of why an estimate is being used rather than an ex-post figure.] The UCITS UK UCITS’ annual report for each financial year will include detail on the exact charges made.’  

CHAPTER IV  

PARTICULAR UCITS UK UCITS STRUCTURES  

SECTION 1  

Investment compartments  

Article 25  

Investment compartments
1. Where a UCITS UK UCITS consists of two or more investment compartments a separate key investor information document shall be produced for each individual compartment.

2. Each key investor information document referred to in paragraph 1 shall indicate within the ‘practical information’ section the following information:

   (a) that the key investor information document describes a compartment of a UCITS UK UCITS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire UCITS UK UCITS named at the beginning of the key investor information document;

   …

SECTION 2

Share classes

Article 26

Key investor information document for share classes

1. Where a UCITS UK UCITS consists of more than one class of units or shares, the key investor information document shall be prepared for each class of units or shares.

2. The key investor information pertinent to two or more classes of the same UCITS UK UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.

3. The management company may select a class to represent one or more other classes of the UCITS UK UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the ‘Risk and reward profile’ section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.

   …

Article 27

Practical information section

If applicable, the Practical information section of the key investor information document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the UCITS UK UCITS’ prospectus.
That section shall also indicate where investors can obtain information about the other classes of the UCITS UK UCITS that are marketed in their own Member State the UK.

SECTION 3

Fund of funds

Article 28

Objectives and investment policy section

Where the UCITS UK UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in Article 50(1)(e) of Directive 2009/65/EC rule 5.2.13 of the Collective Investment Schemes sourcebook, the description of the objectives and investment policy of that UCITS in the key investor information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

Article 29

Risk and reward profile

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each underlying collective undertaking, to the extent that these are likely to be material to the UCITS UK UCITS as a whole.

Article 30

Charges section

The description of the charges shall take account of any charges that the UCITS UK UCITS will itself incur as an investor in the underlying collective undertakings. Specifically, any entry and exit charges and ongoing charges levied by the underlying collective undertakings shall be reflected in the UCITS UK UCITS’ calculation of its own ongoing charges figure.

SECTION 4

Feeder UCITS

Article 31

Objectives and investment policy section

1. The key investor information document for a feeder UCITS, as defined in Article 58 of Directive 2009/65/EC, shall contain, in the description of objectives and investment policy, information about the proportion of the feeder UCITS’ assets which is invested in the master UCITS.

…

Article 34
Practical information section

2. The information referred to in paragraph 1 shall include:

(b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with Article 63(5) of Directive 2009/65/EC rules 4.2.3 and 4.5.15 of the Collective Investment Schemes sourcebook.

SECTION 5

Structured UCITS UK UCITS

Article 36

Performance scenarios

1. The key investor information document for structured UCITS UK UCITS shall not contain the ‘Past performance’ section.

For the purposes of this Section, structured UCITS UK UCITS shall be understood as UCITS UK UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or UCITS UK UCITS with similar features.

2. For structured UCITS UK UCITS, the ‘Objectives and investment policy’ section of the key investor information document shall include an explanation of how the formula works or how the pay-off is calculated.

3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the UCITS UK UCITS’ potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

4. They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the UCITS UK UCITS.
Article 37

Length

The key investor information document for structured UCITS UK UCITS shall not exceed three pages of A4-sized paper when printed.

CHAPTER V

DURABLE MEDIUM

Article 38

Conditions applying to the provision of a key investor information document or a prospectus in a durable medium other than paper or by means of a website

1. Where, for the purposes of Directive 2009/65/EC, the key investor information document or prospectus is to be provided to investors using a durable medium other than paper the following conditions shall be met:

   ...
Annex B

Amendments to the Investment Funds sourcebook (FUND)

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

1 Introduction

1.1 Application and purpose

1.1.1 The application of this sourcebook is summarised at a high level in the following table. The detailed application is provided in each chapter.

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Applicable chapters</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>full-scope UK AIFM of an EEA AIF</td>
<td>Chapters 1, 3 and 10</td>
</tr>
<tr>
<td>full-scope UK AIFM of a non-EEA AIF non-UK AIF</td>
<td>Chapters 1, 3 and 10</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>incoming EEA AIFM branch of a UK AIF</td>
<td>Chapters 1, 3 and 10</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>depositary of a UK ELTIF managed by a full-scope EEA AIFM</td>
<td>Chapters 1, 3 and 4.2</td>
</tr>
</tbody>
</table>

(2) ...

(3) FUND 10 will apply to a UK AIFM or incoming EEA AIFM which intends to passport or market on a cross-border basis.

Compatibility with European law: AIFMD and the AIFMD level 2 regulation

1.1.2 Handbook rules which conflict with either a rule which transposes transposed AIFMD or a provision in the AIFMD level 2 regulation are modified to the extent necessary to be compatible with European law those rules and provisions.

...

1.2 Structure of the Investment Funds sourcebook
Structure of the Investment Funds sourcebook

1.2.1 G *FUND* is structured as follows:

... (4) *FUND* 4 sets out some requirements in relation to European AIF the ELTIF regime.

...

1.3 Types of fund manager

Types of fund manager within the scope of European legislation the UK AIFM and UCITS regimes

1.3.1 G The *UK* regulatory regime provides that an *undertaking* which manages an AIF or UCITS a UCITS scheme in the *UK* and is within the scope of AIFMD or the UCITS Directive must fall into one or both of the following categories:

(1) an *AIFM*; or

(2) a UCITS management company.

Types of fund manager outside the scope of European legislation the UK AIFM and UCITS regimes

1.3.2 G An *authorised person* that operates a collective investment scheme in the *UK* and falls entirely outside the scope of AIFMD the *UK AIFM* or the UCITS Directive regimes will be a residual CIS operator.

...

Full-scope UK AIFM

1.3.4 G (1) A full-scope *UK AIFM* is a UK AIFM which is authorised in accordance with AIFMD the *UK AIFM* regime and, therefore, subject to its full requirements.

...

Small AIFM

1.3.5 G (1) AIFMD provides that an AIFM which has assets under management below certain thresholds (a “small AIFM”) may be subject to limited requirements under AIFMD. However, this is subject to the right of EEA States to impose stricter requirements. [deleted]

(2) In the *UK*, the regulatory regime provides that an AIFM which has assets under management below certain thresholds (“a small AIFM”), with a registered office in the *UK* may be either:
Small authorised UK AIFM

1.3.6  G  (1)  …

(2) A small authorised UK AIFM may also opt in to the full requirements in of AIFMD the UK AIFM regime, in which case it will become a full-scope UK AIFM.

Small registered UK AIFM

…

1.3.8  G  Under regulation 16 of the AIFMD UK regulation a small registered UK AIFM may apply to the FCA for a Part 4A permission to manage an AIF. In its application a small registered UK AIFM may apply to become:

(1)  …

(2) a full-scope UK AIFM, in accordance with article 3(4) of AIFMD.

1.4  AIFM business restrictions

Single AIFM

1.4.1  R  A full-scope UK AIFM must ensure that for each AIF it is appointed to manage, it is the only AIFM of that AIF, and is responsible for ensuring compliance with AIFMD, the AIFMD level 2 regulation and the AIFMD UK regulation.

[Note: article 5(1) of AIFMD]

…

External AIFMs

1.4.3  R  An external AIFM that is a full-scope UK AIFM must not engage in any activities other than:

(1)  …

(2) the management of UCITS, for which it is subject to authorisation under the UCITS Directive must have permission to carry on the regulated activity of managing a UK UCITS;

(3) the management of portfolios of investments in accordance with mandates given by investors on a discretionary client-by-client basis, including portfolios of investments for pension funds and institutions for occupation retirement provisions in accordance with article 19(1)
of Directive 2003/41/EC occupational pension schemes, within the meaning of section 1(1) of the Pension Schemes Act 1993:

...

1.4.6 G In the FCA’s view an AIFM is permitted under FUND 1.4.3R to carry out AIFM management functions for a collective investment undertaking the management of which falls outside the scope of AIFMD or the UCITS Directive which is neither an AIF nor a UCITS.

...

3 Requirements for alternative investment fund managers

3.1 Application

3.1.1 G The application of this chapter is summarised in the following table; the detailed application is provided in each section.

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Applicable sections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-scope UK AIFM of a UK AIF.</td>
<td>All of chapter 3.</td>
</tr>
<tr>
<td>Full-scope UK AIFM of an EEA AIF operating from an establishment in the UK.</td>
<td>All of chapter 3.</td>
</tr>
<tr>
<td>Full-scope UK AIFM of an EEA AIF operating from a branch in another EEA state.</td>
<td>All of chapter 3 with the exception of FUND 3.8 (Prime brokerage firms).</td>
</tr>
<tr>
<td>Incoming EEA AIFM branch which manages a UK AIF.</td>
<td>FUND 3.8 (Prime brokerage firms).</td>
</tr>
<tr>
<td>Full-scope UK AIFM of a non-EEA AIF non-UK AIF marketed in the UK.</td>
<td>All of chapter 3 with the exception of FUND 3.12 (Marketing in the home Member State of the AIFM UK).</td>
</tr>
<tr>
<td>Full-scope UK AIFM of a non-EEA UK AIF not marketed in the UK.</td>
<td>All of chapter 3 with the exception of FUND 3.3 (Annual report of an AIF), FUND 3.11 (Depositaries) and FUND 3.12 (Marketing in the home Member State of the AIFM UK).</td>
</tr>
<tr>
<td>UK depositary of a UK AIF or a non-EEA UK AIF.</td>
<td>FUND 3.11 (Depositaries).</td>
</tr>
</tbody>
</table>

3.2 Investor information

...
Prior disclosure of information to investors

3.2.2 R An AIFM must, for each UK AIF and EEA AIF that it manages, and for each AIF it markets in the EEA UK, make available to AIF investors before they invest, in line with the instrument constituting the fund, the following information and any material changes to it:

...

...

3.2.4 R Where the AIF is required to publish a prospectus under section 85 of the Act or the equivalent provision implementing article 3 of the Prospectus Directive in the AIF’s Home State, only information referred to in FUND 3.2.2R and 3.2.3R that is additional to that contained in the prospectus needs to be disclosed, either separately or as additional information in the prospectus.

[Note: article 23(3) of AIFMD]

Periodic disclosure

3.2.5 R An AIFM must, for each UK AIF and EEA AIF it manages, and each AIF it markets in the EEA UK, disclose to investors periodically:

...

3.2.6 R An AIFM that manages a UK AIF or an EEA AIF or markets an AIF in the EEA UK must, for each such AIF that employs leverage, disclose on a regular basis:

...

...

3.3 Annual report of an AIF

Application

3.3.1 R This section applies to a full-scope UK AIFM of:

(1) a UK AIF; and

(2) an EEA AIF; and [deleted]

(3) a non-EEA AIF non-UK AIF marketed in the UK.

Provision of an annual report

3.3.2 R An AIFM must, for each UK AIF and EEA AIF it manages and for each AIF it markets in the UK:
make the annual report available to the FCA and, in the case of an EEA AIF, to the competent authority of that AIF.

[Note: article 22(1) first paragraph and article 24(3)(a) of AIFMD]

3.3.4 R (1) Where the AIF is required to make an annual financial report public under DTR 4.1.3R (Publication of annual financial reports) or an equivalent provision implementing article 4.1 of the Transparency Directive in the Home State of the AIF in the country where the AIF is established, only information referred to in FUND 3.3.5R that is additional to the annual financial report needs to be provided to investors on request, either separately or as an additional part of the annual financial report.

(2) Where additional information in (1) is provided as an addition to the annual financial report, that report must be made public no later than four months following the end of the financial year, under DTR 4.1.3R (Publication of annual financial reports) or an equivalent provision implementing article 4.1 of the Transparency Directive in the Home State of the AIF in the country where the AIF is established.

[Note: second paragraph, article 22(1) of AIFMD]

3.4 Reporting obligations to the FCA
Content of reporting information

3.4.3  R  An AIFM must, for each UK AIF and EEA AIF it manages, and for each AIF it markets in the EEA UK, provide the following to the FCA:

...  

Additional information

3.4.6A  R  In addition to the information in FUND 3.4.2R, an AIFM must regularly report the following information to the FCA:

...  

(2)  the information in FUND 3.4.3R for each non-EEA AIF it manages that is not marketed in the EEA or the UK, if:

...  

(b)  that AIF is the master AIF of a feeder AIF which the AIFM also manages and that feeder AIF is:

...  

(ii)  a non-EEA AIF that is marketed in the EEA or the UK.

...  

3.4.6B  G  Further details in relation to the additional reporting requirements in FUND 3.4.6AR can be found in ESMA’s opinion on the “Collection of information for the effective monitoring of systemic risk under article 24(5), first sub-paragraph, of the AIFMD” (ESMA 2013/1340)


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

...  

Guidelines
3.4.8  ESMA’s guidelines on reporting obligations under articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD (ESMA 2013/1339) provide further details in relation to the requirements in this section.

3.5  Investment in securitisation positions

Application

3.5.1  R  This section applies to a **full-scope UK AIFM** of:

1. **a UK AIF**; and

2. **an EEA AIF**; and [deleted]

3. **a non-EEA AIF non-UK AIF**.

Subordinate measures

3.5.3  G  Articles 50 to 56 of the **AIFMD level 2 regulation** provide detailed rules supplementing the provisions in **AIFMD rules** on investment in securitisation positions.

3.6  Liquidity

Application

3.6.1  R  This section applies to a **full-scope UK AIFM** of:

1. **a UK AIF**; and

2. **an EEA AIF**; and [deleted]

3. **a non-EEA AIF non-UK AIF**.

3.7  Risk management

Application

3.7.1  R  This section applies to a **full-scope UK AIFM** of:

1. **a UK AIF**; and
(2) an EEA AIF; and [deleted]

(3) a non-EEA AIF non-UK AIF.

Functional and hierarchical separation

<table>
<thead>
<tr>
<th>3.7.3 EU UK</th>
<th>Functional and hierarchical separation of the risk management function</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. ...</td>
<td></td>
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<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>3.7.4 EU UK</th>
<th>Safeguards against conflicts of interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The safeguards against conflicts of interest referred to in the UK legislation that implemented Article 15(1) of Directive 2011/61/EU shall ensure, at least, that:</td>
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<td></td>
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</tbody>
</table>

... 

3.8 Prime brokerage firms

Application

3.8.1 R This section applies to:

(1) a full-scope UK AIFM of:

(a) a UK AIF; and

(b) an EEA AIF managed or marketed from an establishment in the UK; and [deleted]

(c) a non-EEA AIF non-UK AIF; and

(2) an incoming EEA AIFM branch which manages or markets a UK AIF. [deleted]

...

3.9 Valuation
3.9.1 R This section applies to a full-scope UK AIFM of:

(1) a UK AIF; and
(2) an EEA AIF; and [deleted]
(3) a non-EEA AIF non-UK AIF.

...  

3.10 Delegation

Application

3.10.1 R This section applies to a full-scope UK AIFM of:

(1) a UK AIF; and
(2) an EEA AIF; and [deleted]
(3) a non-EEA AIF non-UK AIF.

in relation to the delegation of those AIFM management functions for which it is responsible, other than supporting tasks such as administrative or technical functions.

[Note: recital 31 of AIFMD]

General delegation requirements

3.10.2 R An AIFM must ensure the following conditions are met when a delegate carries out any function on its behalf:

...

(2) ...

(d) in addition to (c), where the delegation of AIFM investment management functions is conferred on a third-country non-UK delegate, cooperation between the FCA and the supervisory authority of the delegate is ensured;

...

...

3.10.3 G For the purposes of FUND 3.10.2R(2)(d) cooperation is ensured between the FCA and the supervisory authorities of a third-country delegate which is not established in the UK where a cooperation arrangement is in place.
between the two authorities in accordance with AIFMD and article 78(3) of the AIFMD level 2 regulation.

3.11 Depositaries

Application

3.11.1 R This section applies in accordance with the table in FUND 3.11.2R and FUND 3.11.3R.

3.11.2 R This table belongs to FUND 3.11.1R.

<table>
<thead>
<tr>
<th>Rule</th>
<th>Full-scope UK AIFM of a UK AIF or an EEA AIF (other than a non-EEA feeder AIF non-UK feeder AIF which is marketed in the UK)</th>
<th>Full-scope UK AIFM of a non-EEA AIF non-UK AIF or a non-EEA feeder AIF non-UK feeder AIF which is marketed in the UK</th>
<th>UK depositary of a UK AIF (other than a non-EEA feeder AIF non-UK feeder AIF which is marketed in the UK) managed by a full-scope UK AIFM of an EEA AIF</th>
<th>UK depositary of a non-EEA AIF non-UK AIF or a non-EEA feeder AIF non-UK feeder AIF which is marketed in the UK</th>
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<tr>
<td>...</td>
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<tr>
<td>3.11.4R</td>
<td>✗</td>
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</tbody>
</table>

3.11.3 R A UK depositary of a non-EEA AIF non-UK AIF or a non-EEA feeder AIF non-UK feeder AIF which is marketed in the UK that does not perform all of the functions of cash monitoring, safekeeping and oversight for the AIF need only comply with the following rules that are applicable to the functions it performs:

... Appointment of a single depositary

3.11.4 R An AIFM must, for each AIF UK AIF it manages, ensure that:
(2) the assets of the AIF are entrusted to the *depositary* for safekeeping in accordance with *FUND 3.11.21R* and *FUND 3.11.23R*.

(a) for a UK AIF, *FUND 3.11.21R* and *FUND 3.11.23R*; or

(b) for an EEA AIF, the national laws and regulations in the *Home State* of the AIF implementing article 21(8) of AIFMD.

[Note: article 21(1) and (8) of AIFMD]

Eligible depositaries for UK AIFs

3.11.10 R Subject to *FUND 3.11.12R*, an AIFM must, for each *UK AIF* it manages, ensure the appointment of a *depositary* which is a *firm established* in the *UK* and which is one of the following:

... (2) a *MiFID investment firm* or an *EEA MiFID investment firm* which:

... (Note: 3.11.10 R(2) in IPVO)

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 IFPRU investment firm* to meet the requirements of *FUND 3.11.10R(2)*. A *MiFID investment firm* An *EEA MiFID investment firm* that has a *branch* in the *UK* must meet the capital requirements under the *EU CRR* for a *CRD full-scope firm* as implemented in its *Home State* to meet the requirements of *FUND 3.11.10R(2)*.

... (3.11.10 R(2) in IPVO)

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-INF 5* (particularly *IPRU-INF 5.4.3R* (Own funds requirement)) but if the *firm* also undertakes *MiFID business*, its capital requirements will be contained in *IFPRU*, the *UK CRR*, and the *EU CRR*, or in *GENPRU* and *BIPRU* depending on the scope of that *MiFID business*. 

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[Note: recital 34 of AIFMD]

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 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 IFPRU and the UK CRR or 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 IFPRU and the UK CRR or EU CRR to meet the £4 million requirement.

Eligible depositaries for EEA AIFs

3.11.18 R An AIFM must, for each EEA AIF it manages, ensure the appointment of a depositary which is established in the Home State of the AIF and which is eligible to be a depositary in that Home State in accordance with article 21(3) of AIFMD. [deleted]

[Note: article 21(3) and (5)(a) of AIFMD]

...

Depositary functions: cash monitoring

3.11.20 R A depositary must ensure that the AIF's cash flows are properly monitored and that:

(1)  …

(2)  all cash of the AIF has been booked in cash accounts opened:

…

(b)  at:

…

(iii) a bank authorised in a third non-EEA country; or

(iv) another entity of the same nature, in the relevant market where cash accounts are required, provided such an entity is subject to effective prudential regulation and supervision which have the same effect as EU UK law and are effectively enforced and in accordance with the principles set out in article 2 (safeguarding of client financial instruments and funds) of the MiFID Delegated Directive; and

…
Depositary functions: safekeeping of financial instruments

3.11.22 EU UK

Financial instruments to be held in custody

1. Financial instruments belonging to the AIF or to the AIFM acting on behalf of the AIF which are not able to be physically delivered to the depositary shall be included in the scope of the custody duties of the depositary where all of the following requirements are met:

(a) they are transferable securities including those which embed derivatives as referred to in COLL 5.2.19R(3) (see the last subparagraph of Article 51(3) of Directive 2009/65/EC and Article 10 of Commission Directive 2007/16/EC), money market instruments or units of collective investment undertakings;

...
(b) ... 

(3) (a) A depositary that performs part of its functions through a branch or registered office in another an EEA State should ensure that those arrangements do not impede the depositary’s ability to meet the threshold conditions. 

(b) (i) ... 

(ii) For example, the FCA’s ability to supervise the depositary might be impeded if the depositary performed tasks other than administrative and supporting tasks from its branch or registered office in another an EEA State.

Delegation: safekeeping

3.11.28 R A depositary may delegate the functions in FUND 3.11.21R and FUND 3.11.23R to third parties, subject to the following conditions:

(1) the tasks are not delegated with the intention of avoiding the requirements of AIFMD those rules or the AIFMD level 2 regulation;

... Delegation: third countries other than the UK

3.11.29 R A depositary may delegate custody tasks in relation to AIF custodial assets to an entity in a third country other than the UK that does not satisfy the conditions in FUND 3.11.28R(4)(b), provided that:

(1) the law of that third country requires those AIF custodial assets to be held in custody by a local entity;

... (3) the depositary delegates its functions to such a local entity only to the extent required by the law of that third country and only for as long as there is no local entity that satisfied the delegation conditions in FUND 3.11.28R(4)(b);

(4) the investors of the relevant AIF are informed before their investment that such delegation is required due to legal constraints in the third that country and of the reasons as to why the delegation is necessary; and

...
3.11.33 R An AIFM of a non-EEA AIF non-UK AIF or a non-EEA feeder AIF non-UK feeder AIF which is marketed in the UK must:

...

3.12 Marketing in the home Member State of the AIFM UK

Application

3.12.1 R This section applies to:

(1) a full-scope UK AIFM of a UK AIF:

(a) a UK AIF; and

(b) an EEA AIF; and

(2) a full-scope EEA AIFM of:

(a) a UK AIF; and

(b) an EEA AIF. [deleted]

Marketing application

3.12.2 D Under regulation 54 (FCA approval for marketing) of the AIFMD UK regulation, a full-scope UK AIFM and a full-scope EEA AIFM may apply to market a UK AIF or EEA AIF it manages in the UK by submitting a notice to the FCA in the form set out in FUND 3 Annex 1D.

3.12.3 G If the UK AIF or EEA AIF is a feeder AIF, the master AIF needs to be an AIF that is not managed by a non-EEA AIFM non-UK AIFM or is not a non-EEA AIF non-UK AIF for it to be marketed in accordance with regulation 54 of the AIFMD UK Regulation. If the master AIF is managed by a non-EEA AIFM non-UK AIFM or is a non-EEA AIF non-UK AIF, the AIF may be marketed in the UK in accordance with regulation 57 to 59 (Marketing under article 36 of the directive) of the AIFMD UK regulation (see FUND 10.5.2G 10.5.9G (Marketing under article 36 of AIFMD) of AIFs managed by other third country AIFMs).

3.12.4 G (1) A full-scope UK AIFM may use the form set out in FUND 3 Annex 1D to apply to market a UK AIF or EEA AIF (that is not a feeder AIF, the master AIF of which is managed by a non-EEA UK AIFM or is a non-EEA UK AIF) to professional clients and/or retail clients.

(2) A full-scope UK AIFM may inform the FCA of its intention to market such an AIF in the UK in its application to become authorised as a Full-scope UK AIFM, in which case the firm does not also have
to submit the form in FUND 3 Annex 1D in respect of that marketing.

(3) A full-scope UK AIFM may also use the form in FUND 3 Annex 1D to apply to the FCA to market an AIF in other EEA States using the AIFMD marketing passport and to notify the FCA of material changes to domestic and cross-border marketing. [deleted]

3.12.5 G (1) A full-scope EEA AIFM that wishes to market a UK AIF or EEA AIF (that is not a feeder AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF) to professional clients should do so using the marketing passport provided for under AIFMD and should, therefore, apply to its Home State regulator for permission to do so.

(2) In accordance with regulation 49 (Marketing by full-scope EEA AIFMs of certain AIFs) of the AIFMD UK Regulation, a full-scope EEA AIFM may market such an AIF to retail clients in the UK if the FCA has received a regulator’s notice in relation to the marketing in accordance with Schedule 3 to the Act (EEA Passport rights) or if the AIFM has applied to the FCA for permission to market the AIF using the form in FUND 3 Annex 1D and the FCA has approved such marketing.

(3) As such, a full-scope EEA AIFM may use the form in FUND 3 Annex 1D to apply to market such an AIF in the UK to retail clients, but should not use this form to apply to market such an AIF to professional clients in the UK. [deleted]

3.12.6 G A full-scope UK AIFM or a full-scope EEA AIFM that intends to market to retail clients should consider the application of the financial promotions regime and ensure it is compliant with the relevant requirements (see PERG 8.37.14G (Application of the financial promotion and scheme promotion restrictions)).

... 4 European Specialist AIF Regimes

[Editor’s note: The changes to this Chapter will be consulted on in a separate consultation paper.]

10 Operating on a cross-border basis

10.1 Application and purpose

Application
10.1.1  R (1) This chapter applies to the following types of firm in relation to the activities in (2):

(a) …;

(b) a full scope EEA AIFM; [deleted]

(c) a small non-EEA AIFM small-non-UK AIFM; and

(d) an above threshold non-EEA AIFM above threshold-non-UK AIFM.

...

Introduction

10.1.3  G An AIFM operates on a cross-border basis when it manages or markets an AIF in an EEA State other than the state in which it has its registered office (which may include, in certain cases, a state which is a non-EEA State). [deleted]

10.1.4  G (1) AIFMD allows certain types of AIFM to operate on a cross-border basis using a passport. There are two types of passport that are provided for in AIFMD: [deleted]

(a) a management passport, which allows an AIFM to establish a branch in, or provide cross-border services into, another EEA State to manage an AIF; and

(b) a marketing passport, which allows an AIFM to provide cross-border services into another EEA State to market an AIF to investors that are professional clients.

(2) The following types of AIFM are allowed to operate on a cross-border basis using the management and marketing passport:

(a) a full scope UK AIFM of:

(i) a UK AIF; and

(ii) an EEA AIF; and

(b) a full scope EEA AIFM of:

(i) a UK AIF; and
(ii) an EEA AIF.

10.1.5 G (1) AIFMD also contains specific provisions for third country AIFs and AIFMs (ie, in relation to non-EEA AIFs, non-UK AIFs and non-EEA AIFMs, non-UK AIFMs) and the marketing of a UK AIF or an EEA AIF non-UK AIF that is a feeder AIF, the master AIF of which is managed by a non-EEA AIFM non-UK AIFM or is a non-EEA AIF non-UK AIF.

(2) In line with these provisions, the following types of AIFM are allowed to manage a non-EEA AIF non-UK AIF from an EEA State the UK:

(a) a full-scope UK AIFM; and

(b) a full-scope EEA AIFM.

(3) In addition, EEA States may allow the UK allows the marketing by the following types of AIFM in their territory only the UK:

…

FUND 10.2 (AIFM management passport) and 10.3 (EEA AIFM marketing passport in the UK) are deleted in their entirety. The deleted text of each section is not shown but the sections are marked [deleted] as shown below.

10.2 AIFM management passport [deleted]

10.3 EEA AIFM marketing passport in the UK [deleted]

10.4 AIFM third country management

Application

10.4.1 R This section applies to a full-scope UK AIFM of a non-EEA AIF non-UK AIF that is not marketed in the EEA UK to EEA UK investors.

Applicable requirements

10.4.2 G A full-scope UK AIFM may manage a non-EEA AIF non-UK AIF subject to the satisfaction of certain conditions. If the AIF is not marketed, these conditions are that:

(1) the AIFM complies with the full requirements of AIFMD FUND, other rules in the Handbook which, when made, implemented
AIFMD, the AIFMD level 2 regulation and the UK AIFMD regulation in respect of that AIF, except article 21 (Depositaries) and article 22 FUND 3.3 (Annual reporting) and FUND 3.11 (Depositaries); and

(2) (in accordance with regulation 33 of the AIFMD UK regulation) appropriate cooperation arrangements are in place between the competent authorities of the Home State of the AIFM FCA and the supervisory authorities of the country where the non-EEA AIF non-UK AIF is established in order to ensure an efficient exchange of information that allows the competent authority of the Home State of the AIFM FCA to carry out its duties in accordance with AIFMD, other rules in the Handbook which, when made, implemented AIFMD, the AIFMD level 2 regulation and the UK AIFMD regulation.

10.4.3 G As a result, a full-scope UK AIFM of a non-EEA AIF non-UK AIF that is not marketed is required to comply with:

(1) all of FUND 3 with the exception of FUND 3.3 (Annual report of an AIF), FUND 3.11 (Depositaries) and FUND 3.12 (Marketing in the home Member State of the AIFM UK); and

(2) …

10.4.4 G If a full-scope UK AIFM wishes to market in the UK a non-EEA AIF non-UK AIF that it manages, the AIFM must comply with the relevant requirements, as explained in FUND 10.5.3G to FUND 10.5.5G (Marketing under article 36 of AIFMD of third country AIFs managed by full-scope UK AIFMs).

…

10.5 National private placement

Application

10.5.1 G This section applies to the following types of AIFM that intend to market an AIF in the UK:

(1) a full-scope UK AIFM of:

(a) a feeder AIF that is a UK AIF or an EEA AIF, the master AIF of which is managed by a non-EEA AIF non-UK AIF or is a non-EEA AIF non-UK AIF; and

(b) a non-EEA AIF non-UK AIF;

(2) a full-scope EEA AIFM of: [deleted]
(a) a feeder AIF that is a UK AIF or an EEA AIF, the master AIF of which is managed by a non-EEA AIFM or is a non-EEA AIF; and

(b) a non-EEA AIF;

(3) a small non-EEA AIFM of: [deleted]

(a) a UK AIF;

(b) an EEA AIF; and

(e) a non-EEA AIF; and

(4) an above-threshold non-EEA AIFM above-threshold non-UK AIFM of:

(a) a UK AIF; and

(b) an EEA AIF; and [deleted]

(c) a non-EEA AIF non-UK AIF.

Introduction

10.5.2 G AIFMD permits EEA States to allow the marketing in their territory Marketing in the UK only of the types of AIF set out in FUND 10.5.1G, is permitted subject to certain conditions. This has been implemented in the UK by (see Part 6 (Marketing) of the AIFMD UK regulation). In accordance with these provisions, an AIFM of the type set out in FUND 10.5.1G may market an AIF in the UK providing it has notified the FCA of its intention to market, it meets the relevant conditions in the AIFMD UK regulation and the FCA has not suspended or revoked the AIFM’s entitlement to market the AIF. The AIFM is entitled to market the AIF as soon as a notification containing all of the required information has been sent to the FCA.

Marketing under article 36 of the AIFMD of third country AIFs managed by full-scope UK AIFMs

10.5.3 G In accordance with regulation 57 (Marketing under Article 36 of the directive) of the AIFMD UK regulation, a full-scope UK AIFM and a full-scope EEA AIFM may market the following types of AIF in the UK by submitting a notification to the FCA in the form in FUND 10 Annex 1D:

(1) a feeder AIF that is a UK AIF or an EEA AIF, the master AIF of which is managed by a non-EEA AIFM non-UK AIFM or is a non-EEA AIF non-UK AIF; and
(2) a non-EEA AIF non-UK AIF.

10.5.4  G  To allow the AIFM to comply with regulation 57(4), the notification includes a statement from the AIFM confirming that the following conditions are met:

(1) subject to (2), the AIFM complies with the requirements of AIFMD, other rules in the Handbook which, when made, implemented AIFMD, the AIFMD level 2 regulation and the UK AIFMD regulation in respect of that AIF;

(2) the AIFM is not required to comply with the requirements of article 24 FUND 3.11 (Depositaries) of AIFMD provided the AIFM:

(a) ensures that one or more entities, other than the AIFM, are appointed to carry out the duties in article 21(7) to (9) of AIFMD FUND 3.11.20R to 3.11.23R and 3.11.25R; and

…

(3) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the FCA and the supervisory authorities of the relevant third country to ensure an efficient exchange of information that enables the FCA to carry out its duties in accordance with AIFMD, other rules in the Handbook which, when made, implemented AIFMD, the AIFMD level 2 regulation and the UK AIFMD regulation; and

(4) the third country where the non-EEA AIF non-UK AIF is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).

10.5.5  G  (1) As a result of marketing an AIF in the UK, a full-scope UK AIFM is required to comply with:

(a) all of FUND 3, except certain sections of FUND 3.11 (Depositaries) (as set out in FUND 3.11.33R (AIFM of a non-EEA AIF non-UK AIF)) and (Marketing in the home Member State of the AIFM UK); and

(b) …

(2) A full-scope UK AIFM managing a non-EEA AIF non-UK AIF that is not marketed should note that the rules it needs to comply with will change in relation to that AIF as a result of the AIF being marketed (see FUND 10.4.3G for details of the rules that apply to a full-scope UK AIFM managing a non-EEA AIF non-UK AIF that is not marketed). In particular, an AIFM will be subject to the annual report
requirements in *FUND 3.3* (Annual report of an AIF) and some of the depositary provisions in *FUND 3.11* (Depositaries) (as set out in *FUND 3.11.33R* (AIFM of a non-EEA AIF)).

Marketing of AIFs managed by small third-country AIFMs

10.5.6 G In accordance with regulation 58 (Marketing of AIFs managed by small third country AIFMs) of the *AIFMD UK regulation*, a **small non-EEA AIFM small non-UK AIFM** may market an AIF in the UK managed by it by submitting a notification to the *FCA* in the form set out in *FUND 10 Annex 1D*.

10.5.7 G To allow the *AIFM* to comply with the requirements of regulation 58(2), the notification includes a statement from the *AIFM* confirming that the following conditions are met:

(1) …

(2) the *AIFM* is a **small non-EEA AIFM small non-UK AIFM**.

10.5.8 G As a result of **marketing an AIF in the UK**, a **small non-EEA AIFM small non-UK AIFM** is required to provide the *FCA* with information on:

…

Marketing under article 42 of the directive of AIFs managed by other third country AIFMs

10.5.9 G In accordance with regulation 59 (Marketing under article 42 of the directive) of the *AIFMD UK regulation*, an **above-threshold non-EEA AIFM above-threshold non-UK AIFM** may market a UK AIF, an EEA AIF or a non-EEA AIF non-UK AIF in the UK managed by it by submitting a notification to the *FCA* in the form in *FUND 10 Annex 1D*.

10.5.10 G To allow the *AIFM* to comply with the requirements of regulation 59(2), the notification includes a statement from the *AIFM* confirming that the following conditions are met:

…

(2) the *AIFM* complies with the requirements of articles 22 to 24 of *AIFMD FUND 3.2, 3.3* and 3.4 in so far as such provisions are relevant to the *AIFM* and the AIF to be marketed;

…

(4) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between:
(a) the FCA and, if applicable, the competent authorities of the other EEA State country where the AIF is established; and

(b) the supervisory authorities of the country where the non-EEA AIFM non-UK AIFM is established and, if applicable, of the country where the non-EEA AIF non-UK AIF is established,

to ensure an efficient exchange of information that enables the FCA to carry out its duties in accordance with AIFMD; and

(5) the third country where the non-EEA AIF non-UK AIF is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).

10.5.11 G As a result of marketing an AIF in the UK, an above-threshold non-EEA AIFM above-threshold non-UK AIFM is required to comply with:

…

10.5.11 A (1) (a) A provision of FUND 3.2 (Investor Information), FUND 3.3 (Annual report of the AIF) or FUND 3.4 (Reporting obligations to the FCA) will not be relevant to an above-threshold non-EEA AIFM above-threshold non-UK AIFM and the AIF it markets, if it relates to another provision to which the AIFM is not subject.

…

…

App 1 Written Notice decision procedures under the AIFMD UK regulation

App 1.1 Section title

…

<table>
<thead>
<tr>
<th>App 1.1.4G</th>
<th>Regulation</th>
<th>Description</th>
<th>Decision Maker</th>
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<td>54(6)</td>
<td>Where the FCA proposes to refuse an application to market an AIF by a full-scope UK AIFM or a full</td>
<td>Executive procedures</td>
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<td>Scope of EEA AIFM under regulation 54 (FCA approval for marketing) of the AIFMD UK regulation.</td>
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<tr>
<td>54(7)(a)</td>
<td>Where the FCA decides to refuse an application to market an AIF by a full-scope UK AIFM or a full-scope EEA AIFM under regulation 54 (FCA approval for marketing) of the AIFMD UK regulation.</td>
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<td>...</td>
<td>Executive procedures</td>
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Annex C

Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

1 Introduction

1.1 Introduction to sourcebook

... Purpose

1.1.2 G The general purpose of this sourcebook is to set out the guidance, directions and rules made by the FCA under the RCB Regulations. Those regulations enable bonds to be issued which comply with Article 52(4) of the UCITS Directive qualify under COLL 5.2.11R(5A) and 5.6.7R(3A) for a concession from the general spread of risk requirements in respect of transferable securities.

... An insurer (which is not a UK Solvency II firm or a non-directive friendly society, incoming EEA firm or an incoming Treaty firm) may benefit from increased counterparty limits under INSPRU 2.1.22R(3)(b). An insurer which is a UK Solvency II firm is subject to the rules in the PRA Rulebook which transposed the Solvency II Directive and also to the Solvency II Regulation (EU) 2015/35 of 10 October 2014.

... Issuers which are subject to an obligation to publish a prospectus under the Prospectus Directive Act and the Prospectus Rules are required by Article 3 of the PD Regulation to disclose risk factors. These requirements are set out in PR 2.3.1EU UK and PR App 3.1.1EU UK.

...
EXITING THE EUROPEAN UNION: MISCELLANEOUS (AMENDMENTS)
INSTRUMENT 201[X]

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of:

(1) regulation 3 of the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018; and

(2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

B. This instrument comes into force on [29 March 2019 at 11 p.m].

Amendments to the FCA Handbook

C. 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.

<table>
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Amendments to material outside the Handbook

D. The Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) is amended in accordance with Annex D to this instrument.

E. The Wind-down Planning Guide (WDPG) is amended in accordance with Annex E to this instrument.

F. The MiFID 2 Guide (M2G) is amended in accordance with Annex F to this instrument. It is also renamed the MiFID 2 Onshoring Guide.

Citation

G. This instrument may be cited as the Exiting the European Union: Miscellaneous (Amendments) Instrument 201[X].

By order of the Board
[\textit{date}]
Editor’s notes

(1) The amendments proposed in this instrument relate to the statutory instruments set out in Annex 2 of the accompanying consultation paper and other matters arising from the UK’s withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.

(2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 2 of the consultation paper.

(3) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day, rather than the text of the Handbook in force on 1 July 2018.

(4) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.
Annex A

Cross-cutting definitional changes

Part 1: In the following provisions, delete the references to EU CRR and insert references to UK CRR.

Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

SYSC 7.1.17R
SYSC 7.1.21R
SYSC 10.1.1R
SYSC 19D.1.9G
SYSC 19D.3.34R

Prudential sourcebook for Investment Firms (IFPRU)

IFPRU 1.1.4G
IFPRU 1.1.7G
IFPRU 1.1.16G
IFPRU 1.1.17G
IFPRU 1.4.1R
IFPRU 1.4.2G
IFPRU 2.2.7R
IFPRU 2.2.14R
IFPRU 2.2.18R
IFPRU 2.2.23R
IFPRU 2.2.28R
IFPRU 2.2.34R
IFPRU 2.2.37R
IFPRU 2.2.40G
IFPRU 2.2.50R
IFPRU 2.2.56G
IFPRU 2.2.70G
IFPRU 2.2.73G
IFPRU 2.3.4G
IFPRU 2.3.7G
IFPRU 2.3.8G
IFPRU 2.3.10G
IFPRU 2.3.20G
IFPRU 2.3.36G
IFPRU 2.3.50R
IFPRU 2.3.51R
IFPRU 2.3.52R
IFPRU 3.1.5G
IFPRU 3.1.6R
IFPRU 3.2.2G
IFPRU 3.2.3R
IFPRU 3.2.4G
IFPRU 3.2.10R
IFPRU 3.2.17R
IFPRU 3.2.18G
IFPRU 3.2.19G
IFPRU 3.2.20G
IFPRU 4.1.2G
IFPRU 4.2.1R
IFPRU 4.2.2G
IFPRU 4.2.3R
IFPRU 4.2.5G
IFPRU 4.2.7G
IFPRU 4.2.8G
IFPRU 4.2.9G
IFPRU 4.2.10G
IFPRU 4.2.11G
IFPRU 4.3.1G
IFPRU 4.3.2G
IFPRU 4.3.7G
IFPRU 4.3.10G
IFPRU 4.3.11G
IFPRU 4.3.14G
IFPRU 4.3.15G
IFPRU 4.3.16G
IFPRU 4.3.17G
IFPRU 4.4.1G
IFPRU 4.4.6G
IFPRU 4.4.7G
IFPRU 4.4.8G
IFPRU 4.4.9G
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IFPRU 4.4.11G
IFPRU 4.4.12G
IFPRU 4.4.13G
IFPRU 4.4.14G
IFPRU 4.4.15G
IFPRU 4.4.16G
IFPRU 4.4.17G
IFPRU 4.5.1G
IFPRU 4.5.3G
IFPRU 4.5.5G
IFPRU 4.5.6G
IFPRU 4.6.5G
IFPRU 4.6.8G
IFPRU 4.6.13G
IFPRU 4.6.22G
IFPRU 4.6.23G
IFPRU 4.6.24G
IFPRU 4.6.29G
IFPRU 4.6.31G
IFPRU 4.6.32G
IFPRU 4.7.3G
IFPRU 4.7.4G
IFPRU 4.7.5G
IFPRU 4.7.6G
IFPRU 4.7.7G
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IFPRU 4.12.3G
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IFPRU 4.12.13G
IFPRU 4.12.24G
IFPRU 4.12.27G
IFPRU 4.12.32G
IFPRU 4.12.35G
IFPRU 4.12.37G
IFPRU 4.12.42G
IFPRU 4.13.1R
IFPRU 4.14.1R
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IFPRU 4.14.4G
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IFPRU 6.3.12G
IFPRU 6.3.17G
IFPRU 6.3.18G
IFPRU 6.3.19G
IFPRU 6.3.25G
IFPRU 7.1.2G
IFPRU 7.1.5R
IFPRU 7.1.6R
IFPRU 8.1.2G
IFPRU 8.1.3R
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IFPRU 8.2.3G
IFPRU 8.2.4G
IFPRU 8.2.7R
IFPRU 8.2.8R
IFPRU 8.2.10R
IFPRU 10.4.1R
IFPRU 10.4.3R
IFPRU 10.6.5G
IFPRU TP 1.4R
IFPRU TP 1.6R
IFPRU TP 1.8R
IFPRU TP 1.9R
IFPRU TP 1.10R
IFPRU TP 1.11G
IFPRU TP 1.12G
IFPRU TP 3.2G
IFPRU TP 3.4R
IFPRU TP 3.5R
IFPRU TP 3.6R
IFPRU Sch 1(3)
IFPRU Sch 2(3)

Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

BIPRU 8.1.2AR
BIPRU 8.1.2BR
BIPRU 12.4.1R
BIPRU TP 2.3G
BIPRU TP 15.3G
BIPRU TP 15.4R

Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)
**MIPRU** 4.2.5R

**MIPRU** 4.4.1R

**Interim Prudential sourcebook for Investment Businesses (IPRU(INV))**

**IPRU(INV)** 4.2.4G

**IPRU(INV)** 11.6.5G

**Collective Investment Schemes sourcebook (COLL)**

**COLL** 5.6.7R

**COLL** 5.7.5R

**COLL** 6.6A.8R

**COLL** 6.6B.7G

**COLL** 6.6B.9G

**Regulated Covered Bonds sourcebook (RCB)**

**RCB** 1.1.6G

**RCB** 2.3.13G

**Energy Market Participants Guide (EMPS)**

**EMPS** 1.2.3G

**Oil Market Participants Guide (OMPS)**

**OMPS** 1.2.2G

**Part 2:** In the following provisions, delete any references to ‘manage a UCITS’ or ‘managing a UCITS’ and insert references to ‘manage a UK UCITS’ or ‘managing a UK UCITS’, as appropriate.

**General Prudential sourcebook (GENPRU)**

**GENPRU** 2.1.46R
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

BIPRU 1.1.3R
BIPRU 8.5.8G

Prudential sourcebook for Investment Firms (IFPRU)

IFPRU 1.1.3G
IFPRU 3.2.20G

Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

IPRU(INV) 11.6.4R
IPRU(INV) 11.6.5G
IPRU(INV) 11.7.1G

Collective Investment Schemes sourcebook (COLL)

COLL 6.9.9R
Annex B

Amendments to the Supervision manual (SUP)

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

3 Auditors

3.1 Application

... 

Incoming firms

3.1.3 R This chapter applies to an incoming EEA firm (and the auditor of such a firm) only if it has a top-up permission. [deleted]

3.1.4 G The application of SUP 3.10 to the auditor of an incoming EEA firm with a top-up permission is qualified in SUP 3.10.3R. [deleted]

3.1.5 R This chapter does not apply to an incoming Treaty firm, which:

(1) does not have a top-up permission; and

(2) is not required to comply with the client asset rules. [deleted]

3.1.6 G The application of SUP 3.7 to an incoming Treaty firm or an auditor of such a firm is further qualified in SUP 3.7.1G. [deleted]

... 

3.7 Notification of matters raised by auditor

Application

3.7.1 G SUP 3.7 does not apply to an incoming Treaty firm which does not have a top-up permission. [deleted]

... 

3.10 Duties of auditors: notification and report on client assets

... 

3.10.3 R SUP 3.10.5R(3) does not apply to an auditor of a lead regulated firm or an incoming EEA firm. [deleted]

... 

4 Actuaries
4.1  Application

... 

4.1.3  Applicable sections

<table>
<thead>
<tr>
<th>(1)</th>
<th>Category of firm</th>
<th>(2) Applicable sections or rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>A long-term insurer, other than:</td>
<td>SUP 4.1, SUP 4.2, SUP 4.3 and SUP 4.5</td>
</tr>
</tbody>
</table>

(a) ... 

(b) an incorporated friendly society that is a flat rate benefits business friendly society; and 

(c) an incoming EEA firm; and [deleted]

(d) ... 

... 

6  Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

6.1  Application, interpretation and purpose

... 

6.1.3  This chapter applies to an incoming firm or a UCITS qualifier only in respect of a top-up permission. An incoming firm or a UCITS qualifier should refer to SUP 14 (Variation of passport rights by incoming EEA firms and ending authorisation) for the procedures for changes to permission granted under Schedules 3, 4 or 5 of the Act. [deleted]

... 

6.2  Introduction

... 

UK firms exercising EEA or Treaty rights

6.2.12  A UK firm should assess the effect of any change to its Part 4A permission, or any requirements, on its ability to continue to exercise any EEA right or Treaty right and discuss any concerns with its appropriate supervisory
contact(s). This may also change the applicable provisions with which it is required to comply by a Host State. [deleted]

6.2.13 G A UK firm which, as well as applying to vary or cancel its Part 4A permission, wishes to vary or terminate any business which it is carrying on in another EEA State under one of the Single Market Directives, should follow the procedures in SUP 13 (Exercise of passport rights by UK firms) on varying or terminating its branch or cross border services business. [deleted]

…

6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

…

6.3.3 G In applying for a variation of Part 4A permission, a branch of a firm from outside the EEA UK should be mindful of any continuing requirements referred to in the rest of the Handbook.

…

6.3.6 G If a firm is seeking a variation of Part 4A permission to add categories of regulated activities, it should be mindful of the directive requirements referred to at SUP 6.3.42G relating to the need to commence new activities within 12 months.

…

App 2 Insurers: Regulatory intervention points and run-off plans

App 2.1 Application

2.1.1 R Subject to SUP App 2.1.6R, SUP App 2.1 to 2.15 apply to an insurer, unless it is:

(1) a Swiss general insurer; or

(2) an EEA deposit insurer; or

(3) an incoming EEA firm; or

(4) an incoming Treaty firm.

…

App 2.10 Grant or variation of permission

2.10.1 The PRA will ask Solvency II firms seeking a grant or variation of permission to provide a scheme of operations as part of the application process (see the UK provisions which implemented article 18 of the Solvency II Directive). It may
make a similar request to other firms (see SUP 6.3.25G). Firms which have submitted such a scheme of operations are not required to submit to the PRA a further scheme of operations under this appendix unless SUP App 2.8 or the relevant parts of PRA Rulebook: Non-Solvency II firms: Run Off Operations or PRA Rulebook: Solvency II firms: Run Off Operations apply. SUP 6 Annex 4 does, however, apply to such a firm.

App 2.15

Run-off plans for closed with-profits funds

2.15.8B Delegated acts or implementing technical standards may be adopted under the UK provisions which implemented article 35(6) and (7) of the Solvency II Directive in relation, among other things, to run-off plans. In that event Solvency II firms should comply with those acts and standards to the extent that they supersede SUP App 2.15.8AG.
Annex C

Amendments to the Consumer Redress Schemes sourcebook (CONRED)

In this Annex, striking through indicates deleted text.

1 General

…

1.4 Scope of a consumer redress scheme

…

1.4.2 A consumer redress scheme could apply to all authorised persons, electronic money issuers or payment service providers or to a specified description of authorised person, electronic money issuer or payment service provider. This means the FCA could create a scheme that applied to a named list of firms. Given that a scheme can apply to authorised persons, it could also apply to incoming EEA firms that are authorised under Schedule 3 to the Act. However, the FCA would need to consider on a case-by-case basis the extent to which this was both practicable and appropriate (having regard to the division of responsibilities between Home and Host State regulators under the various EU Directives that apply to financial services firms).

…

1.4.9 The section 404 power could be used in relation to non-UK consumers if they are protected by the underlying law (e.g. some FCA rules apply to UK firms doing business in another EEA State).
Annex D

Amendments to the Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD)

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

…

**Distributor responsibilities**

1.25 …

<table>
<thead>
<tr>
<th>Notes:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>The Guide represents our view based on the law, regulation and other circumstances that exist as at the publication date, but also takes into account changes to the Handbook including those to implement the Markets in Financial Instruments Directive (MiFID).</td>
</tr>
</tbody>
</table>

…
Annex E

Amendments to the Wind-down Planning Guide (WDPG)

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

2 Application and interpretation

2.1 Application and interpretation

2.1.1 This guide aims to assist FCA solo-regulated firms authorised with a Part 4A permission and for which the FCA is the Home State regulator with wind-down planning. It is not relevant where a firm is already in administration or liquidation, nor is it directly relevant to recovery strategies a firm may engage in as part of its recovery plan. While the guide does not impose any obligation on a firm to create a wind-down plan, it shows what an effective wind-down plan might include.

...  

3 The concept and process of wind-down planning  

3.1 What is wind-down planning?

...  

3.1.6 We know that some firms may have carried out similar planning exercises under different but related regulatory processes (e.g. ICAAP, RRD). This guide does not replace or re-interpret those processes. However, firms may want to take this guide into account to further strengthen their wind-down planning as well as to consider how consistent these processes are with one another.

[Note: Internal Capital Adequacy Assessment Process (ICAAP) is for firms which are subject to the UK provisions which implemented CRD IV / BIPRU. Some of these firms are also subject to the UK provisions which implemented the Recovery and Resolution Directive (RRD).]

...  

3.4 Effective risk management  

...  

3.4.6 Firms may consider potential options for recovery in the face of adverse business conditions, such as selling part of the business or seeking a capital injection. This is known as recovery planning. Even if a firm has carried out recovery planning, wind-down planning can still be relevant as there is no guarantee that recovery options would save the firm’s business.
[Note: Some firms are required to prepare recovery plans, i.e. those subject to the UK provisions which implemented the Recovery and Resolution Directive (RRD).]
Annex F

The MiFID 2 Onshoring Guide (M2G)

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

1 Implementation Onshoring for Trading Venues & Data Reporting Service Providers

1.1 Background

1.1.1 This guide sets out an overview of the FCA’s approach to transposition onshoring of the recast Markets in Financial Instruments Directive 2 (MiFID 2) in the MAR and REC sourcebooks, by explaining how they fit within the context of the overall implementation of the legislation at a UK and EU level. “Onshoring”, for these purposes, refers to the process by which law deriving from EU legislation at exit day is retained or adapted, post exit day. This guide focuses on the regulatory regime in MiFID 2 for UK trading venues (as defined by article 4(1)(24) MiFID 2(16A) MiFIR: this term comprises UK regulated markets, multilateral trading facilities and organised trading facilities, but not systematic internalisers) and UK data reporting services providers (DRSPs).

1.1.2 MiFID 2 is made up of MiFID (2014/65/EU) and the Markets in Financial Instruments Regulation (MiFIR - 600/2014/EU). MiFID is addressed to all Member States and being a directive is binding as to the result to be achieved, albeit leaving the choice of form and methods of implementation to national authorities. The UK has implemented the directive through a combination of primary legislation, secondary legislation and regulatory rules. As an EU regulation, MiFIR is binding in its entirety and directly applicable, its content becomes law in the UK without the need for domestic legislative intervention. [deleted]

1.1.3 MiFID 2 enables the Commission to make secondary legislation in several places. That legislation takes the form of a combination of delegated acts (for example as provided for in article 4(2) MiFID to specify elements of the definitions), regulatory technical standards (RTS) and implementing technical standards (ITS). Delegated acts under MiFID 2 are both drafted and made by the Commission, after it receives advice from the European Securities and Markets Authority (ESMA), and may take the form of either directives or directly applicable regulations. As for RTS and ITS, these are prepared in draft by ESMA and subject to public consultation, before endorsement and making by the Commission; both take the form of regulations and so are directly applicable. RTS and ITS feature, in particular, in the MiFID 2 provisions relating to trading venues and DRSPs. After exit day, in the UK, in broad terms, the former role of the Commission is discharged by the Treasury and ESMA’s functions are performed by the FCA. For further details, see the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.
1.1.4 You can be subject to a MiFID derived or MiFIR requirement, even if you are not an authorised financial institution. This is the effect of article 1 MiFID and article 1 MiFIR. In the case of article 1 MiFID, this Article 30 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 applies algorithmic trading requirements to certain persons exempt under MiFID, where they are members of a regulated market or multilateral trading facility (article 1(5) MiFID). Similarly, article 1 MiFIR requires non-financial counterparties above the clearing threshold in article 10 of the European Market Infrastructure Regulation (‘EMIR’) (Regulation 648/2012/EU. See our EMIR webpage (https://www.fca.org.uk/markets/emir) for further details about non-financial counterparties and the clearing threshold) to comply with the obligations in Title V MiFIR. This means trading certain classes of derivatives on organised venues only, UK regulated markets, UK multilateral trading facilities (MTFs), UK organised trading facilities (OTFs) and permitted third country venues (article 28 MiFIR). EEA venues are treated as third country venues for these purposes.

1.1A Transitional onshoring provisions

1.1A.1 The effect of section 3 of the European Union (Withdrawal) Act 2018 is that “direct EU legislation” became part of UK law, as at exit day (and is known as “retained EU law” in accordance with section 6 of the same legislation). As such, MiFIR and all directly applicable regulations made under MiFID and MiFIR, including the MiFID Org Regulation (Commission Delegated Regulation [2017/565]), the MiFIR Delegated Regulation (Commission Delegated Regulation [2017/567]) and technical standards became part of UK law, as at exit day.

1.1A.2 Each of these pieces of legislation is subject to the power in section 8 of the European Union (Withdrawal) Act 2018 to deal with deficiencies arising out of the UK’s withdrawal from the EU. The Treasury has exercised this power in the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (the ‘Exit Regulations’) to amend each of the following:

- MiFIR;
- MiFID Org Regulation;
- MiFIR Delegated Regulation;
- Data Reporting Services Regulations; and

A reference to any of the above in the remaining text of this guide is to the legislation as amended by the Exit Regulations.

1.1A.3 The FCA has exercised its power under Part 2 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations
2018 in relation to a number of technical standards [insert link to FCA webpage] and to amend rules in MAR referred to in M2G 1.2.3G.

1.2 MiFID implementation onshoring in UK legislation and the FCA Handbook

1.2.1 The UK’s implementation onshoring of the directive takes the form of a combination of legislation made by HM Treasury, in the form of a number of statutory instruments, and rules contained in the FCA Handbook and the PRA Rulebook.

1.2.2 The Treasury legislation is set out in the following statutory instruments as amended by the Exit Regulations—(links to statutory instruments relate to the instrument when made and users may need to update their searches of the relevant legislation):


- The MiFI regulations amend Part XVIII FSMA and the Recognition Requirements Regulations (‘RRRs’) applying to recognised investment exchanges. This includes implementing the regulatory regimes relating to a market operator operating an organised trading facility and data reporting services, as well as obligations in regard to the management body and systems and controls. It also includes applying algorithmic trading requirements in relation to unauthorised entities and position management requirements for trading venues on which commodity derivatives are traded. The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013, SI 2013/419 is updated by the MiFI regulations so that FCA supervisory and enforcement powers under FSMA may be applied in the event of breach of MiFIR and regulations made under MiFID and MiFIR.

- …

- The RAO Amendment Order imposes reflects scope changes arising out of MiFID, notably the new investment service of operating an organised trading facility and the extension of “financial instruments” to include emission allowances. The onshoring amendments to Part 1 of Schedule 2 to the RAO essentially preserve the pre-exit day scope of regulation relating to physically-settled power forward contracts.
1.2.3 The amendments to the FCA Handbook complement the Treasury legislation, referred to above, so for example:

- REC contains, in REC 2, extracts of the RRRs as amended by the MiFI regulations and ‘Notes’ signposting further directly applicable technical standards made under MiFID or MiFIR which are relevant to recognised investment exchanges’ compliance with certain RRRs. These include having adequate systems and controls for algorithmic trading (see REC 2.5), and sufficient price transparency to ensure fair and orderly trading (see REC 2.6). Where REC 2 previously copied out EU legislation which has been repealed by MIFID or MiFIR, this has now been deleted and, where appropriate, replaced with a simple reference to the equivalent MiFID or MiFIR provision.

- REC 3, which contains existing FCA rules requiring certain notifications to be made by RIEs to the FCA, has been amended to include also includes ‘Notes’ signposting further new notification requirements set out in the amended RRRs or directly applicable technical standards made under MiFID or MiFIR.

- MAR 5 is amended to apply the MiFID requirements on systems and controls for algorithmic trading to MTFs, including requirements in the areas of systems resilience, algorithmic market-making, tick sizes and clock synchronisation. It is also amended to align further the organisational requirements on MTFs with those for regulated markets, in the areas of conflicts of interest and risk management, and the management of technical operations. Rules on the suspension and removal of financial instruments also align with those for regulated markets. The rules concerning pre- and post-transparency are removed, given the directly applicable nature of these requirements imposed by MiFIR, which chapter contains guidance on the ability to register an MTF as an SME Growth Market.

- MAR 5A introduces a regime for OTFs. OTFs are distinguished from MTFs and regulated markets by the requirement for discretionary order execution and by trading only being permitted on these venues in bonds, structured finance products, emission allowances or derivatives. Restrictions on proprietary and matched principal trading applicable to MTFs and regulated markets are more relaxed for OTFs. In other respects, however, the regulation of these venues aligns with that for MTFs, and also, therefore, substantially with that for regulated markets.

- MAR 6 is amended to remove areas relating to systematic internalisers that are now covered by directly applicable regulations—in particular, by Title III of MiFIR. The notification requirement for relates to systematic internalisers remains, however, and the article 27(3) MiFID execution quality publication requirement (applying to systematic internalisers, amongst other execution venues). This
requirement has been incorporated preserved as part of onshoring as a rule (see MAR 6.3A).

- MAR 7 concerning disclosure of over-the-counter trades conducted by systematic internalisers is deleted because this subject matter is now covered by Title III of MiFIR.

- MAR 7A transposes corresponds to article 17 of the recast MiFID for authorised firms. It imposes systems and controls and notification requirements on firms engaging in algorithmic trading, as well as providing for market making obligations where a firm engages in a high-frequency algorithmic trading technique. It also imposes systems and controls and notification requirements on firms providing direct electronic access services. The services of a general clearing member are now subject to new rules, of a similar nature.

- MAR 9 provides directions and guidance applicable to the operation of the new data reporting services regime, set out in the DRS regulations.

1.2.4 More generally, where requirements in MiFID have been transposed to correspond to FCA rules, the source of the corresponding requirement is referred to below the relevant provision, for example MAR 5A.3.5: -

5A.3.5 R A firm must not engage in:

(1) matched principal trading on an OTF operated by it except in bonds, structured finance products, emission allowances and derivatives which have not been declared subject to the clearing obligation in accordance with article 5 of EMIR, where the client has consented; or

(2) dealing on own account on an OTF operated by it, excluding matched principal trading, except in sovereign debt instruments for which there is not a liquid market.

[Note: article 20(2) and (3) of MiFID]

1.2.5 Amendments to the scope of MiFID are the subject of guidance in PERG 2 and 13.

1.3 Markets in Financial Instruments Regulation (‘MiFIR’)

1.3.1 Although MiFIR is a separate piece of legislation, recital 7 of the recast MiFID notes: ‘both instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and third country firms providing investment services or activities in the Union. The Directive should therefore be read together with that Regulation’. [deleted]
1.3.2 As MiFIR is directly applicable, we have not copied out its content into the Handbook. This means that, for example, the previous Handbook material in REC 2 and MAR 5 relating to transparency requirements for recognised investment exchanges and MTFs under the existing MiFID have been deleted and the new MiFIR provisions referenced instead in the relevant sections of REC 2 and MAR 5. [deleted]

1.3.3 MiFIR as onshored also provides for delegated acts and technical standards on amongst other things:

- price transparency for equity and derivative instruments, see REC 2, MAR 5 and MAR 5A;
- straight-through processing of clearing for derivative instruments, see REC 2, MAR 5 and MAR 5A; and
- transaction reporting, see SUP 17A.

1.4 MIFID 2 technical Technical standards and delegated acts

1.4.1 MiFID 2 also requires the Commission, in certain places, to adopt technical standards, submitted by ESMA. These technical Technical standards, which take the form of regulatory technical standards or implementing technical standards, are, as their names suggest, technical in nature and according to articles 10 and 15 of the ESMA regulation (1095/2010/EU) (see http://data.europa.eu/eli/reg/2010/1095/oj) ‘… shall not imply strategic decisions or policy choices’.

…

1.4.3 Given their directly applicable nature and length, we have not copied out the onshored technical standards into the Handbook, but instead adopted the signposting convention illustrated above.

1.4.4 In addition to enabling the FCA and PRA to make technical standards, MiFID II the Exit Regulations also contains onshore delegated acts prepared by the Commission, itself, in the form of regulations (see, for example, references to the MiFID Org Regulation (Commission Delegated Regulation (EU) 2017/565) and the MiFIR Delegated Regulation (EU) 2017/567).

1.5 ESMA Guidelines

1.5.1 In addition to being required to submit draft technical standards to the Commission, where required by MiFID and MiFIR, ESMA may be required to issue guidelines, for example, on the requirements for the management body of a market operator and a data reporting services provider. [deleted]

…

1.5.3 As a general practice, when the FCA decides to comply with the guidelines issued by ESMA it will signpost a reference to these by
means of a note at the beginning of the relevant section of the Handbook. Although the FCA is required to notify ESMA whether it will comply or intends to comply with the guidelines, with reasons for any non-compliance, financial market participants are not required to report to ESMA (for notification of regulatory breaches by firms to the FCA, see, generally, SUP 45). The FCA have issued non-handbook guidance setting out the FCA’s approach to ESMA guidelines after exit day. The guidance can be found on the FCA website at [URL to be added].

1.6 Third country firms

1.6.1 MiFIR and the EU onshored regulations made under MiFID 2 forming part of “retained EU law” (see [M2G 1.1A.1G]) apply to EU UK firms and EEA firms (when adopted by the EEA states). For the UK branches of non EEA non-UK firms (third country firms), these regulations are not of general application and it is necessary to ensure, via domestic measures, that these branches do not receive more favourable treatment than their EU UK counterparts (see Recital 109 of the recast MiFID). A new rule, GEN 2.2.22AR, is included for this purpose.

1.6.2 MiFIR, the MiFIR Delegated Regulation and the MiFID Org Regulation apply to EEA firms with temporary Part 4A permissions to the extent specified in the Exit Regulations. Technical standards deriving from MiFID apply to these firms to the extent provided for by GEN 2.2.29R.

1.7 Overview

1.7.1 The diagram in M2G 1 Annex 1 provides an overview of trading venue and DRSP requirements deriving from MiFID 2 and the location of their implementation. The references to “technical standards” are to those described in the FCA Handbook Glossary. The technical standards can be accessed from the Commission website.

1.7.2 In addition to MAR and other requirements noted in the overview, firms operating an MTF or OTF will be subject to other MiFID requirements applying elsewhere in the Handbook, notably in SYSC, COBS and SUP 17A.

1.7.3 SUP 17A sets out rules and guidance for transaction reporting and supply of reference data: it also cross-refer to the relevant EU legislation in articles 26 and 27 MiFIR and MiFID RTS 22 and 23 (see Glossary (MiFID 2) Instrument 2017 (FCA 2017/36) at https://www.handbook.fca.org.uk/instrument/2017/FCA_2017_36.pdf). It further confirms that we will allow operators of trading venues and investment firms to use third party technology providers when supplying financial instrument reference data to the FCA.

1 Annex 1 MiFID and Market Infrastructure: An Overview

Annex 1 An overview of MiFID and Market Infrastructure:
2 Implementation for Onshoring of senior management arrangements and systems and controls obligations

2.1 Background

2.1.1 This guide sets out an overview of the FCA’s approach to the transposition onshoring of the Markets in Financial Instruments Directive II (MiFID II) in the SYSC sourcebook. It explains how this fits within the context of the overall implementation of the legislation at EU and UK levels. The guide focuses on the regulatory regime for UK firms and is aimed at UK MiFID investment firms, that is investment firms authorised that would require authorisation under MiFID and credit institutions carrying on MiFID business, and MiFID Optional exemption firms. The latter comprise advisers or arrangers who do not hold client money or assets and meet other conditions imposed under article 3 MiFID II, so as to be exempt from the Directive’s full application. See PERG 13 Q49, as updated by the Conduct, Perimeter Guidance and Miscellaneous Provisions (MiFID 2) Instrument 2017, FCA 2017/39.

2.1.2 MiFID II (2014/65/EU) is addressed to all Member States and is binding as to the result to be achieved, albeit leaving the choice and method to national authorities. The UK has implemented the Directive via a combination of primary legislation, secondary legislation and regulatory rules. [deleted]

2.1.3 MiFID II contains revised senior management and systems and controls obligations relating to firms. With the exception of one aspect...
implementation of the whistleblowing obligations in MiFID II by way of contained in primary legislation, transposition onshoring of the MiFID II Level 1 requirements takes the form of regulatory rules. The relevant FCA rules are mainly contained in SYSC but PRA-authorised firms will also be subject to rules in the General Organisational Requirements in the PRA Rulebook.

2.1.4 MiFID II also enables the European Commission to make secondary legislation which is of particular importance in the case of systems and controls. The Commission Delegated Regulation 2017/565 of 25 April 2016 (the MiFID Org Regulation (see http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0565)), as onshored by the Exit Regulations, contains detailed organisational requirements for those firms to which it applies, including authorised MiFID investment firms and credit institutions. References to the MiFID Org Regulation in M2G are to the regulation as amended by the Exit Regulations. These ‘Level 2’ obligations supplement the more general systems and controls obligations in MiFID II itself. As an EU regulation, the MiFID Org Regulation is binding in its entirety and directly applicable, and it becomes law in the UK without the need for domestic legislation.

2.1.5 Many of the obligations in the MiFID Org Regulation feature in the MiFID implementing Directive (2006/73/EC) and so were implemented in SYSC by way of regulatory rules. The use of a regulation in MiFID II to impose many detailed requirements necessitates revisiting the corresponding rules in SYSC implementing MiFID and adapting the structure of SYSC. [deleted]

2.2 MiFID I implementation and SYSC [deleted]

2.2.1 The main Handbook sourcebook for implementing the MiFID requirements in relation to the management body, general organisational requirements, conflicts of interest and whistleblowing is SYSC. As regards the obligations on the management body, general organisational requirements and conflicts of interest, the corresponding requirements in MiFID I were implemented using the ‘common platform’. The common platform requirements in SYSC 4 to 10 covered the following areas:

- SYSC 4 (General organisational requirements including persons who effectively direct the business and responsibility of senior personnel);
- SYSC 5 (Employees, agents and other relevant persons);
- SYSC 6 (Compliance, internal audit and financial crime);
- SYSC 7 (Risk control);
- SYSC 8 (Outsourcing);
- SYSC 9 (Record-keeping);
- SYSC 10 (Conflicts of interest).
2.2.2 The common platform was initially devised to ensure that a single set of requirements apply to firms subject to MiFID and CRD, as opposed to similar, but different, regulatory requirements arising from these Directives being imposed upon the same business functions. A unified set of requirements is simpler and more cohesive for firms, and was supported in consultation responses. The common platform requirements in SYSC 4.10 were then adapted and extended to non-MiFID firms, including investment advisers and arrangers subject to the article 3 MiFID exemption. The adaptation of the common platform requirements took the form of applying various rules as guidance to these firms, as set out in the application tables in SYSC 1 Annex 1 Part 3.

…

2.4 MiFID II implementation onshoring and SYSC

2.4.1 The combination of senior management and systems and controls requirements for firms in a directive and regulation means that FCA rules are still required in order to implement onshore the provisions in the directive. As such, the approach to implementation onshoring of MiFID II retains the familiar approach of the common platform but adapts the existing structure of SYSC in the following principal ways:

- updates the application of common platform requirements in SYSC 1 Annex 1 Part 3 and creates a new Table B for MiFID optional exemption firms;
- creates a new rule which has the effect, amongst other things, of extending the application of certain parts of the MiFID Org Regulation to all of a UK MiFID investment firm’s designated investment business, MiFID or otherwise (SYSC 1 Annex 1 2.8AR);
- creates a new rule which extends the application of the MiFID Org Regulation in relation to general organisational requirements, compliance, risk management, internal audit, responsibility of senior management, remuneration policies and practices and outsourcing to all of a MiFID optional exemption firm’s designated investment business, by way of rule or guidance depending on the individual provision (SYSC 1 Annex 1 3.2CR discussed further in M2G 2.5);
- uses signposting references in the application provisions to individual SYSC chapters to identify the relevant articles of the MiFID Org Regulation which supplement the rules implementing the MiFID requirements. These are also listed in the new Table C in SYSC 1 Annex 1;
- creates a new chapter (SYSC 10A) on recording telephone conversations and electronic communications to implement new obligations imposed by MiFID II, supplemented by the MiFID Org Regulation;
- creates a new section (SYSC 18.6) on the whistleblowing obligations imposed upon MiFID investment firms and which includes a signposting mechanism pointing firms to similar obligations derived from other single market legislation; and
creates a new section (SYSC 19F) to implement a new obligation in respect of remuneration and performance management of sales staff.

2.8 Other firms - Collective portfolio management investment firms and authorised professional firms

This short summary focuses only on MiFID II transposition and not obligations arising under other single market legislation.

2.8.1 A collective portfolio management investment firm (‘CPMI’) is a firm which is subject to authorisation under UCITS or AIFMD which does MiFID business, in accordance with article 6 UCITS directive or article 6 AIFMD. A CPMI takes the form of a ‘UCITS investment firm’ or an ‘AIFM investment firm’, as defined in the FCA Handbook Glossary. A UCITS investment firm is subject to the common platform requirements as set out in Column A+ in SYSC 1 Annex 1 Table A. An AIFM investment firm is subject to the requirements listed in Column A in SYSC 1 Annex 1 Table A in relation to their MiFID business. …

2.8.2 Authorised professional firms exempt from MiFID II under article 2(1)(c) of the directive falling within the exemption in paragraph 1(d) of Part 1 of Schedule 3 to the RAO will be subject to common platform requirements as set out in Column B in SYSC 1 Annex 1 Table A. If they satisfy the criteria of a MiFID optional exemption firm (in accordance with Chapter 1 of Part 2 of the MiFIF Regulations) they will be subject to the provisions in the SYSC 1 Annex 1 Part 3 Table B column A. If they fall within both the article 2(1)(c) and 3 exemptions in paragraph 1(d) of Part 1 of Schedule 3 to the RAO and Chapter 1 of Part 2 of the MiFIF Regulations, they are entitled to comply only with the common platform requirements relating to article 2(1)(c) exempt firms in Column B in SYSC 1 Annex 1 Table A. Where they are required to be authorised by MiFID II, they will be subject to common platform requirements in Column A in SYSC 1 Annex 1 Table A and other SYSC requirements as a UK MiFID investment firm, except to the extent indicated otherwise (including SYSC 1 Annex 1 2.5R).

2.9 Other organisational requirements

2.9.1 In addition to the SYSC obligations outlined above, firms will find MiFID II-related organisational requirements in respect of complaints handling in DISP, client money and assets (CASS) and product governance obligations in PROD. Firms will also remain subject to domestic obligations in the form of the relevant senior management, certification, COCON and approved persons requirements.

2 Annex 1 Overview

Annex 1 …
The diagram focuses on the position of UK MiFID investment firms (other than CPMI and authorised professional firm firms) and MiFID optional exemption firms.

**MiFID II Organisational requirements for firms**

- **MFID investment firm = common platform firm**
  - Articles [21-25, 27, 30-35 & 72 MiFID Org Regulation] apply to the firm’s non-MiFID business in accordance with:
    - SYSC 1 Annex 1.2.8R
    - SYSC 1 Annex 1.2.8AR

- **Applies directly to MiFID investment firms – see articles A1 and 1 for scope**

- **MFID optional exemption firm**
  - Articles 21-25, 27, 30-35 & 72 MiFID Org Regulation apply to the firm’s business in accordance with SYSC 1 Annex 1 3.2CR
Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of:

   (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; and

   (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

B. This instrument comes into force on [29 March 2019 at 11 p.m.].

Amendments to the Handbook

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

D. The Financial Conduct Authority confirms and remakes in the Glossary of definitions the defined expressions relating to any UK legislation which has been amended further to section 8 of the European Union (Withdrawal) Act 2018.

Citation

E. This instrument may be cited as the Exiting the European Union: Glossary (Amendments) Instrument 201[X].

By order of the Board
[date]

Editor’s notes

(1) The amendments proposed in this instrument relate to the statutory instruments set out in Annex 2 of the accompanying consultation paper and other matters arising from the UK’s withdrawal from the EU. We will set out our approach in due course for any additional amendments which are required to these provisions as a result of the publication of further statutory instruments.

(2) The text in this instrument may also need to be amended at the time of the final instrument if there are further changes to the content of the statutory instruments set out in Annex 2 of the consultation paper.
(3) Further amendments proposed to the Glossary in a later instrument may also affect the meaning of provisions consulted in instruments accompanying this consultation paper. In due course we will publish a consolidated version of all amendments proposed to the Glossary.

(4) The amendments in this instrument are based on the text of the Handbook in force on 1 July 2018. If amendments are made to the relevant text between 1 July 2018 and exit day, we will consider whether these give rise to further deficiencies or have a material impact on the proposed amendments set out in this instrument. Unless this is the case, we intend to proceed in the final instrument with deleting or amending the relevant provision based on the text of the Handbook in force immediately before exit day, rather than the text of the Handbook in force on 1 July 2018.

(5) The consultation is based on the assumption that the Financial Conduct Authority will have the power under the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 to make the proposed rule changes.
Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

**Annex 1 activities** has the meaning in article 4(1)(26A) of the *UK CRR*.

**Capital Requirements Regulations 2013** the Capital Requirements Regulations 2013 (SI 2013/3115).


**CRR ITS on supervisory reporting** the UK version of Regulation (EU) 2015/1278 of 9 July 2015 amending Implementing Regulation (EU) No 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions as regards instructions, templates and definitions, which is part of UK law by virtue of the EUWA.

**CRD ITS on templates, definitions and IT-solutions** the UK version of Regulation (EU) 2016/2070 of 14 September 2016 laying down implementing technical standards for templates, definitions and IT-solutions to be used by institutions when reporting in accordance with Article 78(2) of the CRD, which is part of UK law by virtue of the EUWA.

**CRD RTS on the identification of the geographical location of credit exposures for calculating institution-specific countercyclical capital buffer rates** the UK version of Regulation (EU) No 1152/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates, which is part of UK law by virtue of the EUWA.

**EU CRR** the EU version of Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012.

EU OTF (as defined in Article 2(1)(15B) of MiFIR) means a multilateral system:

(a) which is not a regulated market or an MTF;

(b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments directive of 15th May 2014.

EU regulated market (as defined in Article 2(1)(13B) of MiFIR) means a regulated market which is authorised and functions regularly and in accordance with Title III of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments directive of 15th May 2014.


exit day as defined in section 20(1) of the EUWA, means 29 March 2019 at 11 p.m. or such date as is specified further to section 20(2) to (5)).

General data protection regulation the UK version of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), which is part of UK law by virtue of the EUWA.

IAS Regulation the UK version of EC Regulation No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, which is part of UK law by virtue of the EUWA.

Insolvency Proceedings Regulation the UK version of Regulation (EC) No.1346/2000 on 29 May 2000 on insolvency proceedings, which is part of UK law by virtue of the EUWA.

technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile which is part of UK law by virtue of the EUWA.

non-UK AIF an AIF which is not a UK AIF.

non-UK AIFM an AIFM which is not a UK AIFM.

onshored a regulation made pursuant to the Treaty and which is part of UK law by virtue of the EUWA.

Regulatory technical standards the UK version of Regulation (EU) No 1152/2014 of 4 June 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the identification of the geographical location of the relevant credit exposures for calculating institution-specific countercyclical capital buffer rates, which is part of UK law by virtue of the EUWA.

RRD Regulation the UK version of Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges, which is part of UK law by virtue of the EUWA.

SSR Delegated Regulation 1 the UK version of Commission Delegated Regulation (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares, which is part of UK law by virtue of the EUWA.

SSR Delegated Regulation 2 the UK version of Commission Delegated Regulation (EU) No 918/2012 of 5 July 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps with regard to definitions, the calculation of net short positions, covered sovereign credit default swaps, notification thresholds, liquidity thresholds for suspending restrictions, significant falls in the value of financial instruments and adverse events, which is part of UK law by virtue of the EUWA.
the *UK* version of Commission Implementing Regulation (EU) No 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps, which is part of *UK* law by virtue of the *EUWA*.

**UK MTF**

(as defined in article 2(1)(14A) of *MiFIR*) means a multilateral system, operated by a UK investment firm or market operator, which:

(a) brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract; and

(b) complies, as applicable, with:

(i) paragraph 9A of the *Recognition Requirements Regulations*;

(ii) the EU regulations specified in Schedule 2 of *MiFIR*;

(iii) rules made by the competent authority governing the operating conditions of investment firms so far as they apply to MTFs,

and for the purposes of this definition, an investment firm or market operator is a UK investment firm or market operator if it has its registered office (or if it does not have a registered office, its head office) in the United Kingdom.

**UK OTF**

(as defined in article 2(1)(15A) of *MiFIR*) means a multilateral system:

(a) which is not a regulated market or an MTF;

(b) in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract, and complies, as applicable, with:

(i) paragraph 9A of the *Recognition Requirements Regulations*;

(ii) the EU regulations specified in Schedule 2 of *MiFIR*;
(iii) rules made by the competent authority governing the operating conditions of investment firms so far as they apply to OTFs.

**UK parent financial holding company** has the meaning in article 4(1)(30) of the *UK CRR*.

**UK parent institution** has the meaning in article 4(1)(28) of the *UK CRR*.

**UK parent mixed financial holding company** has the meaning in article 4(1)(32) of the *UK CRR*.

**UK prudential sectoral legislation** (in relation to a financial sector) requirements applicable to persons in that financial sector in accordance with UK legislation and rules about prudential supervision of regulated entities in that financial sector and so that:

(a) (in relation to the banking sector and the investment services sector) in particular this includes the requirements laid down in the *UK CRR* (in relation to a CAD investment firm), GENPRU and BIPRU; and

(b) (in relation to the insurance sector) in particular this includes requirements laid down in the UK provisions which implemented the Solvency II Directive and Solvency II Regulations.

**UK regulated entity** a regulated entity that is a UK firm.

**UK UCITS** means (in accordance with sections 236A and 237 of the Act) subject to (4) below, an undertaking which may consist of several sub-funds and:

(1) is an AUT, an ACS or an ICVC:

(a) with the sole object of collective investment of capital raised from the public in transferable securities or other liquid financial assets specified in paragraph (2), and operating on the principle of risk-spreading;

(b) with units which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings’ assets (see also paragraph (3)); and

(c) which (in accordance with the rules in COLL 4.2) has identified itself as a UCITS in its prospectus and has been authorised accordingly by the FCA.
(2) The *transferable securities* or other liquid financial assets specified for the purposes of paragraph (1)(a) are those which are permitted by *COLL 5.2*.

(3) For the purposes of paragraph (1)(b), action taken by the undertaking to ensure that the price of its *units* on an investment exchange do not significantly vary from their net asset value is to be regarded as equivalent to such repurchase or redemption.

(4) The following undertakings are not a *UK UCITS*:

(a) a collective investment undertaking of the closed-ended type;

(b) a collective investment undertaking which raises capital without promoting the sale of its *units* to the public in the *UK*;

(c) an open-ended investment company, or other collective investment undertaking, the *units* of which, under the fund rules or the instruments of incorporation of the investment company, may be sold only to the public in countries or territories outside the *UK*.

Amend the following definitions as shown. Underlining indicates new text and striking through indicates deleted text.

- *above-threshold non-EEA UK AIFM* a non-EEA UK AIFM that is not a *small AIFM*.

- *additional tier 1 capital* as defined in article 61 of the *EU CRR UK CRR*.

- *additional tier 1 instrument* a capital instrument that qualifies as an additional tier 1 capital instrument under article 52 of the *EU CRR UK CRR*.

- *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 or Part 3A of that Order other than:

  …

  (ca) *managing a UK UCITS*;

  …
AIFM investment firm

(a) is:

(i) a full-scope UK AIFM; or

(ii) an incoming EEA AIFM branch; and [deleted]

(b) has a Part 4A permission (or an equivalent permission from its Home State regulator) for managing investments where:

(i) the investments managed include one or more financial instruments; and

(ii) the permission is limited to the activities permitted by article 6(4) of AIFMD referred to in FUND 1.4.3R(3)-6.

AIFM investment management functions

investment management functions of an AIFM as set out in 1(a) (being portfolio management) or (b) (risk management) of Annex I to AIFMD.

AIFM management functions

the management functions of an AIFM listed in Annex I to AIFMD FUND 1.4.7G.

AIFMD level 2 regulation

the UK version of Commission delegated regulation (EU) No 231/2013 supplementing Directive 2011/16/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0231), which is part of UK law by virtue of the EUWA.

alternative debenture

the investment specified in article 77A of the Regulated Activities Order (Alternative finance investment bonds).

[Editor’s note: The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

alternative investment fund

(in accordance with article 4((1)(a) of AIFMD) a collective investment undertaking, including investment compartments thereof, which:

(a) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
(b) does not require authorisation pursuant to article 5 of the UCITS Directive is not a UK UCITS.

[Note: article 4(1)(a) of AIFMD]

ancillary service (1) (except in CONC) any of the services listed in Section B of Annex I to MiFID Part 3A of Schedule 2 to the Regulated Activities Order, that is:

... 

(g) investment services and activities included in Part 3 of Schedule 2 to the Regulated Activities Order, as well as ancillary services within (a) to (f) above, of the type included in Part 3A, related to the underlying of the derivatives included under Section C - 5, 6, 7 and 10, that is (in accordance with that Annex and Recital 21 to, and Article 39 of, the MiFID Regulation) in paragraphs 5, 6, 7 or 10 of Part 1 of Schedule 2 to the Regulated Activities Order where these are connected to the provision of investment or ancillary services.

(i) commodities;

(ii) climatic variables;

(iii) freight rates;

(iv) emission allowances;

(v) inflation rates or other official economic statistics;

(vi) telecommunications bandwidth;

(vii) commodity storage capacity;

(vii) transmission or transportation capacity relating to commodities, where cable, pipeline or other means;

(ix) an allowance, credit, permit, right or similar asset which is directly linked to the supply, distribution or consumption of energy derived from renewable resources;

(x) a geological, environmental or other physical variable;
(xi) any other asset or right of a fungible nature, other than a right to receive a service, that is capable of being transferred;

(xii) an index or measure related to the price or value of, or volume of transactions in any asset, right, service or obligation;

where these are connected to the provision of investment services or ancillary services.

[Note: article 4(1)(3) 2(3) of MiFID MiFIR]

(2) …

ancillary services undertaking

(1) (in accordance with Article 4(21) of the Banking Consolidation Directive (Definitions) for the purpose of GENPRU (except in GENPRU 3) and BIPRU (except in BIPRU 12) and subject to (2)) and in relation to an undertaking in a consolidation group, sub-group or another group of persons) an undertaking complying with the following conditions:

(a) its principal activity consists of:

(i) owning or managing property; or

(ii) managing data-processing services; or

(iii) any other similar activity;

(b) the activity in (a) is ancillary to the principal activity of one or more credit institutions or investment firms; and

(c) those credit institutions or investment firms are also members of that consolidation group, sub-group or group.

[Note: article 4(21) of the Banking Consolidation Directive (Definitions)]

(2) …

(3) (except in (1)) has the meaning in article 4(1)(18) of the EU CRR UK CRR.

appropriate UK regulator

(1) in relation to an EEA firm (in accordance with Schedule 3 paragraph 13(4) and 14(4) to the Act), whichever of the FCA or PRA is the competent authority for the purposes of the relevant Single Market Directive; [deleted]
(2) in relation to a *UK firm* (in accordance with Schedule 3 paragraph 18A to the Act),

(a) the PRA, where the firm is a *PRA-authorised person*; and

(b) in any other case, the FCA.

(3) in relation to a *Treaty firm* (in accordance with section 35(2A) of the Act), [deleted]

(a) in the case of a *PRA-authorised person*, the PRA; and

(b) in any other case, the FCA

*approved bank* (except in COLL) (in relation to a *bank* account opened by a firm):

(a) if the account is opened at a branch in the *United Kingdom*:

(i) the Bank of England; or

(ii) the central bank of a member state of the *OECD*; or

(iii) a *bank*; or

(iv) a *building society*; or

(v) a bank which is supervised by the central bank or other banking regulator of a member state of the *OECD*; or

(b) if the account is opened elsewhere:

(i) a bank in (a); or

(ii) a *credit institution* established in an *EEA State* other than the *United Kingdom* and duly authorised by the relevant *Home State regulator*; or [deleted]

(iii) a bank which is regulated in the Isle of Man or the Channel Islands; or

(c) a bank supervised by the South African Reserve Bank; or

(d) any other bank that:

(i) is subject to regulation by a national banking regulator;

(ii) is required to provide audited accounts;
(iii) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time) and has a surplus revenue over expenditure for the last two financial years; and

(iv) has an annual audit report which is not materially qualified.

(in COLL) any person falling within (a-c) and a credit institution established in an EEA State and duly authorised by the relevant Home State regulator.

approved credit institution a credit institution recognised or permitted under the law of an EEA State or the United Kingdom to carry on any of the activities set out in Annex 1 to the CRD.

approved financial institution any of the following:

(a) the European Central Bank;

(b) the central bank of an EEA State or the United Kingdom;

…

approved security (1) (in COLL) a transferable security that is admitted to official listing in the UK or an EEA State or is traded on or under the rules of an eligible securities market (otherwise than by the specific permission of the market authority).

…

article 18(5) relationship the relationship where there are participations or capital ties other than those referred to in article 18(1) and (4) of the EU CRR UK CRR (Methods for prudential consolidation).

article 18(6) relationship (in accordance with article 18 of the EU CRR UK CRR (Methods for prudential consolidation)) a relationship of one of the following kinds:

(a) where an institution exercises a significant influence over one or more institutions or financial institutions, but without holding a participation or other capital ties in these institutions; or

(b) where two or more institutions or financial institutions are placed under single management other than under a contract or clauses of their memoranda or articles of association.

asset backed commercial paper programme for the purposes of BIPRU 9 (Securitisation) and in accordance with Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions) a programme of securitisations (within the
meaning of paragraph (2) of the definition of securitisation) the securities issued by which predominantly take the form of commercial paper with an original maturity of one year or less.

[Note: Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)]

**asset management company**

A management company within the meaning of Article 2(1)(b) of the UCITS Directive, as well as an undertaking the registered office of which is outside the EEA UK and which would require authorisation in accordance with Article 6(1) of the UCITS Directive Part 4A permission under Article 51ZA of the Regulated Activities Order (Managing a UK UCITS) if it had its registered office within the EEA UK.

**Audit Regulation**

The UK version of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC, which is part of UK law by virtue of the EUWA.

**authorised contractual scheme manager**

A firm, including, if relevant, an EEA UCITS management company or incoming EEA AIFM, which is the authorised fund manager of the ACS in accordance with the contractual scheme deed.

**authorised corporate director**

The director of an ICVC who is the authorised corporate director of the ICVC in accordance with COLL 6.5.3R (Appointment of an ACD) including, if relevant, an EEA UCITS management company or incoming EEA AIFM.

**authorised person**

(in accordance with section 31 of the Act (Authorised persons)) one of the following:

(a) a person who has a Part 4A permission to carry on one or more regulated activities;

(b) an incoming EEA firm; [deleted]

(c) an incoming Treaty firm; [deleted]

(d) a UCITS qualifier; [deleted]

(e) an ICVC;

(f) the Society of Lloyd's.

(see also GEN 2.2.18R for the position of an authorised partnership or unincorporated association which is dissolved.)

**bank**

(a) a firm with a Part 4A permission which includes accepting deposits, and:
(i) which is a credit institution; or

(ii) whose Part 4A permission includes a requirement that it comply with the rules in GENPRU and BIPRU relating to banks; [deleted]

but which is not a building society, a friendly society or a credit union;

(b) an EEA bank which is a full credit institution. [deleted]

benchmarks regulation

the UK version of Regulation (EU) No. 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, which is part of UK law by virtue of the EUWA.

[Note: see http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1011

BIPRU firm

a firm, as defined in article 4(1)(2)(c) of the EU CRR UK CRR that satisfies the following conditions:

(a) ...

branch

(a) (in relation to a credit institution):

(i) a place of business which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions;

(ii) for the purposes of the CRD and in accordance with article 38 of the CRD, any number of places of business set up in the same EEA State by a credit institution with headquarters in another EEA State are to be regarded as a single branch; [deleted]

(b) (in relation to an investment firm):

(i) a place of business other than the head office which is a part of an investment firm, which has no legal personality and which provides investment services and/or activities and which may also perform ancillary services for which the firm has been authorised;

(ii) all the places of business set up in the same EEA State by an investment firm with headquarters in another EEA State are regarded as a single branch. [deleted]

[Note: article 4(1)(30) of MiFID]
(c) (in relation to an insurance undertaking) any permanent presence of the insurance undertaking in an EEA State other than the country in which it has its head office is to be regarded as a single branch, whether that presence consists of a single office which, or two or more offices each of which:

(i) is managed by the insurance undertaking's own staff; or

(ii) is an agency of the insurance undertaking; or

(iii) is managed by a person who is independent of the insurance undertaking, but has permanent authority to act for the insurance undertaking as an agency would.

…

(f) (in relation to an EEA UCITS management company):

[deleted]

(i) a place of business which is a part of an EEA UCITS management company, which has no separate legal personality and which provides the services for which the EEA UCITS management company has been authorised;

(ii) for the purposes of the UCITS Directive, all the places of business set up in the same EEA State by an EEA UCITS management company with headquarters in another EEA State are to be regarded as a single branch.

(g) (in accordance with regulation 2(1) of the Payment Services Regulations) (in relation to a payment institution, or a registered account information service provider or an EEA registered account information service provider) a place of business of such a payment service provider, other than its head office, which forms a legally dependent part of such a provider and which carries out directly all or some of the services inherent in its business. For the purposes of the Payment Services Regulations, all places of business set up in the same EEA State other than the United Kingdom by such a payment service provider are to be regarded as a single branch.

[Note: article 4 (39) of the Payment Services Directive]

(h) …

(i) (in relation to an AIFM)
(i) a place of business which is a part of an AIFM that has no legal personality and provides the services for which the AIFM has been authorised;

(ii) for the purpose of (i), all places of business established in the same EEA State country by an AIFM with its registered office in another EEA State country shall be regarded as a single branch.

[Note: article 4(1)(c) of AIFMD]

Buy-back and Stabilisation Regulation


CAD article 22 group

UK consolidation group or non-EEA non-UK sub-group that meets the conditions in BIPRU 8.4.9R (Definition of a CAD Article 22 group).

CAD investment firm

a firm that is subject to the requirements imposed by the UK implementation of MiFID (or a firm which would be subject to those requirements if its head office were in an EEA State the UK) but excluding a bank, a building society, a credit institution, a local and an exempt CAD firm that meets the following conditions:

(a) it is a firm as defined in article 4(1)(2)(c) of the EU-CRR UK CRR;

...
(3) (for the purposes of GENPRU and BIPRU (except in BIPRU 12), in relation to an undertaking not falling within (1) or (2) and subject to (4)), capital resources calculated in accordance with (1) on the assumption that:

(a) it is a BIPRU firm with a Part 4A permission; and

(b) it carries on all its business in the United Kingdom and has obtained whatever permissions for doing so are required under the Act; or

(4) (for the purposes of GENPRU and BIPRU (except in BIPRU 12) and in relation to any undertaking not falling within in (1) or (2) for which the methodology in (3) does not give an answer whose capital resources a BIPRU firm (the "relevant firm") is required to calculate under a Handbook rule) capital resources calculated under (1) on the assumption that it is a BIPRU firm of the same category as the relevant firm; or

(5) (for a firm carrying on any home financing connected to regulated mortgage contracts or home financing and home financing administration connected to regulated mortgage contracts) capital resources calculated under MIPRU 4.2.23R.

cash assimilated instrument in accordance with Article 4(35) of the Banking Consolidation Directive (Definitions) a certificate of deposit or other similar instrument issued by a lending firm.

[Note: article 4(35) of the Banking Consolidation Directive (Definitions)]

CESR's UCITS eligible assets guidelines the Committee of European Securities Regulators' guidelines concerning eligible assets for investment by undertakings for collective investment in transferable securities (CESR/07-044). These are available at https://www.esma.europa.eu/sites/default/files/library/2015/11/07_044.pdf

CCR internal model method permission an Article 129 implementing measure, Article 129 permission, a requirement or a waiver that requires a BIPRU firm or a CAD investment firm to use the CCR internal model method

central bank (1) (in accordance with Article 4(23) of the Banking Consolidation Directive (Definitions) and for the purposes of GENPRU (except GENPRU 3) and BIPRU (except BIPRU 12)) includes the European Central Bank unless otherwise indicated, the Bank of England and the central banks of other countries.
[Note: article 4(23) of the Banking Consolidation Directive (Definitions)]

(2) (except in (1)) has the meaning in article 4(1)(46) of the EU CRR UK CRR.

central counterparty

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) an entity that legally interposes itself between counterparties to contracts traded within one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

certificates representing certain securities

the investment specified in article 80 of the Regulated Activities Order (Certificates representing certain securities), which is in summary: a certificate or other instrument which confers contractual or property rights (other than rights consisting of options):

…

[Editor’s note: The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

CIU

(1) (except in IFPRU) collective investment undertaking.

(2) (in IFPRU) has the meaning in article 4(1)(7) of the EU CRR UK CRR.

class

(1) …

(2) (in COLL):

(a) a particular class of units of an authorised fund; or

(b) all of the units relating to a single sub-fund; or

(c) a particular class of units relating to a single sub-fund; or

(d) in relation to an EEA UCITS scheme, any arrangement equivalent to (a), (b) or (c). [deleted]
... 

**clean-up call option**

(1) (for the purposes of BIPRU 9 (Securitisation), in relation to a securitisation (within the meaning of paragraph (2) of the definition of securitisation) and in accordance with Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)) a contractual option for the originator to repurchase or extinguish the securitisation positions before all of the underlying exposures have been repaid, when the amount of outstanding exposures falls below a specified level.

[Note: Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)]

...

**collective portfolio management**

in relation to a management company, the activity of management of UCITS schemes, EEA UCITS schemes or other collective investment undertakings not covered by the UCITS Directive that the firm management company is permitted to carry on in accordance with COLL 6.9.9R or article 6(2) of the UCITS Directive as applicable. This includes the functions mentioned in Annex II to that directive.

**collective portfolio management firm**

(a)  

(b) is a UCITS firm that has a Part 4A permission for managing a UK UCITS.

**combined buffer**

the sum of:

(1) the capital conservation buffer; and

(2) the countercyclical capital buffer.

has the meaning in regulation 2(1) (Interpretation) of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014).

**commodity derivative**

those financial instruments defined in:

(a) point (44)(c) of article 4(1) of MiFID which relate to a commodity; or an underlying referred to in Section C(10) of Annex I of MiFID; or

(b) in points (5), (6), (7) and (10) of Section C of Annex I to MiFID.

[Note: article 2(1)(30) of MiFIR]

means financial instruments:
(a) defined in article 2(1)(24)(c) of MiFIR;

(b) which relate to a commodity or an underlying referred to in paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order; or

(c) which are referred to in paragraphs 5, 6, 7 or 10 of Part 1 of Schedule 2 to the Regulated Activities Order.

[Note: article 2(1)(30) of MiFIR]

common equity tier 1 capital as defined in article 50 of the EU CRR UK CRR.

common equity tier 1 instrument a capital instrument that qualifies as a common equity tier 1 instrument under article 26 of the EU CRR UK CRR.

common platform firm …

c(c) a MiFID investment firm which falls within the definition of 'local firm' in article 4(1)(4) of the EU CRR UK CRR; or

…

competent authority …

(3) (in relation to a group, and for the purposes of SYSC 12 (Group risk systems and controls requirement), GENPRU and BIPRU, any national authority of an EEA State the UK which is empowered by law or regulation to supervise regulated entities, whether on an individual or group-wide basis.

(4) the authority, designated by each EEA State in accordance with Article 67 of MiFID, unless otherwise specified in MiFID- regulation 3 of the MiF1 Regulations, or by regulation 17 of the DRS Regulations.

[Note: article 4(1)(26) 2(18) of MiFID MiFIR]

(5) …

(6) [deleted]

(7) [deleted]

(8) (for an AIF) the national authorities of an EEA State which are empowered by law or regulation to supervise AIFs.
(9) (for an AIFM) a national authority in an EEA State which is empowered by law or regulation to supervise AIFMs. [deleted]

(10) (for the purposes of IFPRU) has the meaning in article 4(1)(40) of the EU UK CRR.

(11) (in COLL) an authority exercising functions corresponding to the functions referred to in Part VI of the Act under the laws of an EEA State.

consolidated basis has the meaning in article 4(1)(48) of the EU CRR UK CRR.

consolidated capital resources (in relation to a UK consolidation group or a non-EEA non-UK sub-group and in GENPRU and BIPRU) that group’s capital resources calculated in accordance with BIPRU 8.6 (Consolidated capital resources).

consolidated capital resources requirement (in relation to a UK consolidation group or a non-EEA non-UK sub-group and in GENPRU and BIPRU) an amount of consolidated capital resources that that group must hold in accordance with BIPRU 8.7 (Consolidated capital resources requirement).

consolidated indirectly issued capital has the meaning in BIPRU 8.6.12R (Indirectly issued capital and group capital resources), which is in summary any capital instrument issued by a member of a UK consolidation group or non-EEA non-UK sub-group where the conditions in BIPRU 8.6.12R are met.

consolidated situation has the meaning in article 4(1)(47) of the EU CRR UK CRR.

consolidated tape provider a person permitted under regulation 5 of the DRS Regulations to provide the service of:

(a) collecting trade reports for financial instruments made in accordance with articles 6, 7, 10, 12, 13, 20 and 21 of MiFIR from regulated markets, UK MTFs, UK OTFs and APAs; and

(b) consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument.

consolidating supervisor has the meaning in article 4(1)(41) of the EU CRR UK CRR.

consolidation Article 12(1) relationship a relationship between one undertaking (the first undertaking) and one two or more other undertakings which satisfies the following conditions set out in Article 12(1) of the Seventh Company Law Directive, which in summary are as follows:
(a) those the undertakings are not connected in the manner, as described in article 1(1) or (2) of that Directive section 1162 and Schedule 7 of the Companies Act 2006; and

(b) either one of the following conditions is satisfied:

(i) they the undertakings are managed on a unified basis pursuant to a contract with one of them concluded with the first undertaking, or provisions in the undertaking’s memorandum or articles of association of those undertakings; or

(ii) the administrative, management or supervisory bodies of those undertakings consist, for the major part, of the same persons in office during the financial year in respect of which it is being decided whether such a relationship exists.

contingent convertible instrument

a financial instrument which meets the requirements for either:

(a) Additional Tier 1 instruments under article 52; or

(b) Tier 2 instruments under article 63, provided:

(i) the provisions governing the instrument require that, upon the occurrence of a trigger event, the principal amount of the instrument be written down on a permanent or temporary basis or the instrument be converted to one or more common equity Tier 1 instruments; and

(ii) the trigger mechanism in (i) is different from, or additional to, any discretionary mechanism for converting or writing down the principal amount of the instrument which is activated following a determination by the relevant authority that the issuer of the financial instrument (or its group, or any member of its group) is no longer viable, or will no longer be viable unless the relevant instrument is converted or written down;

in each case of Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012 the UK CRR.

contract for differences

the investment, specified in article 85 of the Regulated Activities Order (Contracts for differences etc), which is in summary rights under:
... [Editor’s note: The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

conversion factor
(in accordance with Article 4(28) of the Banking Consolidation Directive (Definitions) and for the purposes of BIPRU) the ratio of the currently undrawn amount of a commitment 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.

[Note: article 4(28) of the Banking Consolidation Directive (Definitions)]

core UK group
(1) (in relation to a BIPRU firm) all undertakings which, in relation to the firm, satisfy the conditions set out in BIPRU 3.2.25R (Zero risk-weighting for intra-group exposures: core UK group).

(2) (in relation to an IFPRU investment firm) all counterparties which:

(a) are listed in the firm's core UK group permission;

(b) satisfy the conditions in article 113(6) of the EU CRR UK CRR (Calculation of risk-weighted exposure amounts: intragroup); and

(c) (unless it is an IFPRU limited-activity firm or IFPRU limited-licence firm, or an exempt IFPRU commodities firm to which article 493(1) of the EU CRR UK CRR (Transitional provision for large exposures) apply) for which exposures are exempted, under article 400(1)(f) of the EU CRR UK CRR (Large exposures: exemptions), from the application of article 395(1) of the EU CRR UK CRR (Limits to large exposures).

core UK group permission
a permission given by the FCA under article 113(6) of the EU CRR UK CRR (see IFPRU 8.1.14G to IFPRU 8.1.21G).

countercyclical buffer rate
(in accordance with article 128(7) of the CRD (Definitions)) the rate:

(a) expressed as a percentage of total risk exposure amount set by the UK countercyclical buffer authority or an EEA countercyclical buffer authority; or
(b) expressed in terms equivalent to a percentage of total risk exposure amount set by a third-country countercyclical buffer authority,

that a firm must apply in order to calculate its countercyclical capital buffer.

[Note: article 128(7) of the CRD (Definitions)]

countercyclical capital buffer

(in accordance with article 128(2) of CRD (Definitions) regulation 2(1) (Interpretation) of the Capital Requirements (Capital Buffers and Macro-prudential Measures Regulations 2014)) the amount of common equity tier 1 capital a firm must calculate in line with IFPRU 10.3.

counterparty credit risk

(1) (in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purposes of BIPRU) the risk that the counterparty to a transaction could default before the final settlement of the transaction's cash flows.

(2) (other than in (1)) has the meaning as used in the EU CRR UK CRR.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

covered bond

(1) (in accordance with Article 52(4) of the UCITS Directive and except for the purposes of the IRB approach or the standardised approach to credit risk) a bond that is issued by a credit institution which has its registered office in the UK or an EEA State and is subject by law to special public supervision designed to protect bondholders and in particular protection under which sums deriving from the issue of the bond must be invested in conformity with the law in assets which, during the whole period of validity of the bond, are capable of covering claims attaching to the bond and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

[Note: Article 52(4) of the UCITS Directive]

(2) (in accordance with point 68 of Part 1 of Annex VI of the Banking Consolidation Directive (Exposures in the form of covered bonds) and for the purposes of the IRB approach or the standardised approach to credit risk in BIPRU) a covered bond as defined in (1) collateralised in accordance with BIPRU 3.4.107 R (Exposures in the form of covered bonds) that meets the following conditions:
(a) it is issued by a credit institution which has its registered office in the United Kingdom; and

(b) it is collateralised in accordance with BIPRU 3.4.107R (Exposures in the form of covered bonds).

[Note: point 68 of Part 1 of Annex VI of the Banking Consolidation Directive (Exposures in the form of covered bonds)]

(3) …

(4) for the purposes of INSPRU 2.1) a debenture that is issued by a credit institution which:

(a) has its head office in an EEA State; and

(b) is subject by law to special official supervision designed to protect the holders of the debenture; in particular, sums deriving from the issue of the debenture must be invested in accordance with the law in assets which, during the whole period of validity of the debenture, are capable of covering claims attaching to the debenture and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

CRD bank a bank which uses the EU CRR UK CRR to measure the capital requirement on its trading book.

CRD credit institution (1) (except in COLL and FUND) a credit institution that has its registered office (or, if it has no registered office, its head office) in an EEA State the UK, excluding an institution to which the CRD does not apply under the UK provisions which implemented article 2 of the CRD (see also full CRD credit institution).

(2) (in COLL and FUND) a credit institution that:

(a) has its registered office (or, if it has no registered office, its head office) in the UK, excluding an institution to which the CRD does not apply under the UK provisions which implemented article 2 of the CRD; or

(b) has its registered office (or, if it has no registered office, its head office) in an EEA State, excluding an institution to which the CRD does not apply under article 2 of the CRD.
an investment firm as defined in article 4(1)(2) of the EU CRR that is subject to the requirements imposed by the UK provisions that implemented MiFID (or which would be subject to those requirements if its head office were in an EEA State) and that is not a limited activity firm or a limited licence firm.

Credit enhancement (1) (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.

[Note: article 4(43) of the Banking Consolidation Directive (Definitions)]

Credit institution (1) (except in REC):

(a) has the meaning in article 4(1)(1) of the EU CRR; or

(b) [deleted]

(c) [deleted]

(d) [deleted]

(2) …

(3) (in relation to the definition of electronic money issuer and payment service provider) a credit institution as defined by (1)(a) and includes a branch of the credit institution within the meaning of 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 47 of the CRD.

[Note: article 47 of the CRD]

Credit risk mitigation (1) (in GENPRU (except in GENPRU 3) and BIPRU (except in BIPRU 12)) (in accordance with Article 4(30) of the Banking Consolidation Directive (Definitions)) a technique used by an undertaking to reduce the credit risk associated with an exposure or exposures which the undertaking continues to hold.
[Note: article 4(30) of the Banking Consolidation Directive (Definitions)]

(2) (except in (1)) has the meaning in article 4(1)(58) of the EU CRR UK CRR.

cross product netting (in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions) the inclusion of transactions of different product categories within the same netting set pursuant to the rules about cross product netting set out in BIPRU 13.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

CRR firm (for the purposes of SYSC) a UK bank, building society and an investment firm that is subject to the EU CRR UK CRR.

CSDR the UK version of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the EU and on central securities depositories and amending the Settlement Finality Directive and MiFID and the short selling regulation, which is part of UK law by virtue of the EUWA.

current exposure (in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions) the larger of zero, or the market value of a transaction or portfolio of transactions within a netting set with a counterparty that would be lost upon the default of the counterparty, assuming no recovery on the value of those transactions in bankruptcy.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

current market value (in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13.5 (CCR standardised method)) the net market value of the portfolio of transactions within the netting set with the counterparty; both positive and negative market values are used in computing current market value.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

deal on own account (1) (for the purposes of GENPRU and BIPRU) has the meaning in BIPRU 1.1.23R (Meaning of dealing on own account) which is in summary the service referred to in paragraph 3 of point 3 of Section A. Annex I to MiFID Part 3 of Schedule 2 to the Regulated Activities Order, subject to the adjustments
in BIPRU 1.1.23R(2) and BIPRU 1.1.23R(3) (Implementation of Article 5(2) of the Capital Adequacy Directive).

(2) (other than in GENPRU and BIPRU) has the meaning in IFPRU 1.1.12R (Meaning of dealing on own account) which is, in summary, the service referred to in point 3 of Section A of Annex I to MiFID paragraph 3 of Part 3 of Schedule 2 to the Regulated Activities Order, subject to the adjustments in IFPRU 1.1.12R(2) and IFPRU 1.1.12R(3) (Implementation of article 29(2) of CRD).

dealing on own account trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments.

[Note: article 4(1)(6) 2(1)(5) of MiFID MiFIR]

deposit (1) (except in COMP) the investment, specified in article 74 and defined in articles 5(2) and 5(3) of the Regulated Activities Order, which is in summary: a sum of money (other than one excluded by any of articles 6 to 9 AB of the Regulated Activities Order) paid on terms:

... [Editor’s note: The current policy intention for COLL is to reflect the current scope of these articles in the Regulated Activities Order. If amendments are made to the scope of these articles in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

depository (1) (except in LR):

... (ca) (in relation to an EEA UCITS scheme) the person fulfilling the function of a depositary in accordance with article 2(1)(a) of the UCITS Directive; [deleted]

... 

e) (for an AIF managed by a full-scope UK AIFM or a full-scope EEA AIFM (other than an AIF which is an ICVC, an AUT or an ACS)) the person fulfilling:

(i) the function of a depositary in accordance with article 21(1) of AIFMD FUND 3.4.11R; or

(ii) one or more of the functions of cash monitoring, safekeeping or oversight for a non-
**EEA UK AIF**, in line with FUND 3.11.33R(1)(a) (AIFM of a non-EEA UK AIF).

... 

**derivative**

(1) (other than in REC, MAR 5 and MAR 5A) a contract for differences, a future or an option (see also securitised derivative).

[Editor’s note: The current policy intention for COLL is to reflect the current scope of these definitions, which in turn are defined by reference to articles in the Regulated Activities Order. Please refer to the individual glossary terms for further information.]

(2) (in REC, MAR 5 and MAR 5A) has the meaning in article 2(1)(29) of MiFIR those financial instruments defined in article 2(1)(24)(c) of MiFIR or referred to in paragraphs 4 to 10 of Part 1 of Schedule 2 to the Regulated Activities Order.

[Note: article 2(1)(29) of MiFIR]

**designated investment**

(1) a security or a contractually-based investment (other than a funeral plan contract and a right to or interest in a funeral plan contract) specified in Part III of the Regulated Activities Order (Specified Investments):

... 

[Editor’s note: The current policy intention for COLL is to reflect the current scope of this Part of the Regulated Activities Order. If amendments are made to the scope of this Part in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

... 

**designated investment business**

any of the following activities, specified in Part II of the Regulated Activities Order (Specified Activities), which is carried on by way of business:

... 

(p) managing a UK UCITS;
designated money market fund

(in BIPRU 12 and BSOCS) a collective investment scheme authorised under the UCITS Directive or which is subject to supervision and, if applicable, authorised by an authority under the national law of an EEA State, and which an authorised fund which satisfies the following conditions:

…

dilution risk

(in accordance with Article 4(24) of the Banking Consolidation Directive (Definitions)) the risk that an amount receivable is reduced through cash or non-cash credits to the obligor.

[Note: article 4(24) of the Banking Consolidation Directive (Definitions)]

discretionary pension benefit

(1) (in SYSC 19C) enhanced pension benefits granted on a discretionary basis by a firm to an employee as part of that employee's variable remuneration package, but excluding accrued benefits granted to an employee under the terms of his company pension scheme. [Note: article 4(49) of the Banking Consolidation Directive]

(2) (in IFPRU, SYSC 19A (IFPRU Remuneration Code) and SYSC 19D (Dual-regulated firms Remuneration Code)) has the meaning in article 4(1)(73) of the EU CRR UK CRR.

distribution in connection with common equity tier 1 capital

(in accordance with article 141(10) of CRD) includes:

(a) a payment of cash dividends;

(b) a distribution of fully or partly paid bonus shares or other capital instruments referred to in article 26(1)(a) of the EU CRR UK CRR (Common equity tier 1 items);

(c) a redemption or purchase by a firm of its own shares or other capital instruments referred to in article 26(1)(a) of the EU CRR UK CRR (Common equity tier 1 items);

(d) a repayment of amounts paid in connection with capital instruments referred to in article 26(1)(a) of the EU CRR UK CRR (Common equity tier 1 items); and

(e) a distribution of items referred to in article 26(1)(b) to (e) of the EU CRR UK CRR (Common equity tier 1 items).

[Note: article 141(10) of CRD]
distribution of exposures

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the forecast of the probability distribution of market values that is generated by setting forecast instances of negative net market values equal to zero.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

distribution of market values

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the forecast of the probability distribution of net market values of transactions within a netting set for some future date (the forecasting horizon), given the realised market value of those transactions up to the present time.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

domestic UCITS merger

(in COLL and in accordance with article 2(1)(r) of the UCITS Directive regulations 7 and 8 of the UCITS Regulations 2011) a UCITS merger between two or more UCITS schemes in relation to which a UCITS marketing notification has been made in respect of at least one of the relevant schemes.

durable medium

(a) paper; or

(b) any instrument which enables the recipient to store information addressed personally to him or her in a way accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored. In particular, durable medium covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes internet sites, unless such sites meet the criteria specified in the first sentence of this paragraph. (In relation to the equivalent business of a third country investment firm, MiFID optional exemption business or collective portfolio management, if the relevant rule derives from the MiFID Org Regulation or is a rule which implements implemented the UCITS Directive, the UCITS implementing Directive or the UCITS implementing Directive No 2) the instrument used must be:

(i) appropriate to the context in which the business is to be carried on; and
(ii) specifically chosen by the recipient when offered the choice between that instrument and paper.

For the purposes of this definition, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the firm and the client is, or is to be, carried on if there is evidence that the client has regular access to the internet. The provision by the client of an email address for the purposes of the carrying on of that business is sufficient.

[Note: article 2(f) of, and Recital 20 to, the Distance Marketing Directive, article 2(12) of the Insurance Mediation Directive, article 4(1)(62) of MiFID and article 3(1) of the MiFID Org Regulation, articles 75(2) and 81(1) of the UCITS Directive, article 20(3) of the UCITS implementing Directive and article 7 of the UCITS implementing Directive No 2]

early amortisation provision  

(1) (in BIPRU) (in accordance with Article 100 of the Banking Consolidation Directive (Securitisation of revolving exposures) and in relation to a securitisation within the meaning of paragraph (2) of the definition of securitisation) a contractual clause which requires, on the occurrence of defined events, investors' positions to be redeemed prior to the originally stated maturity of the securities issued.

[Note: article 100 of the Banking Consolidation Directive (Securitisation of revolving exposures)]

(2) (except in (1)) has the meaning in article 242(14) of the EU CRR UK CRR.

ECAI  

(1) (except in MIPRU) an external credit assessment institution, as defined in article 4(1)(98) of the EU CRR UK CRR.

(2) (in MIPRU) an external credit assessment institution.

EEA AIF  

an AIF, other than a UK AIF, which:

(a) is authorised or registered in an EEA State under the applicable national law; or

(b) is not authorised or registered in an EEA State but has its registered office or head office in an EEA State.

EEA AIFM  

an AIFM which has its registered office in an EEA State other than the UK.

EEA firm  

(in accordance with paragraph 5 of Schedule 3 to the Act (EEA Passport Rights)) any of the following:
(a) an investment firm (as defined in article 4(1) of MiFID) which is authorised (within the meaning of article 5) by its Home State regulator;

(b) a credit institution (as defined in article 4(1)(1) of the EU CRR)

(c) a financial institution (as defined in article 41(26) of the EU CRR) which is a subsidiary of the kind mentioned in article 34 of the CRD and which fulfils the conditions in articles 33 and 34;

(d) an undertaking which has received authorisation under article 14 of the Solvency II Directive from its Home State regulator;

[deleted]

…

**EEA MiFID investment firm**

a MiFID investment firm whose Home State is not the United Kingdom an EEA firm which would be a MiFID investment firm if it had its head office or registered office in the UK.

**EEA regulator**

(1) a competent authority for the purposes of any of the Single Market Directives or the EU auction regulation.

…

**EEA State**

(in accordance with Schedule 1 to the Interpretation Act 1978), in relation to any time -

(a) a state which at that time is a member State; or

(b) any other state which is at that time a party to the EEA agreement.

[Note: Current non-member State parties to the EEA agreement are Norway, Iceland and Lichtenstein. Where the context requires, references to an EEA State include references to Gibraltar as appropriate.]

**EEA UCITS management company**

any incoming EEA firm that is a management company established in the EEA.

**EEA UCITS Scheme**

a collective investment scheme established in accordance with the UCITS Directive in an EEA State other than the United Kingdom.

**effective expected exposure**

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement
transactions) and as at a specific date) the maximum *expected exposure* that occurs at that date or any prior date; alternatively, it may be defined for a specific date as the greater of the *expected exposure* at that date, or the effective *exposure* at the previous date.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

**effective expected positive exposure**

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and for the purpose of BIPRU 13) the weighted average over time of *effective expected exposure* over the first year, or, if all the contracts within the netting set mature before one year, over the time period of the longest maturity contract in the netting set, where the weights are the proportion that an individual *expected exposure* represents of the entire time interval.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

**effective maturity**

(in accordance with Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions), for the purpose of the CCR internal model method and with respect to a netting set with maturity greater than one year) the ratio of the sum of *expected exposure* over the life of the transactions in the netting set discounted at the risk-free rate of return divided by the sum of *expected exposure* over one year in a netting set discounted at the risk-free rate; this effective maturity may be adjusted to reflect rollover risk by replacing *expected exposure* with *effective expected exposure* for forecasting horizons under one year.

[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]

**efficient portfolio management**

(in COLL and in accordance with article 11 of the *UCITS eligible assets Directive*) techniques and instruments which relate to transferable securities and approved money-market instruments and which fulfil the following criteria:

…

[Note: article 11 of the *UCITS eligible assets Directive*]

**electronic money issuer**

(1) (except in DISP) any of the following *persons* when they issue *electronic money*:

(a) *authorised electronic money institutions*;

(b) *small electronic money institutions*;

(c) *EEA authorised electronic money institutions*; [deleted]

(d) *credit institutions*;

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(e) the Post Office Limited;

(f) the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, when not acting in its capacity as a monetary authority or other public authority;

...
energy market participant a firm:

(a) whose permission:

(i) includes a requirement that the firm must not carry on any designated investment business other than energy market activity;

(ii) does not include a requirement that it comply with IPRU-INV 5 (Investment management firms) or 13 (Personal investment firms); and

(b) which is not an authorised professional firm, bank, BIPRU 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, oil market participant, service company, insurance intermediary, home finance administrator, home finance provider, incoming EEA firm (without a top up permission), or incoming Treaty firm (without a top up permission) or regulated benchmark administrator.

established (1) (in accordance with article 4(1)(j) AIFMD):

(a) for AIFMs, 'having its registered office in';

(b) for AIFs, 'being authorised or registered in' or, if the AIF is not authorised or registered, 'having its registered office in'; or

(c) for depositaries of unauthorised funds only, 'having its registered office or branch in'.

[Note: article 4(1)(j) of AIFMD]

(2) for a depositary of a UCITS scheme, 'having its registered office or branch in'.

EU Cross-Border Regulation the UK version of Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the European Community, which is part of UK law by virtue of the EUWA.
**EU UK CRR**

the **UK** version of Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012, which is part of **UK** law by virtue of the **EUWA**.

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**EuSEF regulation**

the **UK** version of Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds, which is part of **UK** law by virtue of the **EUWA**.

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**EuVECA regulation**

the **UK** version of Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds, which is part of **UK** law by virtue of the **EUWA**.

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**excess spread**

(for the purposes of **BIPRU 9** (Securitisation), in relation to a *securitisation* (within the meaning of paragraph (2) of the definition of securitisation) and in accordance with Part 1 of Annex IX of the **Banking Consolidation Directive** (Securitisation definitions)) finance charge collections and other fee income received in respect of the securitised exposures net of costs and expenses.

[Note: Part 1 of Annex IX of the **Banking Consolidation Directive** (Securitisation definitions)]

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**exchange-traded fund**

a fund of which at least one unit or share class is traded throughout the day on at least one trading venue and with at least one market maker which takes action to ensure that the price of its units or shares on the trading venue does not vary significantly from its net asset value and, where applicable, from its indicative net asset value.

[Note: article 4(1)(46) 2(26) of **MiFID MiFIR**]

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**excluded custody activities**

any activities of a firm which:

(a) are carried on in connection with, or for the purposes of, managing a **UK UCITS** or an AIF (as the case may be); and

(b) …

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**exempt CAD firm**

(1) (except in **SYSC** and **IPRU(INV)**) a firm as defined in article 4(1)(2)(c) of the **EU CRR UK CRR** that is authorised to provide only one or more the following investment services:

(a) investment advice;

(b) receive and transmit orders from investors as referred to in Section A of Annex I of **MiFID Part 3 of Schedule 2 to the Regulated Activities Order**.
(2) (in SYSC and IPRU(INV)) a firm in (1) whose head office (or, if it has a registered office, that office) is in the United Kingdom.

exempt IFPRU commodities firm

an IFPRU investment firm which falls within the meaning in articles 493(1) and 498(1) of the EU CRR UK CRR.

expected exposure

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the average of the distribution of exposures at any particular future date before the longest maturity transaction in the netting set matures.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

expected loss

(in accordance with Article 4(29) of the Banking Consolidation Directive (Definitions) and for the purposes of the IRB approach and the standardised approach to credit risk) the ratio of the amount expected to be lost on an exposure from a potential default of a counterparty or dilution over a one year period to the amount outstanding at default.

[Note: article 4(29) of the Banking Consolidation Directive (Definitions)]

expected positive exposure

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the weighted average over time of expected exposures where the weights are the proportion that an individual expected exposures represents of the entire time interval; when calculating the minimum capital requirement, the average is taken over the first year or, if all the contracts within the netting set mature before one year, over the time period of the longest-maturity contract in the netting set.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

exposure

(1) (in relation to a firm but subject to (2) and (6)) the maximum loss which the firm might suffer if:

(a) a counterparty or a group of connected counterparties fail to meet their obligations; or

(a) it realises assets or off-balance sheet positions;

(2) (in accordance with Article 77 of the Banking Consolidation Directive and for the purposes of the calculation of the credit
risk capital component and the counterparty risk capital component (including BIPRU 3 (Standardised credit risk), BIPRU 4 (The IRB approach), BIPRU 5 (Credit risk mitigation), BIPRU 9 (Securitisation)) an asset or off-balance sheet item.

[Note: article 77 of the Banking Consolidation Directive]

(3) [delete]

(4) (in IFPRU and to calculate own funds requirements under Part Three Title II (credit risk and counterparty credit risk)) has the meaning in article 5(1) of the EU CRR UK CRR.

(5) (in IFPRU 8.2 (Large exposures) for the purpose of Part Four ((Large exposures) of the EU CRR UK CRR) has the meaning in article 389 of the EU CRR UK CRR (Large exposures: definitions).

(6) (in MIPRU) an asset or liability.

**external valuer**
a person who performs the valuation function described in article 19 of the AIFMD FUND 3.9.4R and 3.9.5R in respect of an AIF managed by a full-scope UK AIFM, and is not the AIFM of that AIF.

**FCA consolidation group**
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 UK CRR and IFPRU 8.1.3 R to IFPRU 8.1.4 R (Prudential consolidation) for which the FCA is the consolidating supervisor under article 111 of the CRD regulation 20 of the Capital Requirements Regulations 2013.

**fee-paying payment service provider**
any of the following when they provide payment services:

(a) a payment institution;

(b) a full credit institution;

(c) an electronic money issuer (except where it is an electronic money issuer whose only payment service activities are those relating to the issuance of electronic money by itself or if it is a credit union, a municipal bank or the National Savings Bank);

(d) the Post Office Limited;

(e) the Bank of England, other than when acting in its capacity as a monetary authority or carrying out functions of a public nature; and
(f) government departments and local authorities, other than when carrying out functions of a public nature.

A full credit institution that is an EEA firm is only a fee-paying payment service provider if it is exercising an EEA right in accordance with Part 2 of Schedule 3 to the Act (exercise of passport rights) to provide payment services in the United Kingdom. An EEA authorised payment institution or an EEA authorised electronic money institution is only a fee-paying payment service provider if it is exercising a right under Article 25 of the Payment Services Directive or Article 3 of the Electronic Money Directive to provide payment services in the United Kingdom.

**feeder AIF**

(in accordance with article 4(1)(m) of AIFMD) an AIF which:

...  

[Note: article 4(1)(m) of AIFMD]

**feeder UCITS**

(in accordance with article 58(1) of the UCITS Directive):

(a) a UCITS scheme or a sub-fund of a UCITS scheme which has been approved by the FCA of

(b) an EEA UCITS scheme or a sub-fund of an EEA UCITS scheme which has been approved by the competent authority of the UCITS Home State;

...to invest at least 85% of its assets in the units of a single master UCITS.

[Note: article 58(1) of the UCITS Directive]

**financial holding company**

a financial institution that fulfils the following conditions:

(1) (except in (2)) has the meaning in article 4(1)(20) of the EU CRR UK CRR.

(2) (in GENPRU (except GENPRU 3) and BIPRU (except BIPRU 12) a financial institution that fulfils the following conditions:

(a) its subsidiary undertakings are exclusively or mainly CAD investment firms or financial institutions;

(b) at least one of those subsidiary undertakings is a CAD investment firm; and

(c) it is not a mixed financial holding company.

**financial institution**

(1) (in accordance with paragraph 5(c) of Schedule 3 to the Act (EEA Passport Rights: EEA firm) and article 3 (22) of the...


CRD (Definitions)), but not for the purposes of GENPRU, BIPRU, and IFPRU, 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 listed activities listed in points 2 to 12 and 15 of Annex I to the CRD, which is a subsidiary of the kind mentioned in article 34 of the CRD and which fulfils the conditions in that article [deleted]

(2) for the purposes of GENPRU (except GENPRU 3), BIPRU (except in BIPRU 12) and in accordance with Articles 1(3) (Scope) and 4(5) (Definitions) of the Banking Consolidation Directive:

(a) an undertaking, other than a credit institution or an investment firm, the principal activity of which is to acquire holdings or to carry on one or more of the listed activities activities listed in points 2 to 12 and 15 of Annex I to the Banking Consolidation Directive Annex 1 activities including the services and activities provided for in Sections A and B of Annex I of the MiFID Parts 3 and 3A of Schedule 2 to the Regulated Activities Order when referring to financial instruments, the financial instruments provided for in Section C of Annex I of that Directive

(b) (for the purposes of consolidated requirements) those institutions permanently excluded by listed in Article 2 of the Banking Consolidation Directive (Scope), with the exception of the Bank of England and the central banks of EEA States other countries. [Note: articles 1(3) (Scope) and 4(5) (Definitions) of the Banking Consolidation Directive]

(3) (except in (1) and (2) and subject to (4)) has the meaning in article 4(1)(26) of the EU CRR UK CRR.

(4) (for the purposes of consolidated requirements in IFPRU and in accordance with article 2(6) of CRD) the following:

(a) financial institutions within the meaning in article 4(1)(26) of the EU CRR UK CRR; and

(b) those institutions permanently excluded by article 2(5) of CRD (Scope) with the exception of the ESCB central banks as defined in article 4(1)45 of the EU CRR UK CRR. [Note: article 2(6) of CRD]

financial instrument (1) (other than in (2), and (3) and (4)) instruments specified in Section C of Annex I of MiFID; those instruments specified...
in Part 1 of Schedule 2 to the Regulated Activities Order, that is:

…

(f) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, an MTF or an OTF, except for wholesale energy products (having regard to article 6 of the MiFID Org Regulation) traded on an OTF or an EU OTF that must be physically settled where the conditions of article 5 of the MiFID Org Regulation are met;

(g) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (f) and:

(i) not being for commercial purposes or wholesale energy products traded on an EU OTF, having regard to article 7(4) of the MiFID Org Regulation;

(ii) which have the characteristics of other derivative financial instruments, having regard to article 7(1) of the MiFID Org Regulation; and

(iii) not being spot contracts having regard to articles 7(1) and (2) of the MiFID Org Regulation;

…

(2) …

(3) (in IFPRU) has the meaning in article 4(50) of the EU CRR UK CRR.

(4) (for a UCITS custodial asset) an instrument specified in Section C of Annex I to MiFID. [deleted]

financial sector entity

Financial Services Register

has the meaning in article 4(1)(27) of the EU CRR UK CRR.

the public record, as required by section 347 of the Act (The public record), regulation 4 of the Payment Services Regulations (The register of certain payment service providers), regulation 4 of the
Electronic Money Regulations and article 8 of the MCD Order, of every:

…

(aa) authorised payment institution and its EEA branches;

…

(aca) authorised electronic money institution and an EEA branch of an authorised electronic money institution;

…

FINREP firm  
(a) a credit institution or investment firm subject to article 99(2) of the EU-CRR UK CRR that is also subject to article 4 of Regulation (EC) No 1606/2002; or

(b) a credit institution other than one referred to in article 4 of Regulation (EC) No 1606/2002 that prepares its consolidated accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in article 6(2) of that Regulation. [deleted]

[Note: article 99 of the EU-CRR UK CRR]

funded credit protection  
(in accordance with Article 4(31) of the Banking Consolidation Directive (Definitions) and for the purposes of BIPRU) a technique of credit risk mitigation where the reduction of the credit risk on the exposure of an undertaking derives from the right of the undertaking, 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 exposure to, or to replace it with, the amount of the difference between the amount of the exposure and the amount of a claim on the undertaking.

[Note: Article 4(31) of the Banking Consolidation Directive (Definitions)]

full CRD credit institution  
an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account and that has its registered office (or, if it has no registered office, its head office) in an EEA state the UK, excluding an institution to which CRD did not apply under the UK provisions which implemented article 2 of CRD.

full-scope UK AIFM  
a UK AIFM which:

(a) is not a small AIFM; or
(b) is a small AIFM but has opted in to AIFMD in accordance with article 3(4) of AIFMD exercised the option to meet the full requirements applying to a full-scope AIFM.

future

the investment, specified in article 84 of the Regulated Activities Order (Futures), which is in summary: rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made and futures and forwards to which article 84(1A), (1B), (1C), (1CA) or (1D) of the Regulated Activities Order applies.

[Editor’s note: The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

general market risk

(in accordance with paragraph 12 of Annex I of the Capital Adequacy Directive) the risk of a price change in an investment:

(a) (in relation to items that may or must be treated under BIPRU 7.2 (Interest Rate PRR)) owing to a change in the level of interest rates; or

(b) (in relation to items that may or must be treated under BIPRU 7.3 (Equity PRR and basic interest rate PRR for equity derivatives) except insofar as BIPRU 7.3 relates to the calculation of the interest rate PRR) owing to a broad equity-market movement unrelated to any specific attributes of individual securities.

[Note: paragraph 12 of Annex I of the Capital Adequacy Directive]

general wrong-way risk

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the risk that arises when the probability of default of counterparties is positively correlated with general market risk factors.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

government and public security

the investment, specified in article 78 of the Regulated Activities Order (Government and public securities), which is in summary: a loan stock, bond or other instrument creating or acknowledging indebtedness, issued by or on behalf of:

[Editor’s note: The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If
amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

group

…

(5) (in relation to a common platform firm) means the group of which that firm forms a part, consisting of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a consolidation article 12(1) relationship within the meaning of Article 12(1) of Directive 83/349/EEC on consolidated accounts.

…

group of connected clients

has the meaning given to it in article 4.1(39) of the EU CRR UK CRR.

hedging set

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) a group of risk positions from the transactions within a single netting set for which only their balance is relevant for determining the exposure value under the CCR standardised method.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

Home State

…

(4) (in relation to an insurance undertaking with an EEA right) the EEA State in which the registered office of the insurance undertaking is situated. [deleted]

…

(7) (in relation to a Treaty firm) the EEA State in which its head office is situated, in accordance with paragraph 1 of Schedule 4 to the Act (Treaty Rights). [deleted]

…

(12) (in relation to a person who has received authorisation under article 18 of the EU auction regulation) the EEA state in which the person is established and authorised under the EU auction regulation.

…
**Home State regulator**

1. (in relation to an EEA firm) (as defined in paragraph 9 of Schedule 3 to the Act (EEA Passport Rights)) the competent authority (under the relevant Single Market Directive or the EU auction regulation) of an EEA State (other than the United Kingdom) in relation to the EEA firm concerned.

2. (in relation to a UK firm or UCITS scheme) the FCA or PRA as the case may be. [deleted]

3. (in relation to a Treaty firm) (as defined in paragraph 1 of Schedule 4 to the Act (Treaty Rights)) the competent authority of the firm’s Home State for the purpose of its Home State authorisation. [deleted]

**Host State**

... (except in LR, PR and DTR and except in relation to MiFID) the EEA State in which an EEA firm, a UK firm, or a Treaty firm is exercising an EEA right or Treaty right to establish a branch or provide cross-border services. [deleted]

... (in relation to the UCITS Directive) the EEA State, other than the UCITS Home State, in which units of a UCITS are marketed in accordance with a notification made under article 93 of that directive. [deleted]

**Host State regulator**

1. (in relation to an EEA firm or a Treaty firm exercising an EEA right or Treaty right in the United Kingdom) the FCA or PRA as the case may be. [deleted]

2. (in relation to a UK firm) (as defined in paragraph 11 of Schedule 3 to the Act (EEA Passport Rights)) the competent authority (under the relevant Single Market Directive or the auction regulation) of an EEA State (other than the United Kingdom) in relation to a UK firm’s exercise of EEA rights there. [deleted]

3. ... (in relation to an EEA UCITS scheme which is a recognised scheme) the FCA. [deleted]

4. (in relation to a UCITS that is the subject of a notification in accordance with article 93 of the UCITS Directive) the competent authority of an EEA State (other than the United
Kingdom) in which units of the UCITS may be marketed to the public. [deleted]

**IFPRU investment firm**

an investment firm, as defined in article 4(1)(2) of the EU CRR UK CRR (including a collective portfolio management investment firm), that satisfies the following conditions:

(a) it is a firm;

(b) its head office is in the UK and it is not otherwise excluded under IFPRU 1.1.5R; and

(c) it is not a designated investment firm; that is not excluded under IFPRU 1.1.5R (Exclusion of certain types of firms).

**IFR**

the UK version of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, which is part of UK law by virtue of the EUWA.

**initial capital**

(1) [deleted]

(2) [deleted]

(3) [deleted]

(3A) (in IPRU(INV) 11 and in accordance with article 28(1) of the CRD) the amount of own funds referred to in article 26(1)(a) to (e) of the EU CRR UK CRR and calculated in line with Part Two of those Regulations (Own funds).

[Note: article 28(1) of the CRD]

(4) (in the case of a BIPRU firm) capital resources included in stage A (Core tier one capital) of the capital resources table plus capital resources included in stage B of the capital resources table (Perpetual non-cumulative preference shares).

(5) (in the case of an institution that is an EEA firm) capital resources calculated in accordance with the CRD implementation measures of its Home State for Article 4 of the Capital Adequacy Directive (Definition of initial capital) or Article 9 of the Banking Consolidation Directive (Initial capital requirements); [deleted]

(6) (for the purposes of the definition of dealing on own account in BIPRU and in the case of an undertaking not falling within (3) or (4)) capital resources calculated in accordance with (3) and paragraphs (3) and (4) of the definition of capital resources.
(7) (in \textit{IPRU(INV)} 13) the initial capital of a \textit{firm} calculated in accordance with \textit{IPRU(INV)} 13.1A.6R.

(8) (for an \textit{IFPRU} investment firm and in accordance with article 28(1) of \textit{CRD}) the amount of \textit{own funds} referred to in article 26(1)(a) to (e) of the \textit{EU CRR UK CRR} and calculated in accordance with Part Two of those Regulations (Own funds).

[Note: article 28(1) of \textit{CRD}]

(9) (for the purpose of the definition of dealing on own account in \textit{IFPRU}) the amount of \textit{own funds} referred to in article 26(1)(a) to (e) of the \textit{EU CRR UK CRR} and calculated in accordance with Part Two of those Regulations (Own funds).

\textit{institution} (1) has the meaning in article 4(1)(3) of the \textit{EU CRR UK CRR}.

(2) (for the purposes of \textit{GENPRU} and \textit{BIPRU}) includes a \textit{CAD} investment firm.

\textit{instrument constituting the fund} …

(ba) (in relation to an EEA UCITS scheme) the fund rules or instrument of incorporation of such a scheme; [deleted]

…

\textit{insurance special purpose vehicle} an \textit{undertaking} whether incorporated or not, which has received authorisation in accordance with \textit{UK} provisions which implemented article 211(1) or (3) of the \textit{Solvency II Directive} and:

…

\textit{interest-rate contract} interest-rate contracts listed in paragraph 1 of Annex II to the \textit{EU CRR UK CRR}.

\textit{internal approaches} one or more of the following, as referred to in the \textit{EU CRR UK CRR}:

(a) the Internal Ratings Based Approach in article 143(1);

(b) the Internal Models Approach in article 221;

(c) the own estimates approach in article 225;

(d) the Advanced Measurement Approaches in article 312(2);

(e) the Internal Model Method and internal models in articles 283 and 363; and

(f) the internal assessment approach in article 259(3).
intra-group transactions (in accordance with Article 2(18) of the Financial Groups Directive (Definitions)) all transactions by which regulated entities within a financial conglomerate rely either directly or indirectly upon other undertakings within the same financial conglomerate or upon any person linked to the undertakings within that financial conglomerate by close links, for the fulfilment of an obligation whether or not contractual, and whether or not for payment.

[Note: article 2(18) of the Financial Groups Directive (Definitions)]

investment firm (1) any person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.

[Note: article 4(1)(4) of MiFID 2(1A) of MiFIR]

... (3) (in IFPRU and BIPRU 12) has the meaning in article 4(1)(2) of the EU CRR UK CRR.

investment management firm a firm whose permitted activities include designated investment business, which is not an authorised professional firm, bank, IFPRU investment firm, BIPRU firm, collective portfolio management firm, credit union, energy market participant, friendly society, ICVC, insurer, media firm, oil market participant, or service company, incoming EEA 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 or IPRU-INV 13 (Personal investment firms) and which is within (a), (b) or (c):

...investment service any of the following involving the provision of a service in relation to a financial instrument: any of the services listed in Part 3 of Schedule 2 to the Regulated Activities Order, relating to any of the instruments listed in Part 1 of Schedule 2 to that order, that is:

...investment services and/or activities any of the services and activities listed in Section A of Annex I to MiFID relating to any financial instrument, any of the services and activities listed in Part 3 of Schedule 2 to the Regulated Activities Order, relating to any of the instruments listed in Part 1 of Schedule 2 to that order, that is:

...
investment trust  a company which:

(a) is approved by the Commissioners for HM Revenue and Customs under sections 1158 and 1159 of the Corporation Tax Act 2010 (or, in the case of a newly formed company, has declared its intention to conduct its affairs so as to obtain such approval); or

(b) is resident in an EEA State other than the United Kingdom and would qualify for such approval if resident in the United Kingdom. [deleted]

IRB permission  an Article 129 implementing measure, a requirement or a waiver that requires a BIPRU firm or a CAD investment firm to use the IRB approach.

key investor information  (1) (for a UCITS) key information for investors on the essential elements of a UCITS scheme or EEA UCITS scheme, as detailed in article 78 of the UCITS Directive and in the KII Regulation.

(2) …

KII Regulation  the UK version of Commission Regulation (EU) No 583/2010, specifying the form and contents of key investor information, the text of which is reproduced in COLL Appendix 1EU Appendix 1UK, which is part of UK law by virtue of the EUWA.

KIRB  (for the purposes of BIPRU 9 (Securitisation), in relation to a securitisation (within the meaning of paragraph (2) of the definition of securitisation) and in accordance with Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)) 8% of the risk weighted exposure amounts that would be calculated under the IRB approach in respect of the securitised exposures, had they not been securitised, plus the amount of expected losses associated with those exposures calculated under the IRB approach.

[Note: Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)]

large exposure  (1) (in BIPRU) the exposure of a firm to a counterparty, or a group of connected clients, whether in the firm’s non-trading book or trading book or both, which in aggregate equals or exceeds 10% of the firm’s capital resources.

(2) (except in (1)) has the meaning in article 392 of the EU CRR UK CRR (Definition of a large exposure).
lending firm

(in accordance with Article 90 of the Banking Consolidation Directive (Credit risk mitigation) and for the purposes of rules in BIPRU about credit risk mitigation) a firm that has an exposure, whether or not deriving from a loan.

[Note: article 90 of the Banking Consolidation Directive (Credit risk mitigation)]

leverage

(in accordance with article 4(1)(v) of AIFMD) any method by which an AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means.

[Note: article 4(1)(v) of AIFMD]

limited activity firm

has the meaning in article 96(1) of the EU CRR UK CRR.

limited licence firm

has the meaning in article 95(1) of the EU CRR UK CRR.

liquidity facility

(for the purposes of BIPRU 9 (Securitisation), in relation to a securitisation (within the meaning of paragraph (2) of the definition of securitisation) and in accordance with Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)) the securitisation position arising from a contractual agreement to provide funding to ensure timeliness of cash-flows to investors.

[Note: Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)]

liquidity risk

(1) (in COLL and in accordance with article 3(8) of the UCITS implementing Directive) the risk that a position in a UCITS portfolio cannot be sold, liquidated or closed out at limited cost in an adequately short timeframe and that the ability of the scheme to comply at any time with COLL 6.2.16R (Sale and redemption) or, in the case of an EEA UCITS scheme, article 84(1) of the UCITS Directive is thereby compromised.

[Note: article 3(8) of the UCITS implementing Directive]

listed activity

an activity listed in Annex 1 to the CRD the Annex 1 Activities.

local firm

has the meaning in article 4(1)(4) of the EU UK CRR.

long settlement transaction

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions)) a transaction where a counterparty undertakes to deliver a security, a commodity, or a foreign currency amount against cash, other CRD financial instruments, or commodities, or vice versa, at a settlement or delivery date that is contractually specified as more than the lower of the market standard for this...
particular transaction and five business days after the date on which the person enters into the transaction.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

**loss**

(in accordance with Article 4(26) of the Banking Consolidation Directive (Definitions) and for the purposes of the IRB approach, the standardised approach to credit risk and BIPRU 5 (Credit risk mitigation)) economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.

[Note: article 4(26) of the Banking Consolidation Directive (Definitions)]

(1) (in BIPRU and in accordance with Article 4(26) of the Banking Consolidation Directive (Definitions) and for the purposes of the IRB approach, the standardised approach to credit risk and BIPRU 5 (Credit risk mitigation)) economic loss, including material discount effects, and material direct and indirect costs associated with collecting on the instrument.

[Note: article 4(26) of the Banking Consolidation Directive (Definitions)]

(2) (except in (2)) has the meaning in article 5(1) of the EU CRR UK CRR.

**loss given default**

(in accordance with Article 4(27) of the Banking Consolidation Directive (Definitions) and in relation to the IRB approach) the ratio of the loss on an exposure due to the default of a counterparty to the amount outstanding at default.

[Note: article 4(27) of the Banking Consolidation Directive (Definitions)]

**management body**

(1) (other than in (2)) (in accordance with article 3(7) of CRD and article 4(1)(36) of MiFID 4(1)(9) of the UK CRR) the governing body and senior personnel who are empowered to set the person’s strategy, objectives and overall direction, and which oversee and monitor management decision-making in the following:

(a) a common platform firm (in relation to the requirements imposed by or under the UK provisions which implemented MiFID or MiFIR); or

(b) a recognised investment exchange; or

(c) a data reporting services provider.
(2) (in COLL and in SYSC 19E and in accordance with article 2(1)(s) of the UCITS Directive), the governing body of a management company or depositary of a UCITS scheme or an EEA UCITS scheme, as applicable, with ultimate decision-making authority comprising the supervisory and the managerial function or only the managerial function, if the two functions are separated.

[Note: article 2(1)(s) of the UCITS Directive]

management company

(in accordance with article 2(1)(b) of the UCITS Directive) a company, the regular business of which is the management of UCITS in the form of unit trusts, common funds (including authorised contractual schemes) or investment companies (collective portfolio management), including, where permitted by its Home State regulator, the additional services referred to in article 6(3) of that directive, as defined in section 237(2) of the Act, that is:

(1) a company, the regular business of which is:

(a) the management of UK UCITS; or

(b) the management of other collective investment undertakings which are not UK UCITS (and whose units cannot be marketed as such) and for which the management company is subject to prudential supervision, where undertaken in addition to the activity in sub-paragraph (a).

(2) For the purposes of paragraph 1(a) above, the regular business of a management company may include the following services, where permitted by the FCA and where undertaken in addition to the activity in paragraph 1 (a) above:

(a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more financial instruments; and

(b) the following non-core services, where provided in addition to the services in paragraph 2(a) above:

(i) investment advice concerning one or more financial instruments;

(ii) safekeeping and administration in relation to units of collective investment undertakings.
(3) For the purposes of paragraph 1(b) above, the management of other collective investment schemes includes the functions referred to in schedule 6 of the Regulated Activities Order.

(manager) (1) (in relation to an AUT) the firm, including, if relevant, an EEA UCITS management company or incoming EEA AIFM which is the manager of the AUT in accordance with the trust deed.

(1A) (in relation to an OEIC which is an undertaking for collective investment in transferable securities within the meaning of the UCITS Directive a UK UCITS or which is an AIF, and which has appointed a person to manage the scheme) the person appointed to manage the scheme.

…

managing a UK UCITS the regulated activity, specified in article 51ZA of the Regulated Activities Order of carrying on collective portfolio management within the meaning of the UCITS Directive, in relation to a UK UCITS.

margin agreement (in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) a contractual agreement or provisions to an agreement under which one counterparty must supply collateral to a second counterparty when an exposure of that second counterparty to the first counterparty exceeds a specified level.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

margin lending transaction (in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) transactions in which a person extends credit in connection with the purchase, sale, carrying or trading of securities; the definition does not include other loans that happen to be secured by securities collateral.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

margin period of risk (in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the time period from the last exchange of collateral covering a netting set of transactions with a defaulting counterpart
until that counterpart is closed out and the resulting market risk is re-hedged.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

margin threshold

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the largest amount of an exposure that remains outstanding until one party has the right to call for collateral.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

Market Abuse Regulation


marketing

(1) …

(2) (except in COLL) a direct or indirect offering or placement, at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages, to or with investors domiciled or with a registered office in the EEA UK.

[Note: article 4(1)(x) of AIFMD]

market maker

(1) …

(2) (in COBS and DTR) a person who holds himself or herself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his that person’s proprietary capital at prices defined by him that person.

[Note: article 4(1)(7) 2(1)(6) of MiFID MiFIR]

(3) [deleted]

market making activities

(as defined in article 2(1)(k) of the short selling regulation) the activities of an investment firm, a credit institution, a third country entity, or a firm as referred to in point (1) of article 2(1) of MiFID, which is a member of a trading venue or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the European Commission pursuant to article 17(2) of the short selling regulation, where it deals as principal in a financial instrument, whether traded on or outside a trading venue, in any of the following capacities.
(a) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market; or

(b) as part of its usual business, by fulfilling orders initiated by clients or in response to clients’ requests to trade; or

(c) by hedging positions arising from the fulfilment of tasks under points (a) and (b).

(as defined in article 2(1)(k) of the short selling regulation) means the activities of an investment firm, a credit institution, a third-country entity, or a firm as referred to in point (ka), which is a member of a trading venue or of a market in a third country, the legal and supervisory framework of which has been declared equivalent by the Commission pursuant to Article 17(2) before exit day, or by the Treasury in accordance with that paragraph as amended, or with regulation 16 of the Short Selling (EU Exit) (Amendment) Regulations 2018, where it deals as principal in a financial instrument, whether traded on or outside a trading venue, in any of the following capacities:

(i) by posting firm, simultaneous two-way quotes of comparable size and at competitive prices, with the result of providing liquidity on a regular and ongoing basis to the market;

(ii) as part of its usual business, by fulfilling orders initiated by clients or in response to clients’ requests to trade; or

(iii) by hedging positions arising from the fulfilment of tasks under points (i) and (ii).

[Note: Point 2(1)(ka) of the short selling regulation provides: For the purposes of point (k), the firms referred to in this point are firms which provide investment services and/or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets.]

market operator a person or persons who manages and/or operates the business of a regulated market and who may be the regulated market itself.

[Note: article (4)(1)(18) MiFID 2(1)(10) of MiFIR]
master AIF

(in accordance with article 4(1)(y) of AIFMD) an AIF in which another AIF (a feeder AIF) invests or has an exposure in accordance with the definition of ‘feeder AIF’.

[Note: article 4(1)(y) of AIFMD]

master UCITS

(in accordance with article 58(3) of the UCITS Directive) a UCITS scheme, an EEA UCITS scheme or a sub-fund of such a scheme where:

(a) at least one of its Unitholders is a feeder UCITS;

(a) it is not itself a feeder UCITS; and

(a) it does not hold units of a feeder UCITS.

[Note: article 58(3) of the UCITS Directive]

merging UCITS

(in COLL and in accordance with regulations 7 and 8 of the UCITS Regulations 2011) in relation to a UCITS merger, the UCITS scheme, EEA UCITS scheme or sub-fund of such a scheme, that under the proposed arrangements will be transferring all its assets and liabilities to the receiving UCITS.

MiFID investment firm

(1) (in summary) (except in SUP 13, SUP 13A and SUP 14 in relation to notification of passported activity) a firm to which MiFID applies would apply if it had its head office or registered office in the EEA including, for some purposes only, a credit institution and collective portfolio management investment firm.

(2) (in full) a firm (except in SUP 13, SUP 13A and SUP 14 in relation to notification of passported activity) which is:

(a) an investment firm with its head office in the EEA UK (or, if it has a registered office, that office);

(b) a CRD credit institution (only when providing an investment service or activity or when selling, or advising clients in relation to, structured deposits, for the purposes of:

(i) the rules implementing corresponding to the articles referred to in article 1(3) and article 1(4) of MiFID;

(ii) the requirements imposed upon it by and under MiFIR; and

(iii) the requirements imposed upon it by onshored regulations which were previously EU regulations made under MiFID);
(ba) CRD credit institution (only when providing an investment service or activity) in relation to COMP or FEES 6;

(c) a collective portfolio management investment firm (only when providing the services referred to in article 6(4) AIFMD or article 6(3) of the UCITS Directive in relation to the rules which implemented implementing the articles of MiFID referred to in article 6(6) of AIFMD or Article 6(4) of the UCITS Directive and for a full-scope UK AIFM, where relevant, or the rules implementing which implemented article 12(2)(b) of AIFMD);

unless, and to the extent that, it is a person to which Part 1 of Schedule 3 to the Regulated Activities Order or regulation 8 of the MiFI Regulations applies.

(3) 
(in SUP 13, SUP 13A and SUP 14 in relation to notification of passported activity) an investment firm with its head office in the EEA (or, if it has a registered office, that office) unless, and to the extent that, MiFID does not apply to it as a result of article 2 (Exemptions) or a article 3 (Optional exemptions) of MiFID. [deleted]

MiFID ITS 19 the UK version of Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of MTFs and OTFs and the notification to ESMA according to MiFID, which is part of UK law by virtue of the EUWA.

MiFID ITS 2 the UK version of Commission Implementing Regulation (EU) No 2017/1005 of 15 June 2017 laying down implementing technical standards with regard to the format and timing of the communication and publication of the suspension and removal of financial instruments from trading on a regulated market, an MTF or an OTF according to MiFID, which is part of UK law by virtue of the EUWA.

MiFID ITS 3 the UK version of Commission Implementing Regulation (EU) No 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications according to MiFID, which is part of UK law by virtue of the EUWA.

MiFID ITS 4 the UK version of Commission Implementing Regulation (EU) No 2017/1093 of 20 June laying down implementing technical standards with regard to the format of position reports by investment firms and market operators, which is part of UK law by virtue of the EUWA.
MiFID ITS 4A  
the UK version of Commission Implementing Regulation (EU) No [xxxx/xxx] laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with MiFID, which is part of UK law by virtue of the EUWA.

MiFID ITS 5  
the UK version of Commission Implementing Regulation (EU) No 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues according to MiFID of the European Parliament and of the Council on markets in financial instruments, which is part of UK law by virtue of the EUWA.

MiFID/MiFIR requirements  
any of the requirements applicable to an RIE or an applicant to become an RIE imposed by MiFIR and any formerly directly applicable regulation made under MiFID or EU MiFIR, which is an onshored regulation.

MiFID Org Regulation  
the UK version of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing MiFID of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, which is part of UK law by virtue of the EUWA.

MiFID RTS 1  
the UK version of Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing MiFIR with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and the obligation for investment firms to execute transactions in certain shares on a trading venue or a systematic internaliser, which is part of UK law by virtue of the EUWA.

MiFID RTS 2  
the UK version of Commission Delegated Regulation (EU) No 2017/583 of 14 July 2016 supplementing MiFIR with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives, which is part of UK law by virtue of the EUWA.

MiFID RTS 3  
the UK version of Commission Delegated Regulation (EU) No 2017/577 of 13 June 2016 supplementing MiFIR with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations, which is part of UK law by virtue of the EUWA.

MiFID RTS 3A  
the UK version of Commission Delegated Regulation (EU) No 2017/1018 of 29 June 2016 supplementing MiFID with regard to regulatory technical standards specifying information to be notified by
investment firms, market operators and credit institutions, which is part of UK law by virtue of the EUWA.

**MiFID RTS 6**

the **UK** version of Commission Delegated Regulation (EU) No 2017/589 of 19 July 2016 supplementing **MiFID** with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members, which is part of UK law by virtue of the EUWA.

**MiFID RTS 7**

the **UK** version of Commission Delegated Regulation (EU) No 2017/584 of 14 July 2016 supplementing **MiFID** with regard to regulatory technical standards specifying organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities enabling or allowing algorithmic trading through their systems, which is part of UK law by virtue of the EUWA.

**MiFID RTS 8**

the **UK** version of Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing MiFID with regard to regulatory technical standards specifying the requirements on market making agreements and schemes, which is part of UK law by virtue of the EUWA.

**MiFID RTS 9**

the **UK** version of Commission Delegated Regulation (EU) No 2017/566 of 18 May 2016 supplementing MiFID with regard to regulatory technical standards on the ratio of unexecuted orders to transactions, which is part of UK law by virtue of the EUWA.

**MiFID RTS 10**

the **UK** version of Commission Delegated Regulation (EU) 2017/573 of 6 June 2016 supplementing MiFID with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location and fee structures, which is part of UK law by virtue of the EUWA.

**MiFID RTS 11**

the **UK** version of Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing MiFID with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange traded funds, which is part of UK law by virtue of the EUWA.

**MiFID RTS 12**

the **UK** version of Commission Delegated Regulation (EU) No 2017/570 of 26 May 2016 supplementing MiFID with regard to regulatory technical standards on the determination of a material market in terms of liquidity relating to notifications of a temporary halt in trading, which is part of UK law by virtue of the EUWA.

**MiFID RTS 13**

the **UK** version of Commission Delegated Regulation (EU) No 2017/571 of 2 June 2016 supplementing MiFID with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers, which is part of UK law by virtue of the EUWA.
MiFID RTS 14 the UK version of Commission Delegated Regulation (EU) No 2017/572 of 2 June 2016 supplementing MiFIR with regard to regulatory technical standards on the specification of the offering of pre-trade and post-trade data and the level of disaggregation, which is part of UK law by virtue of the EUWA.

MiFID RTS 17 the UK version of Commission Delegated Regulation (EU) No 2017/568 of 24 May 2016 supplementing MiFID with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets, which is part of UK law by virtue of the EUWA.

MiFID RTS 18 the UK version of Commission Delegated Regulation (EU) No 2017/569 of 24 May 2016 supplementing MiFID with regard to regulatory technical standards for the suspension and removal of financial instruments from trading, which is part of UK law by virtue of the EUWA.

MiFID RTS 21 the UK version of Commission Delegated Regulation (EU) No 2017/591 of 1 December 2016 supplementing MiFID with regard to regulatory technical standards for the application of position limits to commodity derivatives, which is part of UK law by virtue of the EUWA.

MiFID RTS 22 the UK version of Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing MiFIR with regard to regulatory technical standards for the reporting of transactions to competent authorities, which is part of UK law by virtue of the EUWA.

MiFID RTS 23 the UK version of Commission Delegated Regulation (EU) No 2017/585 of 14 July 2016 supplementing MiFIR with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities, which is part of UK law by virtue of the EUWA.

MiFID RTS 25 the UK version of Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing MiFIR with regard to regulatory technical standards for the level of accuracy of business clocks, which is part of UK law by virtue of the EUWA.

MiFID RTS 26 the UK version of Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing MiFIR with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing, which is part of UK law by virtue of the EUWA.

MiFID RTS 27 the UK version of Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing MiFID with regard to regulatory technical standards for the data to be provided by execution venues on
the quality of execution of transactions, which is part of UK law by virtue of the EUWA.

**MiFID RTS 28**

the UK version of Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing MiFID with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, which is part of UK law by virtue of the EUWA.

**MiFIR**

the UK version of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, which is part of UK law by virtue of the EUWA.

**MiFIR Delegated Regulation**

the UK version of Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, which is part of UK law by virtue of the EUWA.

**mixed-activity holding company**

has the meaning given to the definition of "mixed activity holding company" in article 4(1)(22) of the EU CRR UK CRR.

**multilateral system**

any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system.

[Note: article 4(1)(19) 2(1)(11) of MiFID MiFIR]

**mutual society share**

a share, excluding a deferred share issued by a credit union, which:

(a) meets the requirements for common equity Tier 1 capital instruments under article 28 or 29; and

(b) is issued by an institution which is of a type listed in article 27; in each case of Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012 the UK CRR.

**near cash**

money, deposits or investments which, in each case, fall within any of the following:

(a) money which is deposited with an eligible institution or an approved bank in:

(i) a current account; or

(ii) a deposit account, if the money can be withdrawn immediately and without payment of a penalty
exceeding seven days’ interest calculated at ordinary commercial rates;

(b) certificates of deposit issued by an eligible institution or an approved bank if immediately redeemable at the option of the holder;

(c) government and public securities, if redeemable at the option of the holder or bound to be redeemed within two years;

(d) bills of exchange which are government and public securities;

(e) deposits with a local authority of a kind which fall within paragraph 9 of Part II of the First Schedule to the Trustee Investments Act 1961, and equivalent deposits with any local authority in another EEA State, if the money can be withdrawn immediately and without payment of a penalty as described in (a).

**netting set**

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) a group of transactions with a single counterparty that are subject to a legally enforceable bilateral netting arrangement and for which netting is recognised under BIPRU 13.7 (Contractual netting), BIPRU 5 (Credit risk mitigation) and, if applicable, BIPRU 4.10 (The IRB approach: Credit risk mitigation); each transaction that is not subject to a legally enforceable bilateral netting arrangement, which is recognised under BIPRU 13.7 must be interpreted as its own netting set for the purpose of BIPRU 13. Under the method set out at BIPRU 13.6, all netting sets with a single counterparty may be treated as a single netting set if negative simulated market values of the individual sets are set to zero in the estimation of expected exposure (EE).


**non-core concentration risk group counterparty**

(in accordance with Article 113(4)(c) of the Banking Consolidation Directive) has the meaning in BIPRU 10.9A.4R (Definition of non-core concentration risk group counterparty), which is in summary (in relation to a firm) each counterparty which is its parent undertaking, its subsidiary undertaking or a subsidiary undertaking of its parent undertaking, provided that (in each case) both the counterparty and the firm satisfy the conditions in BIPRU 10.9A.4R (Definition of non-core concentration risk group counterparty).

[Note: article 113(4)(c) of the Banking Consolidation Directive]
non-core large exposures group (in relation to a firm) all counterparties which:

(1) are listed in the firm's non-core large exposures group permission;

(2) satisfy the conditions in IFPRU 8.2.6R (Intra-group exposures: non-core large exposures group); and

(3) for which exposures are exempted, under article 400(2)(c) of the EU CRR UK CRR (Exemptions), from the application of article 395(1) of the EU CRR UK CRR (Limits to large exposures).

non-core large exposures group permission a permission referred to in IFPRU 8.2.6R given by the FCA for the purpose of article 400(2)(c) of the EU CRR UK CRR (Large exposures: exemptions).

non-directive firm (1) (in SUP 11 (Controllers and close links) and SUP 16 (Reporting requirements)) (in accordance with the Financial Services and Markets Act 2000 (Controllers) (Exemption) Order 2009 (SI 2009/774)) a UK domestic firm other than:

(a) a credit institution authorised under the Banking Consolidation Directive that has permission under Part 4A of the Act to carry on the regulated activity of accepting deposits;

(b) an investment firm authorised under MIFID that has permission under Part 4A of the Act to carry on regulated activities relating to investment services and/or activities in the UK;

(c) a management company as defined in article 2(1)(b) of the UCITS Directive, authorised under that directive section 237 of the Act which is authorised by the FCA;

(d) a Solvency II firm.

non-EEA non-UK bank a bank which is a body corporate or partnership formed under the law of any country or territory outside the EEA UK.

non-EEA non-UK feeder AIF a UK AIF or an EEA AIF that is a feeder AIF, the master AIF of which is a non-EEA UK AIF or is managed by a non-EEA UK AIFM.

non-EEA non-UK sub-group (1) (in GENPRU (except GENPRU 3) and BIPRU (except BIPRU 12)) a group of undertakings identified as a non-EEA non-UK sub-group in BIPRU 8.3.1R (Main consolidation rule for non-EEA non-UK sub-groups), however where the provision in
question refers to a non-EEA sub-group in another EEA State, it means a group of undertakings identified in Article 73(2) of the Banking Consolidation Directive (Non-EEA subgroups) required to be supervised on a consolidated basis under Article 73(2) of the Banking Consolidation Directive by a competent authority in that EEA State.

(2) (except in (1)) a group of undertakings identified in article 22 of the EU CRR (Sub-consolidation in cases of entities in third countries).

non-listed company (in accordance with article 4(1)(ac) of AIFMD) a company which has its registered office in the UK or the EEA and the shares of which are not admitted to trading on a regulated market.

[Note: article 4(1)(ac) of AIFMD]


official list …

(3) (in COLL):

(a) the list maintained by the FCA in accordance with section 74(1) of the Act (The official list) for the purposes of Part VI of the Act (Official Listing);

(b) any corresponding list maintained by a competent authority for listing in an EEA State.

oil market participant a firm:

(a) whose permission:

(i) includes a requirement that the firm must not carry on any designated investment business other than oil market activity; and

(ii) does not include a requirement that it comply with IPRU(INV) 5 (Investment management firms) or 13 (Personal investment firms); and

(b) which is not an authorised professional firm, bank, BIPRU 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, or home finance provider, incoming EEA firm (without a top-up permission), or incoming Treaty firm (without a top-up permission) or regulated benchmark administrator.

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.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

operational risk

(1) (in COLL and FUND) the risk of loss for a UCITS or AIF resulting from inadequate internal processes and failures in relation to the people and systems of the management company or AIFM or from external events, and it includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the fund.

(2) (in GENPRU (except GENPRU 3 (Cross sector groups) and BIPRU (except BIPRU 12 (Liquidity Standards))) (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.

[Note: article 4(22) of the Banking Consolidation Directive]

(3) (except in (1) and (2)) has the meaning in article 4(1)(52) of the EU CRR UK CRR.

option the investment, specified in article 83 of the Regulated Activities Order (Options), which is in summary an option to acquire or dispose of:

…

[Editor’s note: The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

originator

(1) (in GENPRU (except GENPRU 3), MIPRU and BIPRU (except BIPRU 12)) (in accordance with Article 4(1) of the Banking Consolidation Directive (Definitions) and in relation
to a securitisation within the meaning of paragraph (2) of the definition of securitisation either of the following:

(a) an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposures being securitised; or

(b) an entity which purchases a third party's exposures onto its balance sheet and then securitises them.

[Note: article 4(41) of the Banking Consolidation Directive (Definitions)]

(2) (except in (1)) has the meaning in article 4(1)(13) of the EU CRR UK CRR.

**OTC derivative transaction**

a derivative financial instrument of a type listed on Annex II to the UK CRR that is traded over the counter.

**overseas firm**

(1) (in relation to MAR 5 and MAR 5A) a firm which has its registered office (or, if it has no registered office, its head office) outside the United Kingdom excluding an incoming EEA firm.

(2) (in any other case) a firm which has its registered office (or, if it has no registered office, its head office) outside the United Kingdom.

**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:

... (xa) managing a UK UCITS ...

...

**own funds**

(1) (in GENPRU (except GENPRU 3 (Cross sector groups) and BIPRU (except BIPRU 12 (Liquidity standards)) own funds as described in articles 56 to 67 of the Banking Consolidation Directive.

(2) [deleted]

(2A) (in IPRU(INV) 11) has the meaning in article 4(1)(118) of the EU CRR UK CRR.
(3) (in IPRU(INV) 8) capital, as defined in CREDS 5.2.1R.

(3A) (in IPRU(INV) 13) the own funds of a firm calculated in accordance with IPRU(INV) 13.1A.14R (Own funds) for a personal investment firm that is an exempt CAD firm.

(4) [deleted]

(5) (except in (1) to (4)) has the meaning in article 4(1)(118) of the UK CRR.

own funds instruments
has the meaning in article 4(1)(119) of the EU CRR UK CRR.

own funds requirements
as defined in article 92 (Own funds requirements) of the EU CRR.

parent financial holding company in a Member State the UK
(1) (in GENPRU (except GENPRU 3 and BIPRU (except BIPRU 12)) (in accordance with Article 4(15) of the Banking Consolidation Directive (Definitions) and Article 3 of the Capital Adequacy Directive (Definitions)) a financial holding company which is not itself a subsidiary undertaking of an institution authorised in the same EEA State UK, or of a financial holding company or mixed financial holding company established in the same EEA State UK.

(2) (except in (1)) has the meaning in article 4(1)(30) of the EU CRR. [deleted]

parent institution in a Member State the UK
(1) (in GENPRU (except GENPRU 3 and BIPRU (except BIPRU 12)) (in accordance with Article 4(14) of the Banking Consolidation Directive and Article 3 of the Capital Adequacy Directive (Definitions)) an institution which has an institution or a financial institution as a subsidiary undertaking or which holds a participation in such an institution, and which is not itself a subsidiary undertaking of another institution authorised in the same EEA State UK, or of a financial holding company or mixed financial holding company established in the same EEA State UK.

(2) (except in (1)) has the meaning in article 4(1)(28) of the EU CRR. [deleted]

parent mixed financial holding company in a Member State the UK
(1) (in GENPRU (except GENPRU 3 and BIPRU (except BIPRU 12)) in accordance with Article 4(15a) of the Banking Consolidation Directive (Definitions)) a mixed financial holding company which is not itself a subsidiary undertaking of an institution authorised in the same EEA State UK, or of a financial holding company or mixed financial holding company established in the same EEA State UK.
(2) Except in (1) has the meaning in article 4(1)(32) of the EU CRR. [deleted]

Parent undertaking (3) For the purposes of GENPRU, BIPRU, IFPRU, SYSC 19A (IFPRU Remuneration Code) and SYSC 19D (Dual-regulated firms Remuneration Code) has the meaning in article 4(1)(15) of the EU CRR but so that in accordance with article 2(9) of the Financial Groups Directive, article 4(1)(15)(b) applies for the purpose of GENPRU 3.

[Note: article 2(9) of the Financial Groups Directive]

Participation (1) For the purposes of GENPRU (except GENPRU 3) and for the purposes of BIPRU (except BIPRU 12) as they apply on a consolidated basis:

(a) A participating interest may be defined according to:

(i) Section 421A of the Act where applicable; or

(ii) Paragraph 11(1) of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) where applicable; or

(iii) Paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008 (SI 2008/409) where applicable; or

(iv) Paragraph 8 of Schedule 4 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913) where applicable; or

(v) Paragraph 8 of Schedule 5 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912) where applicable; or

(b) Otherwise the direct or indirect ownership of 20% or more of the voting rights or capital of an undertaking, but excluding the interest of a parent undertaking in its subsidiary undertaking.

(2) Except in (1) has the meaning in article 4(1)(35) of the EU CRR UK CRR.

Payment institution an authorised payment institution, an EEA authorised payment institution or a small payment institution.

[Note: articles 4(4) and 32(3) of the Payment Services Directive]
payment service …

(b) The following activities do not constitute payment services:

…

(xi) services based on specific payment instruments that can be used only in a limited way and meet one of the following conditions:

(A) allow the holder to acquire goods or services only in the issuer's premises; or

(B) are issued by a professional issuer and allow the holder to acquire goods or services only within a limited network of service providers which have direct commercial agreements with the issuer; or

(C) may be used only to acquire a very limited range of goods or services; or

(D) are valid only in a single EEA state the UK, are provided at the request of an undertaking or a public sector entity, and are regulated by a national or regional public authority for specific social or tax purposes to acquire specific goods or services from suppliers which have a commercial agreement with the issuer.

…

…

payment service provider (1) (except in DISP) (in accordance with regulation 2(1) of the Payment Services Regulations) any of the following persons when they carry out a payment service:

(a) an authorised payment institution;

(b) a small payment institution;

(ba) a registered account information service provider;

(c) an EEA authorised payment institution; [deleted]

(d) a credit institution;

(e) an electronic money issuer;
(f) the Post Office Limited;

(g) the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and

(h) government departments and local authorities, other than when carrying out functions of a public nature.

...
permission to carry on *regulated activities*; that is, any of the following:

(a) a *Part 4A permission*;

(b) the permission that an *incoming EEA firm* has, under paragraph 15(1) or paragraph 15A(1), (3) or (4) of Schedule 3 to the *Act* (EEA Passport Rights), on qualifying for *authorisation* under paragraph 12 of that Schedule [deleted];

(c) the permission that an *incoming Treaty firm* has, under paragraph 4(1) of Schedule 4 to the *Act* (Treaty Rights), on qualifying for *authorisation* under paragraph 2 of that Schedule [deleted];

(d) the permission that a *UCITS qualifier* has, under paragraph 2(1) of Schedule 5 to the *Act* (Persons concerned in Collective Investment Schemes) [deleted];

(e) the permission that an *ICVC* has, under paragraph 2(2) of Schedule 5 to the *Act* (Persons concerned in Collective Investment Schemes);

(f) the permission that the Society of Lloyd’s has, under section 315(2) of the *Act* (The Society: authorisation and permission), which is to be treated as a *Part IV permission* for the purposes of *Part 4A of the Act* (Permission to carry on regulated activities) in accordance with section 315(3) of the *Act*.

**personal investment firm** *a firm* whose permitted activities include *designated investment business*, which is not an *authorised professional firm*, *bank*, *IFPRU investment firm*, *BIPRU firm*, *building society*, *collective portfolio management firm*, *credit union*, *energy market participant*, *ICVC*, *insurer*, *media firm*, *oil market participant*, or *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):

...
(1) (in accordance BIPRU 1.2.4R (Definition of the trading book: Positions)) includes proprietary positions and positions arising from client servicing and market making.

(2) (in IFPRU) has the meaning which it has, or is used, in the EU CRR UK CRR.

PRIIPs Regulation


probability of default

(in accordance with Article 4(25) of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU) the probability of default of a counterparty over a one year period; for the purposes of the IRB approach, default has the meaning in the definition of default.

[Note: article 4(25) of the Banking Consolidation Directive (Definitions)]

professional negligence capital requirement

(1) (in IPRU(INV) 11) an amount of own funds that a collective portfolio management firm must hold professional liability risks as set out in article 14 of the AIFMD level 2 regulation (additional own funds) (as replicated in IPRU(INV) 11.3.14 EU UK) (Professional negligence).

[deleted]

Prospectus Regulation

the UK version of Regulation (EU) No 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2033/71/EC, which is part of UK law by virtue of the EUWA.

Prospectus RTS Regulations

(1) the UK version of Commission Delegated Regulation (EU) No 382/2014 supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus, which is part of UK law by virtue of the EUWA; and

**protection buyer** (in BIPRU) (in relation to a credit derivative and in accordance with paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk)) the person who transfers credit risk.

[Note: paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk)]

**protection seller** (in BIPRU) (in relation to a credit derivative and in accordance with paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk)) the person who assumes the credit risk.

[Note: paragraph 8 of Annex I of the *Capital Adequacy Directive* (Calculating capital requirements for position risk)]

**public sector entity** (in accordance with Article 4(18) of the *Banking Consolidation Directive* (Definitions) and for the purposes of BIPRU) any of the following:

(a) non-commercial administrative bodies responsible to central governments, regional governments or local authorities; or

(b) authorities that exercise the same responsibilities as regional and local authorities; or

(c) non commercial *undertakings* owned by central governments that have explicit guarantee arrangements; or

(d) self administered bodies governed by law that are under public supervision.

[Note: article 4(18) of the *Banking Consolidation Directive* (Definitions)]

**qualifying money market fund** (1) (in COLL, CASS 7 and BSOCS) …

…

(4) (in COLL) a collective investment undertaking which is a *UCITS scheme* or authorised under the *UCITS Directive* or which is subject to supervision and, if applicable, authorised by either the FCA or an authority under the national law of the authorising Member State, and which satisfies the following conditions:

(a) its primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors’ initial capital plus earnings;
(b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;

(c) it must provide liquidity through same day or next day settlement.

For the purposes of (b), a money market instrument may be considered to be of high quality if the AIFM or management company of the collective investment undertaking performs its own documented assessment of the credit quality of money market instruments that allows it to consider a money market instrument as high quality subject to the conditions below:

(i) where one or more credit rating agencies registered and supervised by the FCA or ESMA have provided a rating of the instrument, the AIFM’s or management company’s internal assessment must have regard to, inter alia, those credit ratings; and

(ii) while there can be no mechanistic reliance on such external ratings, a downgrade below the two highest short-term credit ratings by any agency registered and supervised by the FCA or ESMA that has rated the instrument will lead the AIFM or UCITS management company to undertake a new assessment of the credit quality of the money market instrument to ensure it continues to be of high quality.

[Note: article 1(4) of, and recital 4 to, the MiFID Delegated Directive]

rated position (for the purposes of MIPRU and BIPRU 9 (Securitisation), in accordance with Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions) and in relation to a securitisation position) describes a securitisation position which has an eligible credit assessment by an eligible ECAI.

[Note: Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)]

(except in COLL):

(a) a government or public security denominated in the currency of the country of its issuer;

(b) any other security which is:
   (i) admitted to official listing on an exchange in an EEA State the UK; or
   (ii) regularly traded on or under the rules of such an exchange; or
   (iii) regularly traded on or under the rules of a recognised investment exchange or (except in relation to unsolicited real time financial promotions) designated investment exchange;

(c) a newly issued security which can reasonably be expected to fall within (b) when it begins to be traded.

(in COLL):

(a) a government or public security denominated in the currency of the country of its issuer;

(b) any other security which is:
   (i) admitted to official listing on an exchange in the UK or an EEA State; or
   (ii) regularly traded on or under the rules of such an exchange; or
   (iii) regularly traded on or under the rules of a recognised investment exchange or (except in relation to unsolicited real time financial promotions) designated investment exchange;

(c) a newly issued security which can reasonably be expected to fall within (b) when it begins to be traded.
receiving UCITS

(in COLL and in accordance with regulations 7 and 8 of the UCITS Regulations 2011) in relation to a UCITS merger, the UCITS scheme or EEA UCITS scheme or sub-fund of that scheme, whether it is an existing scheme (or a sub-fund of it) or one that is being formed for the purpose of that merger, which under the proposed arrangements will be receiving the assets and liabilities of one or more merging UCITS.

recognised scheme

a scheme recognised under section 272 of the Act (individually recognised overseas schemes):

(a) section 264 of the Act (Schemes constituted in other EEA States); or

(b) [deleted]

(c) section 272 of the Act (Individually recognised overseas schemes).

recognised third country credit institution

a full CRD credit institution that satisfies the following conditions:

(a) its head office is outside the EEA UK;

(b) it is authorised by a third country competent authority in the state or territory in which the credit institution's head office is located; and

(c) that third country competent authority applies prudential and supervisory requirements to that credit institution that are at least equivalent to those applied in the EEA UK.

recognised third country investment firm

(1) (in BIPRU and GENPRU 3.2 (Third-country groups) as it applies to a BIPRU firm in relation to a third-country banking and investment group and a banking and investment group) a CAD investment firm that satisfies the following conditions:

(a) its head office is outside the EEA UK;

(b) it is authorised by a third country competent authority in the state or territory in which the CAD investment firm's head office is located;

(c) that third country competent authority is named in Part 2 of BIPRU 8 Annex 6 (Non-EEA UK investment firm regulators' requirements deemed CRD-equivalent for individual risks); and

(d) that investment firm is subject to and complies with prudential rules of or administered by that third
country competent authority that are at least as stringent as those laid down in the Banking Consolidation Directive and the Capital Adequacy Directive as applied under the third paragraph of article 95(2) of the EU-CRR for BIPRU firms in GENPRU and BIPRU.

(2) (except for the purpose in (1)) (in GENPRU 3.2 (Third country groups) in relation to a third-country banking and investment group and a banking and investment group) an investment firm that falls within the meaning of “investment firm” in article 4(1)(2) of the EU-CRR UK CRR and which satisfies the following conditions:

(a) its head office is outside the EEA UK;

(b) it is authorised by a third country competent authority in the state or territory in which the investment firm's head office is located; and

(c) that investment firm is subject to and complies with prudential rules of or administered by that third country competent authority that are at least as stringent as those laid down in the EU-CRR UK CRR.

(3) (in GENPRU 3.1) a firm in either (1) or (2), or both.

regulated activity (A) …

(B) in the FCA Handbook:(in accordance with section 22 of the Act (Regulated activities) the activities specified in Part II of the Regulated Activities Order (Specified Activities) which are, in summary:

…

(na) managing a UK UCITS;

…

regulated information all information which an issuer, or any other person who has applied for the admission of financial instruments to trading on a regulated market without the issuer's consent, is required to disclose under:

(a) the Transparency Directive; or [deleted]

(b) articles 17 to 19 of the Market Abuse Regulation; or

(c) LR, and DTR.

regulated market (1) a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing
together of multiple third-party buying and selling interests in financial instruments—in the system and in accordance with its non-discretionary rules—in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the Title III of MiFID a regulated market which is a UK RIE.

[Note: article 4(1)(21) 2(1)(13A) of MiFID MiFIR]

(2) (in addition, in INSINU and IPRU(INS) only) a market situated outside the EEA States United Kingdom which is characterised by the fact that:

(a) it meets comparable requirements to those set out in (1); and

(b) the financial instruments dealt in are of a quality comparable to those in a regulated market in the United Kingdom.

(3) (in FUND and COLL) as in (1) above or an EU regulated market.

regulatory system

the arrangements for regulating a firm or other person in or under the Act, including the threshold conditions, the Principles and other rules, the Statements of Principle, codes and guidance, or in or under the CCA, and including any relevant directly applicable provisions of a Directive or Regulation an onshored regulation such as those contained in the MiFID Org Regulation and the EU UK CRR.

relevant credit exposures

(in accordance with article 140(4) of CRD) exposures, other than those referred to in article 112(a) to (f) of the EU CRR UK CRR (Exposure classes), that are subject to:

(a) the own funds requirements for credit risk under Part Three, Title II of the EU CRR UK CRR; 

(b) where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of the EU CRR UK CRR or incremental default and migration risk under Part Three, Title IV, Chapter 5 of the EU CRR UK CRR; or

(c) where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of the EU CRR UK CRR.

[Note: article 140(4) of CRD]
Remuneration Code staff (for an IFPRU investment firm and an overseas firm in SYSC 19A.1.1R(1)(d) that would have been an IFPRU investment firm if it had been a UK domestic firm) has the meaning given in SYSC 19A.3.4R which is, in summary, an employee whose professional activities have a material impact on the firm’s risk profile, including any employee who is deemed to have a material impact on the firm’s risk profile in accordance with the Material Risk Takers Regulation.

repurchase transaction (in accordance with Article 3(1)(m) of the Capital Adequacy Directive and Article 4(33) of the Banking Consolidation Directive (Definitions) and for the purposes of BIPRU) any agreement in which an undertaking or its counterparty transfers securities or commodities or guaranteed rights relating to title to securities or commodities where that guarantee is issued by a designated investment exchange or recognised investment exchange which holds the rights to the securities or commodities and the agreement does not allow an undertaking to transfer or pledge a particular security or commodity to more than one counterparty at one time, subject to a commitment to repurchase them or substituted securities or commodities of the same description at a specified price on a future date specified, or to be specified, by the transferor, being a repurchase agreement for the undertaking selling the securities or commodities and a reverse repurchase agreement for the undertaking buying them.

[Note: article 3(1)(m) of the Capital Adequacy Directive and Article 4(33) of the Banking Consolidation Directive (Definitions)]

respondent (1) (in DISP, FEES 5, CRED 9 and GEN 7) a firm (except an AIFM qualifier or a UCITS qualifier), payment service provider, electronic money issuer, CBTL firm, designated credit reference agency, designated finance platform, or VJ participant covered by the Compulsory Jurisdiction or Voluntary Jurisdiction of the Financial Ombudsman Service.

revolving exposure (for the purpose of BIPRU 9.13 (Securitisations of revolving exposures with early amortisation provisions) and in accordance with Article 100 of the Banking Consolidation Directive (Securitisations of revolving exposures)) an exposure whereby customers' outstanding balances are permitted to fluctuate based on their decisions to borrow and repay, up to an agreed limit.

[Note: article 100 of the Banking Consolidation Directive (Securitisations of revolving exposures)]

risk concentration (in accordance with Article 2(19) of the Financial Groups Directive (Definitions)) all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position in general of...
the regulated entities in the financial conglomerate, whether such exposures are caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks.

[Note: article 2(19) of the Financial Groups Directive (Definitions)]

**risk limit system**

(in COLL and in accordance with article 40(2)(d) of the UCITS implementing Directive) a documented system of internal limits concerning the measures used by a management company to manage and control the relevant risks for each UCITS it manages, taking into account all the risks which may be material to the UCITS, as referred to in the second paragraph of article 38(1) of the UCITS implementing Directive and including, but not limited to, liquidity risk, counterparty risk, and operational risk, and ensuring consistency with the UCITS' risk profile.

[Note: article 38(1) and 40(2)(d) of the UCITS implementing Directive]

**risk of excessive leverage**

has the meaning in article 4(1)(94) of EU UK CRR.

**risk position**

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) a risk number that is assigned to a transaction under the CCR standardised method following a predetermined algorithm.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

**rollover risk**

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the amount by which expected positive exposure is understated when future transactions with a counterpart are expected to be conducted on an ongoing basis; the additional exposure generated by those future transactions is not included in calculation of expected positive exposure.

[Note: Part 1 of Annex III of the Banking Consolidation Directive (Definitions)]

**scheme of arrangement**

(in COLL) an arrangement relating to an authorised fund ("transferor fund") or to a sub-fund of a scheme that is an umbrella ("transferor sub-fund") under which:

…
This arrangement includes an arrangement that constitutes a domestic UCITS merger or a cross-border UCITS merger.

**security**

(1) (except in LR and CONC) (in accordance with article 3(1) of the Regulated Activities Order (Interpretation)) any of the following investments specified in that Order:

... 

[Editor’s note: The current policy intention for COLL is to reflect the current scope of this article in the Regulated Activities Order. If amendments are made to the scope of this article in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

**secured lending transaction**

(in accordance with point 2 of Part 1 of Annex VIII of the Banking Consolidation Directive (Eligibility of credit risk mitigation) and for the purposes of BIPRU) 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.

[Note: point 2 of Part 1 of Annex VIII of the Banking Consolidation Directive (Eligibility of credit risk mitigation)]

**securities and futures firm**

a firm whose permitted activities include designated investment business or bidding in emissions auctions, which is not an authorised professional firm, bank, BIPRU 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, or 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):

...

**securities financing transaction**

(1) (in COBS) an instance of stock lending or stock borrowing or the lending or borrowing of other financial instruments, a repurchase or reverse repurchase transaction, or a buy-sell back or sell-buy back transaction.

(1A) (in COLL and FUND) a transaction defined in article 3(11) of the EU Securities Financing Transactions Regulation as it had effect immediately before exit day, as follows:
(a) a repurchase transaction, as defined in article 3(9) of the SFTR that regulation;
(b) securities or commodities lending and securities or commodities borrowing as defined in article 3(7) of the SFTR that regulation;
(c) a buy-sell back transaction or sell-buy back transaction as defined in article 3(8) of the SFTR that regulation; and
(d) a margin lending transaction as defined in article 3(10) of the SFTR that regulation.

(1B) (in CASS) a securities financing transaction as defined in article 3(11) of the SFTR. [Note: article 1(3) of the MiFID Delegated Directive]

(2) (in any other case) any of the following:
(a) a repurchase transaction; or
(b) a securities or commodities lending or borrowing transaction; or
(c) a margin lending transaction.

Securities Financing Transactions Regulation

Securitisation (1) (subject to (2) and (3)) a process by which assets are sold to a bankruptcy-remote special purpose vehicle in return for immediate cash payment and that vehicle raises the
immediate cash payment through the issue of debt securities in the form of tradable notes or commercial paper.

(2) (in accordance with Article 4(36) of the Banking Consolidation Directive (Definitions) and in BIPRU and MIPRU 4) a transaction or scheme whereby the credit risk associated with an exposure or pool of exposures is tranched having the following characteristics:

(a) payments in the transaction or scheme are dependent upon the performance of the exposure or pool of exposures; and

(b) the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme.

[Note: article 4(36) of the Banking Consolidation Directive (Definitions)]

(3) (in IFPRU) has the meaning in article 4(1)(61) of the EU CRR UK CRR.

securitisation position

(1) (in GENPRU, MIPRU and BIPRU) (in accordance with Article 4(40) (Definitions) and Article 96 (Securitisation) of the Banking Consolidation Directive) an exposure to a securitisation within the meaning of paragraph (2) of the definition of securitisation; and so that:

(a) where there is an exposure to different tranches in a securitisation, the exposure to each tranche must be considered as a separate securitisation position;

(b) the providers of credit protection to securitisation positions must be considered to hold positions in the securitisation; and

(c) securitisation positions include exposures to a securitisation arising from interest rate or currency derivative contracts.

[Note: article 4(1)(62) and 245(3) of the UK CRR]

(2) (in IFPRU) has the meaning in article 4(1)(62) of the EU CRR UK CRR.

securitisation special purpose entity

(1) (in accordance with Article 4(14) of the Banking Consolidation Directive (Definitions) and for the purposes of BIPRU) a corporation, trust or other entity, other than a credit institution, organised for carrying on a securitisation or securitisations (within the meaning of paragraph (2) of the definition of securitisation), 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
SSPE from those of the originator, and the holders of the
beneficial interests in which have the right to pledge or
exchange those interests without restriction.

[Note: article 4(44) of the Banking Consolidation Directive
(Definitions)]

\[\text{senior management}\]

(1) (in BIPRU 7.10 (Use of a value at risk model) and in relation
to a firm) the firm's governing body and those of the firm's
senior managers and other senior management who have
responsibilities relating to the measurement and control of the
risks which the firm's VaR model is designed to measure or
whose responsibilities require them to take into account those
risks.

(2) (in SYSC (except SYSC 4.3A) and IFPRU and in accordance
with article 3(9) of CRD 4(1)(10) of the UK CRR) those
persons who are a natural person and who exercise executive
functions in an institution and who are responsible and
accountable to the management body for the day-to-day
management of the institution.

(3) (in SYSC 4.3A and COBS 2.3B and in accordance with article
4.1(37) of MiFID) those persons who are a natural person,
who exercise executive functions in common platform firms
and who are responsible and accountable to the management
body for the day-to-day management of the firm, including for
the implementation of the policies concerning the distribution
of services and products to clients by it and its personnel.

[Note: article 4.1(37) of MiFID]

\[\text{senior personnel}\]

(1) …

(2) (in relation to a management company and in accordance with
article 3(4) of the UCITS implementing Directive) the person
or persons who effectively conduct the business of the
management company.

[Note: article 3(4) of the UCITS implementing Directive]

\[\text{short selling regulation}\]

the UK version of regulation (EU) No 236/2012 of the European
Parliament and of the Council of 14 March 2012 on short selling and
certain aspects of credit default swaps, which is part of UK law by
virtue of the EUWA.

\[\text{Single Market Directives}\]

(a) the Banking Consolidation Directive (to the extent it applies
applied to CAD investment firms);
(aa) the CRD;
(b) the Solvency II Directive;
(ba) [deleted]
(c) MiFID;
(d) the Insurance Mediation Directive;
(da) MCD;
(e) the UCITS Directive; and
(f) AIFMD.

**small authorised UK AIFM** a UK AIFM which:

(a) is a small AIFM; and
(b) has not opted in to AIFMD in accordance with article 3(4) of AIFMD to become a full-scope UK AIFM.

**small non-EEA UK AIFM** a non-EEA UK AIFM that is a small AIFM.

**small and medium-sized enterprise or SME** …

(3) (in IFPRU) has the meaning in article 4(1)(128D) of the UK CRR.

**SME growth market** a multilateral trading facility that is registered as an SME growth market in accordance with article 33 of MiFID MAR 5.10.

[Note: article 4(1)(12) of MiFID]

**Solvency II firm** a firm which is any of:

(a) a "UK Solvency II firm" as defined in chapter 2 of the PRA Rulebook: Solvency II Firms: Insurance General Application;
(b) a third-country insurance or reinsurance undertaking, namely an undertaking that would require authorisation Part 4A permission as an insurance or reinsurance undertaking in accordance with article 14 of the Solvency II Directive if its head office was situated in the EEA United Kingdom;
(c) an undertaking authorised in accordance with a non-UK EEA State’s measures which implement article 14 of the Solvency II Directive; [deleted]

(d) the Society and, separately, a managing agent; and

(e) an insurance special purpose vehicle;

(f) in SUP TP 7 and SUP TP 8, SYSC, COCON, APER, SUP 10A and DEPP only, a large non-directive insurer;

but excluding any firm to the extent that rule 2 of PRA Rulebook: Solvency II Firms: Transitional Measures disapplying relevant rules implementing which implemented the Solvency II Directive.

Solvency II Regulations directly applicable the UK versions of EU Commission Delegated Regulations adopted in accordance with the Solvency II Directive, which is part of UK law by virtue of the EUWA.

sovereign issuer (as defined in article 2(1)(d) of the short selling regulation) any of the following that issues debt instruments: means the United Kingdom, including any government department, or an agency or a special purpose vehicle of the United Kingdom.

(a) the EU; or

(b) a Member State including a government department, an agency, or a special purpose vehicle of the Member State; or

(c) in the case of a federal Member State, a member of the federation; or

(d) a special purpose vehicle for several Member States; or

(e) an international financial institution established by two or more Member States which has the purpose of mobilising funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems; or

(f) the European Investment Bank.

specific risk (1) (in SYSC) unique risk that is due to the individual nature of an asset and can potentially be diversified.

(2) (in GENPRU and BIPRU and in accordance with paragraph 12 of Annex I of the Capital Adequacy Directive) the risk of a price change in an investment due to factors related to its issuer or, in the case of a derivative, the issuer of the underlying investment.
specific wrong-way risk

(in accordance with Part 1 of Annex III of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) the risk that arises when the exposure to a particular counterparty is positively correlated with the probability of default of the counterparty due to the nature of the transactions with the counterparty; a firm is exposed to specific wrong-way risk if the future exposure to a specific counterparty is expected to be high when the counterparty’s probability of default is also high.

specified investment

any of the following investments specified in Part III of the Regulated Activities Order (Specified Investments):

…

[Editor’s note: The current policy intention for COLL is to reflect the current scope of this Part of the Regulated Activities Order. If amendments are made to the scope of this Part in the relevant statutory instrument, we will amend the drafting of this glossary term to deliver the stated policy outcome.]

sponsor

(1) …

(2) (in BIPRU), in accordance with Article 4(42) of the Banking Consolidation Directive (Definitions) and in MIPRU 4 and in relation to a securitisation within the meaning of paragraph (2) of the definition of securitisation, an undertaking other than an originator that establishes and manages an asset backed commercial paper programme or other securitisation scheme that purchases exposures from third party entities.

[Note: article 4(42) of the Banking Consolidation Directive (Definitions)]

(3) in IFPRU and FUND) has the meaning in article 4(1)(14) of the EU-CRR UK CRR.

standardised approach

(for the purposes of BIPRU) one of the following:

…

(e) (where the one of the approaches in (a) to (d) (e) is being applied on a consolidated basis) that approach as applied on a
consolidated basis in accordance with BIPRU 8 (Group risk - consolidation) of

(f) when the reference is to the rules of or administered by a regulatory body other than the appropriate regulator, whatever corresponds to the approach in (a) to (e), as the case may be, under those rules. [deleted]

sub-consolidated basis has the meaning in article 4(1)(49) of the EU CRR UK CRR.

subsidiary

(1) (except in relation to MiFID business) (as defined in section 1159(1) of the Companies Act 2006 (Meaning of "subsidiary", etc)) (in relation to another body corporate ("H") a body corporate of which H is a holding company.

(2) (in relation to MiFID business) a subsidiary undertaking within the meaning of article 2(10) and article 22 of the Accounting Directive, including any subsidiary of a subsidiary undertaking of an ultimate parent undertaking.

(3) (for the purpose of IFPRU) has the meaning in article 4(1)(16) of the EU CRR UK CRR.

[Note: article 4 (1)(33) of MiFID]

suitability report a report which a firm must provide to its client which, among other things, explains why the firm has concluded that a recommended transaction is suitable for the client and which is provided pursuant to:

(a) COBS 9.4 (Suitability reports) where the firm is carrying on designated investment business other than any MiFID, equivalent third country or optional exemption business;

(b) article 54(12) of the MiFID Org Regulation where the firm is carrying on MiFID business;

(c) GEN 2.2.22AR and COBS 9A.3.3 EU UK where the firm is carrying on the equivalent business of a third country investment firm;

(d) COBS 9A.1.2R and COBS 9A.3.3 EU UK where the firm is carrying on MiFID optional exemption business.

supervisory authority

(1) (in accordance with article 4(1)(al) of AIFMD) (for a non-EEA UK AIF) the national authority or authorities of the non-EEA State empowered by law or regulation to supervise AIFs in that non-EEA State.

[Note: article 4(1)(al) of AIFMD]
(2) (in accordance with article 4(1)(am) of AIFMD) (for a non-EEA UK AIFM) the national authority or authorities of the non-EEA State empowered by law or regulation to supervise AIFMs in that non-EEA State.

[Note: article 4(1)(am) of AIFMD]

**supervisory formula method** (for the purposes of BIPRU 9 (Securitisation), in relation to a securitisation within the meaning of paragraph (2) of the definition of securitisation and in accordance with Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)) the method of calculating risk weighted exposure amounts for securitisation positions set out in BIPRU 9.12.21R – BIPRU 9.12.23R and BIPRU 9.14.3R.

[Note: Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)]

**supervisory function** (1) any function within a common platform firm that is responsible for the supervision of its senior personnel.

(2) (in relation to a management company and in accordance with article 3(6) of the UCITS implementing Directive) the relevant persons or body or bodies responsible for the supervision of its senior personnel and for the assessment and periodic review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with its obligations under the UCITS Directive of the firm.

[Note: article 3(6) of the UCITS implementing Directive]

**synthetic risk and reward indicator** (in COLL and in accordance with article 2(2) of the UCITS implementing Directive No 2) a synthetic indicator within the meaning of article 8 of the KII Regulation.

[Note: article 2(2) of the UCITS implementing Directive No 2]

**synthetic securitisation** (in accordance with Article 4(38) 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) where the tranching is achieved by the use of credit derivatives or guarantees, and the pool of exposures is not removed from the balance sheet of the originator.

[Note: article 4(38) of the Banking Consolidation Directive (Definitions)]

**systematic internaliser** (has the meaning in article 4(1)(20) of MiFID) (in summary) an investment firm which, on an organised, frequent systematic and substantial basis, deals on own account by executing client orders.
outside a regulated market, an MTF or an OTF without operating a multilateral system.

[Note: article 4(1)(20) of MiFID]

an investment firm which:

(a) on an organised, frequent, systemic and substantial basis, deals on own account when executing client orders outside a UK regulated market, UK MTF or UK OTF without operating a multilateral system; and

(b) either:

(i) satisfies the criteria set out in Article 12, 13, 14, 15 or 16 of, the MiFID Org Regulation assessed in accordance with Article 17 of that Regulation; or

(ii) has chosen to opt-in to the systemic internaliser regime;

For these purposes:

(c) the frequent and systemic basis is to be measured either by the number of OTC trades in the financial instrument carried out by the investment firm on own account when executing client orders;

(d) the substantial basis is to be measured either by the size of the OTC trading carried out by the investment firm in relation to the total trading of the investment firm in a specific financial instrument or by the size of the OTC trading carried out by the investment firm in relation to the total trading in the relevant area (within the meaning of article 14(5A) MiFIR in a specific financial instrument;

[Note: article 2(1)(12) and (12A) of MiFIR]

systemically important institution (in accordance with article 3(30) of CRD) an EEA parent institution an EEA parent financial holding company, an EEA parent mixed financial holding company or an institution the failure or malfunction of which could lead to systemic risk (in IFPRU) has the meaning in article 4(1)(128D) of the UK CRR.

[Note: article 3(30) of CRD]

third country a territory or country which is not an EEA State the United Kingdom.

third country BIPRU firm (1) (in BIPRU (except in BIPRU 12) and SYSC 19C) an overseas firm that:

(a) is not an EEA firm; [deleted]
(b) has its head office outside the EEA; and [deleted]

(c) would be a BIPRU firm if it had been a UK domestic firm, it had carried on all its business in the United Kingdom and had obtained whatever authorisations for doing so are required under the Act.

(2) (in BIPRU 12) an overseas firm that:
   
   (a) is a bank;
   
   (b) is not an EEA firm; and
   
   (c) has its head office outside the EEA. [deleted]

third country competent authority a regulatory body of a state or territory that is not an EEA State other than the UK.

third-country competent authority the authority of a country or territory which is not an EEA State the UK that is empowered by law or regulation to supervise (whether on an individual or group-wide basis) regulated entities.

third-country countercyclical buffer authority (1) the authority of a third country empowered by law or regulation with responsibility for setting the countercyclical buffer rate for that third country; or

(2) the European Central Bank when it carries out the task of setting a countercyclical buffer rate for an EEA State conferred on it by article 5(2) of Council Regulation (EU) No 1024/2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

third country firm (in SYSC) either:

(a) a third country investment firm; or

(b) the UK branch of a non-EEA bank non-UK bank.

third country IFPRU 730k firm an overseas firm that:-

(a) is not an EEA firm;

(b) has its head office outside the EEA; and

(c) would be an IFPRU 730k firm if it had been a UK domestic firm, had carried on all of its business in the United Kingdom and had obtained whatever authorisations for doing so as are required under the Act.
third country investment firm a firm which would be a MiFID investment firm if it had its head office in the EEA UK.

third country investment services undertaking (in BIPRU) a CAD investment firm, a financial institution or an asset management company in a country other than the UK non-EEA state.

tier 2 capital as defined in article 71 of the EU CRR UK CRR.

tier 2 instruments a capital instrument that qualify as tier 2 instruments under article 62 of the EU CRR UK CRR.

total return swap (in COLL and FUND) a derivative contract defined in article 3(18) of the EU Securities Financing Transactions Regulation as it had effect immediately before exit day.

total risk exposure amount the total risk exposure amount of a firm calculated in accordance with article 92(3) of the EU CRR UK CRR (Own funds requirements).

trading book (1) [deleted]

(2) (in BIPRU and GENPRU in relation to a BIPRU firm) has the meaning in BIPRU 1.2 (Definition of the trading book) which is in summary, all that firm's positions in CRD financial instruments and commodities held either with trading intent or in order to hedge other elements of the trading book, and which are either free of any restrictive covenants on their tradability or able to be hedged.

(3) (in BIPRU and GENPRU and in relation to a person other than a BIPRU firm) has the meaning in (2) with references to a firm replaced by ones to a person.

(4) (in IFPRU and in relation to an IFPRU investment firm) has the meaning in article 4(1)(86) of the EU CRR UK CRR.

(5) (in DTR) has the meaning in article 4.1(86) of EU CRR UK CRR.

trading day [deleted]

[deleted]

(3) (in FINMAR) as defined in article 2(1)(p) of the short selling regulation, a trading day as referred to in article 4 of Regulation (EC) No 1287/2006 in relation to a trading venue, means a day during which the trading venue concerned is open for trading.

trading venue (1) (except in FINMAR) a regulated market, an EU regulated market, an MTF or an OTF.
[Note: article 4(1)(24) of MiFID]

(2) (in FINMAR) (as defined in article 2(1)(l) of the short selling regulation) a regulated market or an MTF:

(i) a UK regulated market within the meaning of point (13B) of article 2(1) of Regulation 2014/600/EU;

(ii) a UK multilateral trading facility within the meaning of point (14A) of article 2(1) of Regulation 2014/600/EU.

[Note: article 4(1)(24) of MiFID]

(3) (in MAR) a regulated market or an MTF.

**traditional securitisation**

(in accordance with Article 4(37) of the Banking Consolidation Directive (Definitions) and for the purpose of BIPRU and MIPRU) 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:

(a) this must be accomplished by the transfer of ownership of the securitised exposures from the originator or through sub-participation; and

(b) the securities issued do not represent payment obligations of the originator.

[Note: article 4(37) of the Banking Consolidation Directive (Definitions)]

**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 and MIPRU) 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.

[Note: article 4(39) of the Banking Consolidation Directive (Definitions)]

**transferable security**

(1) (in PR and LR) (as defined in section 102A of the Act) anything which is a transferable security for the purposes of MiFID, other than money market instruments for the purposes
of that directive which have a maturity of less than 12 months.

(2) (in COLL) an investment within COLL 5.2.7R (Transferable securities) in relation to schemes falling under COLL 5.

(3) those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:

(a) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;

(b) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; and

(c) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

[Note: article 4(1)(44) 2(24) of MiFID MiFIR]

**UCITS**
undertakings for collective investment in transferable securities that are established in accordance with the **UCITS Directive** a **UCITS scheme** or an **EEA UCITS scheme**.

**UCITS firm**
a firm which:

(a) is a management company (whether or not it is also the manager of AIFs or the operator of other collective investment schemes); and

(b) does not have a Part 4A permission (or an equivalent permission from its Home State regulator) to carry on any regulated activities other than those which are in connection with, or for the purpose of, managing collective investment undertakings.

**UCITS investment firm**
a firm which:

(a) is a management company (whether or not it is also the manager of AIFs or the operator of other collective investment schemes); and

(b) has a Part 4A permission (or an equivalent permission from its Home State regulator) to manage investments where:
(i) the investments managed include one or more of the instruments listed in Section C of Annex 1 to MiFID financial instruments; and

(ii) the permission extends to activities permitted by referred to in article 6(3) of the UCITS Directive as well as those permitted by referred to in article 6(2).

**UCITS level 2 regulation**

the UK version of Commission delegated regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to the obligations of depositaries, which is part of UK law by virtue of the EUWA.


**UCITS management company**

(1) (except in relation to MiFID business) a firm which is either:

(a) a UCITS firm; or

(b) a UCITS investment firm.

(2) (in relation to MiFID business) a management company as defined in the UCITS Directive.

…

**UCITS marketing notification**

(in COLL) a notification made before exit day in respect of a UCITS scheme, for the purpose of marketing units in another EEA State, pursuant to:

(a) paragraph 20B(5) (Notice of intention to market) of Schedule 3 (EEA Passport Rights) to the Act.


**UCITS merger**

(in COLL and in accordance with article 2(1)(p) of the UCITS Directive regulations 7 and 8 of the UCITS Regulations 2011) a merger between one or more UCITS schemes or between one or more UCITS schemes and EEA UCITS schemes being an operation whereby:

(a) one or more merging UCITS, on being dissolved without going into liquidation, transfers all of its assets and liabilities to an existing receiving UCITS, in exchange for the issue to its Unitholders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units (a “merger by absorption”); or [deleted]
(b) two or more *merging UCITS*, on being dissolved without going into liquidation, transfer all of their assets and liabilities to a *receiving UCITS* which they form, in exchange for the issue to their *Unitholders* of units of the *receiving UCITS* and, if applicable, a cash payment not exceeding 10% of the net asset value of those units (a "merger by formation of a new UCITS"); or [deleted]

(c) one or more *merging UCITS*, which continue to exist until the liabilities have been discharged, transfer its net assets to another *receiving UCITS*, and for this purpose the *merging UCITS* and the *receiving UCITS* may be sub-funds of the same *UCITS* (a "merger by scheme of arrangement");

but at least one of which is established in the *United Kingdom*.

**UCITS scheme**

(a) an *authorised fund* authorised by the FCA in accordance with the *UCITS Directive*: means a *UK UCITS*.

(i) with the sole object of collective investment in *transferable securities* or in other liquid financial instruments permitted by COLL 5.2 (General investment powers and limits for UCITS schemes) of capital raised from the public and which operates on the principle of risk-spreading; and

(ii) with *units* which are, at the request of *Unitholders*, repurchased or redeemed, directly or indirectly, out of the scheme's assets; and for this purpose action taken by or on behalf of a scheme to ensure that the stock exchange value of its *units* does not significantly vary from their net asset value is to be regarded as equivalent to that repurchase or redemption; or

(b) an *umbrella*, each of whose *sub-funds* would be a *UCITS scheme* if it had a separate *authorisation order*;

unless:

(c) [deleted]

(d) the scheme's *units* under its instrument constituting the fund, may be sold only to the public in non-EEA States; or

(e) the scheme (other than a *master UCITS* which has at least two *feeder UCITS* as *Unitholders*) raises capital without promoting the *sale* of its *units* to the public within the *EEA* or any part of it.

[Note: article 1 of the *UCITS Directive*]
UK consolidation group

1. (for the purposes of SYSC as it applies to a CRR firm) the group of undertakings which are included in the consolidated situation of a UK parent institution in a Member State, an EEA parent institution, an EEA UK parent financial holding company or an EEA a UK parent mixed financial holding company (including any undertaking which is included in that consolidation because of a consolidation article 12(1) relationship, article 18(5) relationship or article 18(6) relationship).

2. (for the purposes of BIPRU and SYSC as it applies to a BIPRU firm) has the meaning in BIPRU 8.2.4R (Definition of UK consolidation group), which is in summary the group that is identified as a UK consolidation group in accordance with the decision tree in BIPRU 8 Annex 1R (Decision tree identifying a UK consolidation group); in each case only persons included under BIPRU 8.5 (Basis of consolidation) are included in the UK consolidation group.

UK countercyclical buffer authority

(for the purposes of IFPRU 10.3 (Countercyclical capital buffer) and in accordance with article 7 of The Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014) the Bank of England, designated for the purpose of article 136(1) of the CRD in article 7 of The Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014.

UK firm

1. (except in REC) (as defined in paragraph 10 of Schedule 3 to the Act (EEA Passport Rights)) an authorised person whose head office is in the United Kingdom and who has an EEA right to carry on activity in an EEA State other than the United Kingdom.

2. (in REC) means an investment firm or credit institution which has a Part 4A permission to carry on one or more regulated activities. [deleted]

UK lead regulated firm

a UK firm that:

a. is not part of a group that is subject to consolidated supervision by the FCA or the PRA or any other regulatory body; or

b. is part of a group that is subject to consolidated supervision by the FCA or the PRA and that group is not part of a wider group that is subject to consolidated supervision by a regulatory body other than the FCA or the PRA.

For the purposes of this definition:
(c) Consolidated supervision of a group of persons means supervision of the adequacy of financial and other resources of that group on a *consolidated basis*.

(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 UK CRR or the Financial Groups Directive.

(e) If the group is a *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'.

This definition is not related to the defined term *lead regulated firm*.

**unauthorised AIFM**

A person who is not an *authorised person* but who is:

(a) a *small registered UK AIFM*; or

(b) a small registered EEA AIFM, i.e. an *EEA AIFM* that is a *small AIFM* that has not opted in to become a *full-scope EEA AIFM*; or [deleted]

(c) a *full-scope EEA AIFM* that is entitled to market an AIF in the United Kingdom following a notification under regulation 57 of the AIFMD UK regulation; or [deleted]

(d) an *a small non-EEA UK AIFM* that is entitled to market an AIF in the United Kingdom following a notification under regulation 58 of the AIFMD UK regulation; or

(e) an *above-threshold non-EEA UK AIFM* to which the requirement at regulation 59(3) of the AIFMD UK regulation applies; or

(f) a *full-scope EEA AIFM* that is exercising a right to market an AIF in the United Kingdom arising out of the EuSEF regulation or the EuVECA regulation. [deleted]

**unfunded credit protection**

1. (in BIPRU and in accordance with Article 4(32) of the Banking Consolidation Directive (Definitions)) a technique of *credit risk mitigation* where the reduction of the credit risk on the *exposure* of an undertaking derives from the *undertaking* 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. [Note: article 4(32) of the Banking Consolidation Directive (Definitions)
(2) (in IFPRU) has the meaning in article 4(1)(59) of the EU CRR UK CRR.

(3) (in MIPRU) a way of mitigating credit risk where the reduction of credit risk on the exposure of an undertaking (the borrower) derives from the enforceable obligation 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.

unrated position (for the purposes of BIPRU 9 (Securitisation), in accordance with Part I of Annex IX of the Banking Consolidation Directive (Securitisation definitions) and in relation to a securitisation position) describes a securitisation position which does not have an eligible credit assessment by an eligible ECAI.

[Note: Part 1 of Annex IX of the Banking Consolidation Directive (Securitisation definitions)]

VaR model permission an Article 129 implementing measure, a requirement or a waiver that requires a BIPRU firm or a CAD investment firm to use the VaR model approach on a solo basis or, if the context requires, a consolidated basis.

Zone A country (a) any EEA State [deleted];

(b) all other countries which are full members of the OECD; and

(c) those countries which have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's general arrangements to borrow (GAB),

save that any country falling with (a), (b) or (c) which reschedules its external sovereign debt is precluded from Zone A for a period of five years.

Delete the following definitions. The text is not shown struck through.

AIFM qualifier an EEA AIFM which is marketing, or has marketed, an AIF in the UK by:

(a) exercising its EEA right to market under Schedule 3 of the Act (EEA Passport Rights); and

(b) is not exercising a right to manage a UK AIF under Schedule 3 of the Act.
**AIFMD host state requirements**

Handbook rules transposing articles 12 and 14 of AIFMD and which fall under the responsibility of the Host State to supervise where an AIFM manages or markets an AIF through a branch in that EEA State, namely:

(a) **FUND 3.8**;
(b) **SYSC 4.1.2CR**;
(c) **SYSC 10.1.22 R to SYSC 10.1.26R**; and
(d) **COBS 2.1.4R**.

**Applicable provisions**

The Host State rules with which:

(a) an incoming EEA firm is required to comply when carrying on a permitted activity through a branch or by providing services (as applicable) in the United Kingdom, as defined in paragraphs 13(4) and 14(4) of Part II of Schedule 3 to the Act (Exercise of passport rights by EEA firms); or

(b) a UK firm is required to comply when conducting business through a branch (in accordance with paragraph 19(13) of Part III of Schedule 3 to the Act (Exercise of passport rights by UK firms)) or by providing services (as applicable) in another EEA State.

**Article 129 implementing measure**

Any:

(a) measure taken by the appropriate regulator under regulations 7-9 of the Capital Requirements Regulations 2006; or

(b) corresponding measure taken by another competent authority to apply an Article 129 permission as referred to in the last paragraph of Article 129(2) of the Banking Consolidation Directive.

**Article 129 permission**

A permission of the type referred to in Article 129(2) of the Banking Consolidation Directive (permission to apply the IRB approach, the AMA approach or the CCR internal model method on a consolidated basis) or Article 37(2) of the Capital Adequacy Directive (permission to apply the VaR model approach on a consolidated basis) excluding an Article 129 implementing measure.

**Article 129 procedure**

The procedure described in Article 129(2) of the Banking Consolidation Directive (permission to apply the IRB approach, the AMA approach or the CCR internal model method on a consolidated basis) or that applies under Article 37(2) of the Capital Adequacy Directive (permission to
apply the *VaR model approach* on a consolidated basis) for the purpose of applying for and granting or refusing an *Article 129 permission* or the procedure for varying of revoking an *Article 129 permission* in accordance with the *Banking Consolidation Directive* or the *Capital Adequacy Directive*.

**branch passport notification**  
a notification made in accordance article 35(2) of *MiFID* and *MiFID ITS 4A Annex VI*.

**central competent authority**  
(in *MAR 10*) in respect of a particular *commodity derivative* traded in significant volumes on *trading venues* in more than one EEA jurisdiction, the *competent authority* of the *trading venue* where the largest volume of trading in the *commodity derivative* takes place in the EEA.

**consent notice**  
a notice given by the *FCA* or *PRA* as the case may be to a *Host State regulator* under:

(a) paragraph 19(4) (Establishment) of Part III of Schedule 3 to the *Act* (Exercise of Passport Rights by UK firms); or

(b) paragraph 20(3A) (Services) of Part III of Schedule 3 to the *Act* (Exercise of Passport Rights by UK firms).

**cross border services**

(1) (in relation to a *UK firm*) services provided within an EEA State other than the *United Kingdom* under the freedom to provide services.

(2) (in relation to an *incoming EEA firm* or an *incoming Treaty firm*) services provided within the *United Kingdom* under the freedom to provide services.

**cross-border dispute**  
(as defined in regulation 5 of the *ADR Regulations*) a dispute concerning contractual obligations arising from a *sales contract* or a *service contract* where, at the time the *consumer* orders the goods or services, the *trader* is established in the *United Kingdom* and the *consumer* is resident in another Member State.

[Note: article 4(1) of the *ADR Directive*]

**cross-border UCITS merger**  
(in *COLL* and in accordance with article 2(1)(q) of the *UCITS Directive*) a *UCITS merger* of two or more *UCITS*:

(a) at least two of which are established in different EEA States; or

(b) established in the same EEA State into a newly constituted *UCITS* established in another EEA State;

but at least one of which is established in the *United Kingdom*.
EEA authorisation (in accordance with paragraph 6 of Schedule 3 to the Act (EEA Passport Rights)):

(a) in relation to an IMD insurance intermediary or an IMD reinsurance intermediary, registration with its Home State regulator under article 3 of the Insurance Mediation Directive;

(b) in relation to any other EEA firm, authorisation granted to an EEA firm by its Home State regulator for the purpose of the relevant Single Market Directive or the auction regulation.

EEA authorised electronic money institution (in accordance with regulation 2(1) of the Electronic Money Regulations) a person authorised in an EEA State other than the United Kingdom to issue electronic money and provide payment services in accordance with the Electronic Money Directive.

EEA authorised payment institution (a) (in accordance with regulation 2(1) of the Payment Services Regulations) a person authorised in an EEA State other than the United Kingdom to provide payment services in accordance with the Payment Services Directive or a person entitled to provide payment services of the type described in paragraph 1(g) of Schedule 1 to the Payment Services Regulations 2009 under regulation 152(5) of the Payment Services Regulations; and

(b) (in accordance with paragraph 1 of Schedule 7 to the Payment Services Regulations) a firm which has its head office in Gibraltar, is authorised in Gibraltar to provide payment services, and has an entitlement corresponding to its passport right deriving from the Payment Services Directive, to establish a branch or provide services in the United Kingdom.

EEA bank an incoming EEA firm which is a CRD credit institution.

EEA branch of an authorised electronic money institution (in accordance with regulation 2(1) of the Electronic Money Regulations) a branch established by an authorised electronic money institution, in the exercise of its passport rights, to issue electronic money, provide payment services, distribute or redeem electronic money or carry out other activities in accordance with the Electronic Money Regulations in an EEA State other than the United Kingdom.

EEA countercyclical buffer authority (1) the authority or body of a EEA State, other than the UK, designated for the purpose of article 136 of CRD with responsibility for setting the countercyclical buffer rate for that EEA State; or

(2) the European Central Bank when it carries out the task of setting a countercyclical buffer rate for an EEA State conferred on it by article 5(2) of Council Regulation (EU) No. 1024/2013, conferring specific tasks on the European Central Bank.
concerning policies relating to the prudential supervision of credit institutions.

**EEA-deposit insurer**
a Solvency II firm that is a third-country insurance undertaking and that has made a deposit in an EEA State (other than the United Kingdom) under article 162(2)(e) of the Solvency II Directive in accordance with article 167 of that Directive.

**EEA ELTIF**
an ELTIF authorised by a competent authority other than the FCA under the ELTIF regulation.

**EEA insurer**
an insurer, other than a pure reinsurer, whose head office is in any EEA State except the United Kingdom and which has received authorisation under article 14 of the Solvency II Directive from its Home State Regulator.

**EEA parent financial holding company**
(1) (in accordance with Article 4(17) of the Banking Consolidation Directive (Definitions) and Article 3 of the Capital Adequacy Directive (Definitions)) for the purpose of GENPRU (except GENPRU 3) and BIPRU (except in BIPRU 12) a parent financial holding company in a Member State which is not a subsidiary undertaking of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company established in any EEA State.

(2) (except in (1)) has the meaning as given to EU parent financial holding company in article 4(1)(31) of the EU CRR.

**EEA parent institution**
(1) (in accordance with Article 4(16) of the Banking Consolidation Directive and Article 2 of the Capital Adequacy Directive (Definitions)) for the purpose of BIPRU (except BIPRU 12) a parent institution in a Member State which is not a subsidiary undertaking of another institution authorised in any EEA State, or of a financial holding company or mixed financial holding company established in any EEA State.

(2) (except in (1)) has the meaning as given to EU parent institution in article 4(1)(29) of the EU CRR.

**EEA parent mixed financial holding company**
(1) (in accordance with Article 4(17a) of the Banking Consolidation Directive (Definitions)) for the purpose of GENPRU (except GENPRU 3) and BIPRU (except in BIPRU 12) a parent mixed financial holding company in a Member State which is not a subsidiary undertaking of an institution authorised in any EEA State or of another financial holding company or mixed financial holding company established in any EEA State.

(2) (except in (1)) has the meaning as given to EU parent mixed financial holding company in article 4(1)(33) of the EU CRR.
**EEA parent undertaking**

(a) an EEA parent institution; or

(b) an EEA parent financial holding company; or

(c) an EEA parent mixed financial holding company.

[Note: article 2(1)(85) of **RRD**]

**EEA Passport Rights Regulations**


**EEA prudential sectoral legislation**

(in relation to a financial sector) requirements applicable to persons in that financial sector in accordance with EEA legislation about prudential supervision of regulated entities in that financial sector and so that:

(a) (in relation to the banking sector and the investment services sector) in particular this includes the requirements laid down in the EU CRR and (in relation to a CAD investment firm) the Banking Consolidation Directive and the Capital Adequacy Directive; and

(b) (in relation to the insurance sector) in particular this includes requirements laid down in the Solvency II Directive and Solvency II Regulations.

**EEA pure reinsurer**

a pure reinsurer whose head office is in any EEA State except the United Kingdom and which has received (or is deemed to have received) authorisation under article 14 of the Solvency II Directive from its Home State Regulator.

**EEA registered account information service provider**

(in accordance with regulation 2(1) of the Payment Services Regulations) a person that is registered as an account information services provider in an EEA State other than the United Kingdom under the Payment Services Directive.

**EEA right**

(in accordance with paragraph 7 of Schedule 3 to the Act (EEA Passport Rights)) the entitlement of a person to establish a branch or provide services in an EEA State other than that in which he has his relevant office:

(a) in accordance with the Treaty as applied in the European Economic Area; and

(b) subject to the conditions of the relevant Single Market Directive or the auction regulation.

In this definition, relevant office means:
(i) in relation to a person who has a registered office and whose entitlement is subject to the conditions of the Insurance Mediation Directive, his registered office; and

(ii) in relation to any other person, his head office.

**EEA territorial scope rule**  
*COBS* 1 Annex 1, Part 2 paragraph 1(1) (which provides that the territorial scope of *COBS* is modified to the extent necessary to be compatible with European law).

**establishment conditions**  
(in relation to the establishment of a branch in the United Kingdom) the conditions specified in paragraph 13 of Schedule 3 to the Act (EEA Passport Rights), which are that:

(a) if the firm falls within paragraph (a), (b), (c), (d) or (f) in the definition of "EEA firm":

(i) ...

(b) if the firm falls within paragraph (e) in the definition of "EEA firm":

(i) the EEA firm has given its Home State regulator notice of its intention to establish a branch in the United Kingdom;

(ii) the FCA or PRA (as the case may be) has received notice ("a regulator's notice") from the firm's Home State regulator that the firm intends to establish a branch in the United Kingdom;

(iii) the EEA firm's Home State regulator has informed it that the regulator's notice has been sent to the FCA or PRA (as the case may be); and

(iv) one month has elapsed beginning with the date on which the EEA firm's Home State regulator informed the firm that it had sent the regulator's notice to the FCA or PRA (as the case may be).

(c) the EEA firm has been informed of the applicable provisions or two months have elapsed beginning with the date when the FCA or PRA (as the case may be) received the consent notice.

**fund application rules**  
(in *COLL* and *SUP*) the rules set out in *COLL* 12.3.5 R (*COLL* fund rules under the management company passport: the fund application rules) that relate to the constitution and functioning of a UCITS scheme and that an EEA UCITS management company must comply with when acting as the operator of the UCITS scheme, whether from a branch in the United Kingdom or under the freedom to provide cross border services, as required by article 19(3) of the UCITS Directive.
Home State authorisation

(as defined in paragraph 3(1)(a) of Schedule 4 to the Act (Treaty Rights)) authorisation of a firm under the law of its Home State to carry on a regulated activity.

incoming EEA AIFM

an incoming EEA firm which is an AIFM and exercising its rights under AIFMD.

incoming EEA AIFM branch

an incoming EEA firm which is an AIFM and exercising its right to establish a branch under AIFMD.

incoming EEA firm

(in accordance with section 193(1)(a) of the Act (Interpretation of this Part)) an EEA firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 3 to the Act (EEA Passport Rights).

incoming firm

(in accordance with section 193(1) of the Act (Interpretation of this Part)) an incoming EEA firm or an incoming Treaty firm.

incoming Treaty firm

(in accordance with section 193(1)(b) of the Act (Interpretation of this Part)) a Treaty firm which is exercising, or has exercised, its right to carry on a regulated activity in the United Kingdom in accordance with Schedule 4 to the Act (Treaty rights).

investment services and activities passport notification

a notification made in accordance with article 34(2) of MiFID and MiFID ITS 4 Annex I.

non-EEA firm

a firm that has its registered office (or, if it has no registered office, its head office) in a non-EEA state.

non-EEA insurer

an insurer whose head office is not in an EEA State.

non-EEA state

a country or state that is not an EEA State.

notice of intention

a notice of intention (as described in SUP 13.5) given by a UK firm to:

(a) establish a branch in an EEA State under paragraph 19(2) of Part III of Schedule 3 to the Act (Exercise of passport rights by UK firms); or

(b) provide services in an EEA State under paragraph 20(1) of Part III of Schedule 3 to the Act (Exercise of passport rights by UK firms); or

(c) establish a branch or provide services in an EEA state in the exercise of its EEA right under the auction regulation.

passported activity

an activity carried on by an EEA firm, or by a UK firm, under an EEA right.
passport right

(in accordance with regulation 2(1) of the Electronic Money Regulations) the entitlement of a person to establish a branch or provide services in an EEA State other than that in which they are authorised to provide electronic money issuance services:

(a) in accordance with the Treaty on the Functioning of the European Union as applied in the EEA; and

(b) subject to the conditions of the Electronic Money Directive.

relevant EEA details

the details listed in regulation 14 of the EEA Passport Rights Regulations and set out in SUP 13 Annex 1 (Requisite details or relevant details: branches).

service conditions

in accordance with paragraph 14 of Schedule 3 to the Act (EEA Passport Rights)) the conditions that:

(a) the firm has given its Home State regulator notice of its intent to provide services in the United Kingdom;

(b) if the firm falls within paragraph (a), (d), (e) or (f) in the definition of "EEA firm", the FCA or the PRA (as the case may be) has received notice from the firm's Home State regulator containing such information as may be prescribed;

(c) if the firm falls within paragraph (d) of that definition, its Home State regulator has informed it that the regulator's notice has been sent to the FCA or the PRA (as the case may be); and

(d) if the firm falls within paragraph (e) of that definition, one month has elapsed beginning with the date on which the firm's Home State regulator informed the firm that it had sent the regulator's notice to the FCA or the PRA (as the case may be).

tied agent passport notification

a notification made in accordance with article 35(2) of MiFID and MiFID ITS 4 Annex VII.

top-up permission

a Part 4A permission given to an incoming EEA firm, an incoming Treaty firm or a UCITS qualifier.

Treaty activity

(as defined in section 417(1) of the Act (Definitions)) an activity carried on under a permission obtained in accordance with Schedule 4 to the Act (Treaty Rights).

Treaty firm

(as defined in paragraph 1 of Schedule 4 to the Act (Treaty Rights)) a person:

(a) whose head office is situated in an EEA State (its “Home State”) other than the United Kingdom; and
(b) which is recognised under the law of that State as its national.

**Treaty right**
the entitlement of a **Treaty firm** to qualify for **authorisation** under Schedule 4 to the **Act** (Treaty Rights). 2001/7

**Treaty**
the Treaty on the Functioning of the European Union.

**UCITS Home State**
the Home State of a UCITS scheme or EEA UCITS scheme.

**UCITS qualifier** a firm (other than an **EEA UCITS management company**) which:

(a) for the time being is an **operator, trustee or depositary** of a **scheme** which is a **recognised scheme** under section 264 of the **Act**; and

(b) is an **authorised person** as a result of paragraph 1(1) of Schedule 5 to the **Act** (Persons Concerned in Collective Investment Schemes);

a reference to a **firm** as a **UCITS qualifier** applies in relation to the carrying on by the **firm** of activities for which it has **permission** in that capacity.

**UK-deposit insurer** a **non-EEA insurer** that has made a deposit in the **United Kingdom** under article 162(2)(e) of the **Solvency II Directive** in accordance with article 167 of that Directive.

**UK MiFID investment firm** a **MiFID investment firm** whose **Home State** is the **United Kingdom** (this may include a natural **person** provided the conditions set out in Article 4(1)(1) of **MiFID** are satisfied).
Appendix 2
Draft Binding Technical Standards
Instruments
TECHNICAL STANDARDS (CREDIT RATINGS AGENCIES REGULATION) (EU EXIT) INSTRUMENT 2019

Powers exercised
A. The Financial Conduct Authority ("the FCA"), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards) (EU Exit) Regulations 2018 ("the Regulations"), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

Pre-conditions to making
B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation
E. In this instrument:
   “Exit Day” has the meaning given in the European Union (Withdrawal) Act 2018.
   Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications
F. The FCA makes the modifications contained in the Annex listed in column (2) to the corresponding EU Regulation listed in column (1) below.

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<td>Commission Delegated Regulation (EU) 447/2012 of 21 March 2012</td>
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<td>supplementing Regulation (EC) 1060/2009 of the European Parliament</td>
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<td>and of the Council on credit rating agencies by laying down</td>
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<td>regulatory technical standards for the assessment of compliance</td>
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<td>supplementing Regulation (EC) 1060/2009 of the European Parliament</td>
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<td>and of the Council with regard to regulatory technical</td>
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<td>Commission Delegated Regulation (EU) 2015/1 of 30 September 2014</td>
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<td>supplementing Regulation (EC) 1060/2009 of the European Parliament</td>
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Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority


Annex D

Revocations


Commencement

H. This instrument comes into force on [29 March 2019 at 11p.m.].

Citation

I. This instrument may be cited as the Technical Standards (Credit Ratings Agencies Regulation) (EU Exit) Instrument 2019.

By order of the Board

[date]
Annex A


... 

Article 1

Subject matter

This Regulation lays down the rules to be used in the assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009.

Article 2

Demonstration of compliance

A credit rating agency shall at all times be able to demonstrate to ESMA the Financial Conduct Authority (“FCA”) its compliance with the requirements set out in Article 8(3) of Regulation (EC) No 1060/2009 relating to the use of credit rating methodologies.

Article 3

Assessment of compliance by ESMA the FCA

1. In addition to examining the compliance of credit rating agencies with the provision of Article 8(3) of Regulation (EC) No 1060/2009 in relation to an application for registration according to Article 15 of that Regulation, ESMA the FCA shall examine compliance by each credit rating agency with Article 8(3) of Regulation (EC) No 1060/2009 on an ongoing basis as ESMA the FCA considers appropriate.

2. When examining the compliance of credit rating agencies with the provision of Article 8(3) of Regulation (EC) No 1060/2009 ESMA the FCA shall use all information relevant to assess the process of developing, approving, using and reviewing credit rating methodologies.

3. In determining the appropriate level of assessment, ESMA the FCA shall consider whether a credit rating methodology has a demonstrable history of consistency and accuracy in predicting credit worthiness and may have regard to methods of validation such as appropriate default or transition studies designed to test that specific methodology.

Article 4

Assessing that a credit rating methodology is rigorous
4. A credit rating agency shall use credit rating methodologies and their associated analytical models, key credit rating assumptions and criteria that promptly incorporate findings or outcomes from an internal review or a monitoring review undertaken by one or more of the following:

(a) the credit rating agency’s independent members of the administrative or supervisory board;

(b) the credit rating agency’s review function;

(c) any other relevant person or committee involved in the monitoring and reviewing of credit rating methodologies.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex B


...
Any information regarding the number of employees shall be provided on a full time equivalent basis calculated as the total hours worked divided by the maximum number of hours subject to compensation within a working year as defined by the relevant national UK law.

...

Article 6
Policies and procedures

1. Policies and procedures provided in an application shall contain or be accompanied by:

...

(d) an indication of the procedure for reporting to ESMA the FCA a material breach of the policy or procedure which may result in a breach of the conditions for initial registration or certification.

...

Article 7
Identification, legal status and class of credit ratings

A credit rating agency shall provide ESMA the FCA with:

(a) the information listed in Annex II to this Regulation;

(b) an excerpt from the relevant commercial or court register, or other form of evidence of the place of incorporation and scope of business activity of the credit rating agency, as of the application date.

SECTION 2
Ownership structure

Article 8
Owners and parent undertaking of a credit rating agency

1. A credit rating agency shall provide ESMA the FCA with:

(a) a list of each person who directly or indirectly holds 5% or more of the credit rating agency’s capital or of voting rights or whose holding makes it possible to exercise a significant influence over the management of the credit rating agency;

(b) the information set out in points 1 and 2 of Annex III in relation to each such person.
2. A credit rating agency shall also provide the following information to ESMA the FCA:
   (a) a list of any undertakings in which a person referred to in paragraph 1 holds 5%
or more of the capital or voting rights or over whose management that person
   exercises a significant influence;
   (b) an identification of their business activity referred to in point 3 of Annex III.
3. Where a credit rating agency has a parent undertaking, it shall:
   (a) identify the country where the parent undertaking is established;
   (b) indicate whether the parent undertaking is authorised or registered and subject
to supervision.

Article 9
Ownership chart

A credit rating agency shall provide ESMA the FCA with a chart showing the ownership links
between any parent undertaking, subsidiaries and any other associated entities established in
the Union UK and their branches. The undertakings shown in the chart shall be identified by
their full name, legal status and address of the registered office and head office.

SECTION 3
Organisational structure and corporate governance

Article 10
Organisational chart

A credit rating agency shall provide ESMA the FCA with an organisational chart detailing its
organisational structure, including a clear identification of significant roles and the identity of
the person responsible for each significant role. Significant roles shall include at least senior
management, persons who direct the activities of the branches and senior rating analysts.
Where the credit rating agency conducts ancillary services, the organisational chart shall also
detail its organisational structure in respect of those services.

Article 11
Organisational structure

1. A credit rating agency shall provide to ESMA the FCA information regarding its
   policies and procedures in relation to its compliance function as set out in point 5 of
   Section A of Annex I to Regulation (EC) No 1060/2009, review function as set out in
   point 9 of Section A of Annex I to Regulation (EC) No 1060/2009 and information
   regarding its policies and procedures established to meet the requirements set out in
   The information provided under this paragraph shall include the information set out in
   Annex IV points 1, 3 and 4.
2. Where the policies and procedures referred to in paragraph 1 are carried out at group of undertakings level, a credit rating agency shall also provide ESMA the FCA with the information set out in Annex IV point 2.

3. A credit rating agency shall also provide ESMA the FCA with the information set out in Annex X.

Article 12
Corporate governance

1. A credit rating agency shall provide ESMA the FCA with information regarding its internal corporate governance policies and the procedures and terms of reference which govern its senior management, including the administrative or supervisory board, its independent members and, where established, committees.

2. Where a credit rating agency adheres to a recognised corporate governance code of conduct, it shall identify the code and provide an explanation for any situations where it deviates from the code.

3. A credit rating agency shall provide the information set out in points 1 and 2 of Annex V on the members of its administrative or supervisory board.

4. A credit rating agency shall provide ESMA the FCA with a copy of the documents referred to in point 3 of Annex V.

SECTION 4
Financial resources for the performance of credit rating activities

Article 13
Financial reports

1. A credit rating agency shall provide ESMA the FCA with a copy of its annual financial reports, including individual and consolidated financial statements where applicable, for the three financial years preceding the date of the submission of its application to the extent available. Where the financial statements of the credit rating agency are subject to statutory audit within the meaning given in Article 2(1) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts as required by UK law the financial reports shall include the audit report on the annual and consolidated financial statement.

2. Where the financial reports referred to in paragraph 1 are not available for the requested period of time, a credit rating agency shall provide ESMA the FCA with an interim financial report.

...
4. A credit rating agency shall provide ESMA the FCA with a description of the measures it has adopted to ensure sound accounting procedure.

SECTION 5
Staffing and compensation

Article 14
Staffing policies and procedures

1. A credit rating agency shall provide ESMA the FCA with information regarding the following policies and procedures:
   (a) reporting to the compliance officer of any situations where one of the persons referred to in point 1 of Section C of Annex I to Regulation (EC) No 1060/2009 considers that any other such person has engaged in conduct that he or she considers illegal, pursuant to the provisions of point 5 of Section C of Annex I to Regulation (EC) No 1060/2009;
   (b) the rotation of lead rating analysts, rating analysts and persons approving credit rating;
   (c) the compensation and performance evaluation practices for rating analysts, persons approving credit ratings, senior management and the compliance officer;
   (d) the training and development relevant to the rating process, including any examination or other type of formal assessment required for the conduct of rating activities.

2. A credit rating agency shall also provide ESMA the FCA with:
   (a) a description of the measures in place to mitigate the risk of over-reliance on individual employees;
   (b) for each class of credit ratings, information on the size and experience of the quantitative teams responsible for developing and reviewing methodologies and models;
   (c) the name and function of any employee of the credit rating agency who has obligations, either individually or on behalf of the credit rating agency, to any other entity within the group of credit rating agencies;
   (d) the average annual fixed and variable remuneration of the rating analysts, lead analysts and the compliance officer for each of the preceding three financial years.

3. A credit rating agency shall describe the arrangements in place to ensure that it is informed when a rating analyst terminates his or her employment and joins a rated entity as set out in point 6 of Section C of Annex I to Regulation (EC) No 1060/2009. A credit rating agency shall describe the arrangements in place to ensure that the persons referred in point 1 of Section C of Annex I to Regulation (EC) No 1060/2009 are aware of the prohibition established as set out in point 7 of Section C of Annex I to Regulation (EC) No 1060/2009.
Article 15

Fitness and appropriateness

1. A credit rating agency shall provide ESMA the FCA with the curriculum vitae, including employment history with relevant dates, identification of positions held and a description of the functions occupied, for each of the following:
   (a) members of senior management;
   (b) persons appointed to direct the business of the branches;
   (c) officers responsible for internal audit, internal control, compliance function, risk assessment and review function.

2. A credit rating agency shall provide ESMA the FCA with the following information in respect of each member of its senior management:
   (a) a recent criminal-record file from the country of origin of the relevant person, unless the relevant national authorities do not issue such a file;
   (b) a self-declaration of their good repute including at least the statements set out in Annex VI and signed by the individual.

SECTION 6

Issuance and review of credit ratings

Article 16

Development, validation, review and disclosure of rating methodologies

1. A credit rating agency shall provide ESMA the FCA, for each class of credit rating, with a high-level description of the range of core models and methodologies used to determine credit ratings.

2. A credit rating agency shall provide ESMA the FCA with the following information regarding its policies and procedures:
   (a) information regarding the development, validation and review of its rating methodologies, including at least the information set out in point 1 of Annex VII;
   (b) information regarding the disclosure of the credit methodologies and descriptions of models and key rating assumptions used in its credit rating activities as set out in point 5 of Part I of Section E of Annex I to Regulation (EC) No 1060/2009.

Article 17

Issuance of credit ratings

1. A credit rating agency shall provide ESMA the FCA with the following information:
   (a) the rating nomenclatures used for each class of credit rating;
(b) the definition of any rating action and statuses used by the credit rating agency;

(c) its policies and procedures regarding the issuance of credit ratings, including at least the information set out in point 2 of Annex VII;

(d) the terms of reference of any rating committees;

(e) a description of the arrangements in place for disclosing a rating decision, including at least the information set out in point 3 of Annex VII;

(f) a description of the procedures in place to ensure that a methodology is applied and implemented consistently across classes of credit rating, offices and regions.

2. A credit rating agency shall identify any differences between the treatment of unsolicited and solicited ratings in the policies and procedures provided under points (c) and (e) of paragraph 1.

3. Where the rating process is regularly audited by an independent third party, a credit rating agency shall provide ESMA the FCA with the last audit report.

4. A credit rating agency shall also provide ESMA the FCA with the following information:

   (a) details and criteria for the selection of data providers;

   (b) details on the reliability of internal and external data input into rating models;

   (c) details of the data sources used.

**Article 18**

**Monitoring of credit ratings**

A credit rating agency shall provide ESMA the FCA with information regarding its policies and procedures concerning:

(a) the monitoring of ratings, identifying any differences between solicited and unsolicited ratings, and including at least the information set out in point 4 of Annex VII;

(b) the disclosure of the decision to review or change a rating;

(c) the monitoring of the impact of changes in macroeconomic or financial market conditions on credit ratings as described in Article 8(5) of Regulation (EC) No 1060/2009.

**SECTION 7**

**Description of issue and review procedures and methodologies**

**Article 19**

**Credit rating presentation requirements**

A credit rating agency shall provide ESMA the FCA with information regarding the following items:
(a) policies and procedures with respect to the credit rating disclosure requirements laid down in the following provisions of Regulation (EC) No 1060/2009:
   (i) paragraphs 1, 2 and 5 of Article 10;
   (ii) Part I of Section D of Annex I;
(b) where the credit rating agency rates structured instruments, policies and procedures with respect to the following provisions of Regulation (EC) No 1060/2009:
   (i) Article 10(3);
   (ii) point 4 of Section B of Annex I; (iii) Part II of Section D of Annex I;
(c) samples of typical credit rating reports or other documents demonstrating how the credit rating agency meets or intends to meet these disclosure requirements; and
(d) samples of typical rating letters for each class of credit rating produced by the credit rating agency.

SECTION 8
Conflicts of interest

Article 20

Independence and avoidance of conflicts of interest

1. A credit rating agency shall provide ESMA the FCA with information regarding its policies and procedures with respect to the identification, management and disclosure of conflicts of interest and the rules on rating analysts and other persons directly involved in credit rating activities covering at least the requirements set out in Annex VIII.

…

Article 21

Inventory of conflicts of interest

1. A credit rating agency shall provide ESMA the FCA with an up-to-date inventory of existing and potential conflicts of interest relevant to it. Where a credit rating agency is part of a group of undertakings, it shall include in the inventory any conflicts of interest arising from other entities which belong to its group of undertakings.

…

Article 22

Conflicts of interest with respect to ancillary services
1. A credit rating agency shall provide ESMA the FCA with a description of the resources, both human and technical, shared by the rating and ancillary services of the credit rating agency or shared with the group of undertakings to which it belongs.

2. A credit rating agency shall describe the arrangements in place to prevent, disclose and mitigate any existing or potential conflicts of interest between the rating business and ancillary services.

3. A credit rating agency shall provide ESMA the FCA with a copy of the results of any internal assessment performed to identify any existing or potential conflict of interest between the rating business and ancillary services.

SECTION 9
Programme of operations

Article 23

Information regarding the programme of operations

A credit rating agency shall provide ESMA the FCA with the annual information described in Annex IX covering a period of three years following the date of registration.

SECTION 10
Use of endorsement

Article 24

Expected use of endorsement

Where a credit rating agency intends to endorse credit ratings issued in third countries as set out in Article 4(3) of Regulation (EC) No 1060/2009, it shall provide ESMA the FCA with the information set out in Annex XI.

SECTION 11
Outsourcing

Article 25

Outsourcing requirements

1. Where a credit rating agency outsources any important operational functions, it shall provide ESMA the FCA the following information:

   (a) its policies with respect to outsourcing;

   (b) an explanation on how it intends to identify, manage and monitor the risks posed by the outsourcing of important operational functions;

   (c) a copy of the outsourcing agreements between the credit rating agency and the entity to which the activities are outsourced;
(d) a copy of any internal or external report on the outsourced activities issued in the past five years.

2. For the purposes of paragraph 1, important operational functions shall comprise rating review, lead analyst, rating methodology development and review, rating approval, internal quality control, data storage, IT systems, IT support and accounting.

CHAPTER 3
CERTIFICATION
SECTION 1
Application for certification
Article 26
Information for application for certification

1. A credit rating agency shall provide ESMA the FCA with the following information:
   (a) the general information requested in points 1 to 10 of Annex II;
   (b) the information regarding its owners referred to in Article 8;
   (c) the organisational chart referred to in Article 10;
   (d) details on the arrangements in place to prevent, disclose and mitigate any existing or potential conflicts of interest between the rating business and ancillary services;
   (e) the information referred to in Article 13 regarding the credit rating agency’s financial resources.

2. A credit rating agency shall provide ESMA the FCA with the following information regarding its business activities:
   (a) for the preceding three years, the number of employees contracted and involved in the rating and ancillary services both permanent and temporary;
   (b) if the applicant has a branch, the number of employees involved in the rating and ancillary business in each branch;
   (c) the number of rating analysts contracted to the applicant including, if the credit rating agency has a branch, the number of rating analysts contracted in each branch;
   (d) if a credit rating agency is planning to establish a new branch, a description of the type of business activities the new branch is expected to conduct, its full name and address and the timeframe for its establishment;
   (e) if a credit rating agency is planning to conduct any new ancillary services, a description of the new services and the timeframe for their commencement;
   (f) the revenue generated over the past three years by the credit rating agency from rating and ancillary services as a proportion of total revenue, presented on a financial year basis;
(g) if the credit rating agency has one or more branches, the revenue generated over the past three years by each branch as a proportion of total revenue, presented on a financial year basis.

3. A credit rating agency shall also provide ESMA the FCA with the following information regarding the credit ratings it issues or proposes to issue:

(a) the class of credit ratings;
(b) the rating nomenclatures used for each class of credit rating;
(c) the definition of any rating action and statuses used by the credit rating agency;
(d) details of whether the credit rating agency produces solicited or unsolicited ratings or both;
(e) for each class of credit rating, the number of years of experience it has in producing these ratings;
(f) for each class of credit rating, the current or expected proportion of public ratings and private ratings.

4. The credit rating agency shall indicate whether it currently holds, or expects to apply for, External Credit Assessment Institution (ECAI) status in one or more Member States and, if so, it shall identify the relevant Member State.

Article 27

General requirements for the application for certification

A credit rating agency shall ensure that its application complies with Articles 2 to 6 regarding the format of its application, the attestation of its accuracy, the class of credit ratings, number of employees and the policies and procedures provided to ESMA the FCA.

SECTION 2

Systemic importance

Article 28

Systemic importance

A credit rating agency shall provide ESMA the FCA with the information set out in Annex XII regarding the systemic importance of its credit ratings and credit rating activities to the financial stability or integrity of the financial markets of one or more Member States the UK.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
ANNEX IV

ORGANISATIONAL STRUCTURE

(Article 11)

1. A credit rating agency shall provide the following information regarding policies and procedures referred to in Article 11(1):
   (a) a description of the roles and responsibilities of the employees;
   (b) a description of the mechanisms to monitor the effectiveness of the policy or procedure;
   (c) the number of employees and the ratio of temporary to permanent employees;
   (d) information on the reporting lines and the frequency of reporting; and
   (e) a description of the interaction between the relevant function and employees directly involved in the rating process and between that function and any other functions.

2. Where the arrangements referred to in point 1 of this Annex are carried out at group of undertakings level, a credit rating agency shall provide ESMA the FCA with a copy of relevant service level agreements that it has entered into, or proposes to enter into, with other group members, and the following information:
   (a) a description of the relevant tasks carried out by each group undertaking, including undertakings located in third countries;
   (b) a clear identification of the undertaking involved in performing the task, specifying its location;
   (c) information on the reporting lines and frequency of reporting of each entity involved and on the way information is collected from each entity; and
   (d) information on any dedicated resources located in the Union UK. In the case of human resources, a credit rating agency shall specify the time devoted to the function on the basis of full time equivalence.

ANNEX V

INFORMATION TO BE PRESENTED WITH REGARD TO CORPORATE GOVERNANCE

(Article 12)

1. Identification of the members of the administrative or supervisory board and other committees as established in Article 12(3):

<table>
<thead>
<tr>
<th>Identification of the member</th>
<th>Body (administrative board, supervisory board, audit committee,</th>
<th>Body of other undertakings where the</th>
</tr>
</thead>
</table>

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remunerations committee, etc.) and position (Chair, vice-chair, member) | person is a member and position |
---|---
... | ...
... | ...
... | ...

2. Identification of the independent members of the administrative or supervisory board as established in Article 12(3) and justification of their independence if they are independent members and of their in-depth knowledge and experience at a senior level of the market in structured finance instruments, where the credit agency applies to issue credit ratings of structured finance products, according to Section A(2) of Annex I to Regulation (EC) No 1060/2009:

<table>
<thead>
<tr>
<th>Identification of the member</th>
<th>Body (administrative or supervisory board)</th>
<th>Independent member (YES/NO) and if YES, provide justification</th>
<th>Experience in structured finance instruments (YES/NO) and if YES, provide justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>…</td>
<td>B.</td>
<td>…</td>
</tr>
<tr>
<td>C.</td>
<td>…</td>
<td>D.</td>
<td>…</td>
</tr>
<tr>
<td>E.</td>
<td>…</td>
<td>F.</td>
<td>…</td>
</tr>
</tbody>
</table>

3. A credit rating agency shall provide to ESMA the FCA a copy of the following documents as established in Article 12(4):

   (a) the last three sets of minutes of the meetings of the administrative and supervisory board;

   (b) the most recent minutes of the meetings of any other committees, such as the remuneration or strategy committees; and

   (c) the last three opinions or reports presented to the administrative or supervisory board by the independent members.

ANNEX IX

PROGRAMME OF OPERATIONS
(Article 23)

Class of credit ratings
2. The following information regarding the class of credit ratings:

   …

   (d) the number and volume (in billions of euro pounds sterling) of structured finance ratings;

   (e) the number and volume (in billions of euro pounds sterling) of corporate ratings, with the following detail: financial institutions, insurance, corporate issuers; and

   …

Corporate governance

5. Number of members of the following bodies:

   (a) administrative and supervisory the board; and

   (b) independent members of the administrative and supervisory board.

   …

Human Resources/Staffing

7. Number of permanent and temporary employees working for the following functions and their seniority:

   (a) senior management other than members of the administrative or supervisory board and persons appointed to direct the branches;

   …

ANNEX XI
USE OF ENDORSEMENT
(Article 24)

…

Assessment of the third-country regulatory regime
3. In relation to each relevant third-country jurisdiction, detailed information, structured analysis and reasoning for each requirement set out in Articles 6 to 12 of Regulation (EC) No 1060/2009, including any reference to the relevant sections of the third-country law/regulation.

The obligation set out in the first subparagraph of this point shall not apply where ESMA, the FCA is satisfied that the requirements of the third-country regime are as stringent as the requirements set out in Articles 6 to 12 of Regulation (EC) No 1060/2009.

ANNEX XII

SYSTEMIC IMPORTANCE INDICATORS

(Article 28)

1. A credit rating agency shall provide ESMA, the FCA with the volume of outstanding credit ratings it has issued with the details set out in the following table. The information regarding the corporate rating and sovereign and public finance ratings shall be provided on the basis of number of credit ratings and the information regarding structured finance ratings shall be provided on the basis of the amount (in millions of euro, pounds sterling) of issuing of the structured finance instruments.

<table>
<thead>
<tr>
<th>Corporate ratings (number of credit ratings)</th>
<th>Financial institution including credit institutions and investment firms</th>
<th>Insurance undertaking</th>
<th>Corporate issuer that is not considered a financial institution or an</th>
<th>Sovereign and public finance ratings (number of credit ratings)</th>
<th>Structured Finance ratings (amount of the issuing in millions of euro, pounds sterling)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. A credit rating agency shall provide information on the annual revenues generated in any European Union Member State, the UK and in other countries outside the European Union, UK (third countries) for the past three years with the following level of detail:
### Rating activities

<table>
<thead>
<tr>
<th>From rated entities or related third parties</th>
<th>From subscribers</th>
<th>Other sources</th>
<th>Total</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>EU Member State 1 (UK)</th>
<th>EU Member State 2</th>
<th>EU Member State 3</th>
<th>Other non-EU countries</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Non-rating activities</th>
</tr>
</thead>
</table>

Member States shall be individually identified.
Annex C

COMMISSION DELEGATED REGULATION (EU) 2015/1 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority

... 

Article 1

General principles

1. Registered credit rating agencies shall submit the following types of reports to ESMA The Financial Conduct Authority (“FCA”):
   (a) pricing policies and procedures as set out in Article 2;
   (b) fee data for credit ratings activities provided under the issuer-pays model as set out in Article 3(1);
   (c) fee data for credit rating activities provided under the subscriber- or investor-pays model as set out in Article 3(2).

2. Registered credit rating agencies shall ensure the accuracy and completeness of the information and data reported to ESMA the FCA.

3. For groups of credit rating agencies, the members of each group may mandate one member to submit reports required under this Regulation on their behalf. Each credit rating agency on whose behalf such a report is submitted shall be identified in the data submitted to ESMA the FCA.

Article 2

Pricing policies and procedures

1. Registered credit rating agencies shall provide to ESMA the FCA their pricing policies, fee structure or fee schedules and pricing criteria in relation to those rated entities or financial instruments on which they are issuing credit ratings and, where applicable, pricing policies regarding ancillary services.

2. Registered credit rating agencies shall ensure that for each type of credit rating offered the pricing policies contain or are accompanied by the following items:
   (a) the names of the persons responsible for the approval and maintenance of the pricing policies, fee schedules and/or fee programmes, including those responsible for setting fees, the internal identifier, the function and internal department to which the persons belong;
   (b) any internal guidelines for application of the pricing criteria in the pricing policies, fee schedules and/or fee programmes relating to the setting of individual fees;
(c) a detailed description of the fee range or fee schedule and criteria applicable to the different types of fees, including those provided for in the fee schedules;

(d) a detailed description of any fee programme, including a relationship programme, frequency of use programme, loyalty programme or other programme, and including the criteria of application and fee range, from which individual credit ratings or set of ratings may benefit in fee terms;

(e) where applicable, the pricing principles and rules to be employed whenever there is a relationship or link between the fees charged for credit rating services and ancillary services or any other services provided to the client, within the meaning of the second subparagraph of point 2 of Part II of Section E of Annex I to Regulation (EC) No 1060/2009 (client), by the credit rating agency and/or any of the entities belonging to the credit rating agency’s group within the meaning of Articles 1 and 2 of Council Directive 83/349/EEC (1);

Articles 22(1)-(5) of Directive 2013/34/EU, as well as any entity linked to the credit rating agency or other company of the credit rating agency’s group by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC Article 22(7) of Directive 2013/34/EU;

(f) the geographical scope of application of the pricing policy, fee schedule or fee programme in terms of the location of the clients and the credit rating agency or agencies applying the pricing policy, fee schedule or fee programme;

(g) the names of the persons authorised to set fees and other charges under the respective pricing policy, fee schedule or fee programme, including those responsible for setting fees, the internal identifier, the function and internal department to which the persons belong.

3. Registered credit rating agencies shall ensure that the pricing procedures contain or are accompanied by the following items:

…

(g) a detailed description of the procedure for reporting to ESMA the FCA any material breach of pricing policies or procedures which may result in a breach of point 3e of Section B of Annex I to Regulation (EC) No 1060/2009.

Article 3

List of fees charged to each client

1. Registered credit rating agencies providing credit ratings on an issuer-pays model shall provide to ESMA the FCA the fees charged to each client for individual credit ratings and any ancillary services per legal entity as well as aggregated by group of companies.

2. Registered credit rating agencies providing credit ratings on a subscriber- or investor-pays model shall provide to ESMA the FCA, on a per client basis, the total fees charged for such services as well as for the ancillary services provided.

3. All deviations from pricing policies or pricing procedures, or the non-application of a pricing policy, fee schedule or fee programme, or pricing procedure to a rating shall be recorded by the registered credit rating agencies, with a clear identification of the main
explanations for the deviation and the individual rating involved in the format set out in Table 1 of Annex II. This record shall be made promptly available to ESMA the FCA upon request.

... Article 5

Data to be provided

1. Registered credit rating agencies shall provide to ESMA the FCA the items set out in Article 2(2) and (3), and the data set out in Tables 1 to 4 of Annex I, as well as the pricing policies, fee schedules, fee programmes and procedures in separate files.

2. Registered credit rating agencies shall provide to ESMA the FCA the data set out in Tables 1 and 2 of Annex II for fees data on each individual credit rating issued and the fees charged for credit ratings and any ancillary services per client in accordance with Article 3(1).

3. Registered credit rating agencies that have provided credit ratings on a subscriber or investor-pays model shall provide to ESMA the FCA the data set out in Table 1 of Annex III for each client of the credit ratings services provided, in accordance with Article 3(2).

4. The data specified in Tables 1 to 4 of Annex I, Tables 1 and 2 of Annex II, and Table 1 of Annex III shall be submitted to ESMA the FCA in separate files.

Article 6

Initial reporting

1. Each registered credit rating agency shall provide data to ESMA the FCA by filling in Tables 1 to 4 of Annex I and separate files for pricing policies, fee schedules, fee programmes and procedures it is applying for each credit rating type in which it is active, in accordance with Article 5(1), within 30 days after the date of entry into force of this Regulation exit day.

2. Initial reporting on fees referred to in Article 5(2) and (3) shall be submitted to ESMA nine months after the date of entry into force of this Regulation and shall include the data accumulated from the date of entry into force of this Regulation until 30 June 2015.

3. The second report on fees referred to in Article 5(2) and (3) shall be submitted to ESMA by 31 March 2016 and shall include the data accumulated from 1 July 2015 until 31 December 2015.

Article 7

Ongoing reporting
1. Without prejudice to the initial reporting requirements set out in Article 6, the information submitted in accordance with Article 5 shall be submitted on a yearly basis by 31 March and shall include data and pricing policies, fee schedules, fee programmes and procedures relating to the preceding calendar year.

2. Without prejudice to paragraph 1, material changes to pricing policies, fee schedules, fee programmes and procedures shall be reported to ESMA the FCA on an ongoing basis without undue delay after their adoption and at the latest 30 days after their implementation.

3. Registered credit rating agencies shall notify ESMA the FCA immediately of any exceptional circumstances that may temporarily prevent or delay reporting in accordance with this Regulation.

Article 8

Reporting procedures

1. Registered credit rating agencies shall submit data files in accordance with the technical instructions provided by ESMA the FCA and using ESMA’s the FCA’s reporting system.

2. Registered credit rating agencies shall store the data files sent to and received by ESMA the FCA under Article 5 as well as the deviation records referred to in Article 3(3) in electronic form for at least five years. Those files shall be made available to ESMA the FCA on request.

3. Where a registered credit rating agency identifies factual errors in data that have been reported, it shall inform ESMA the FCA without undue delay and correct the relevant data according to the technical instructions provided by ESMA the FCA.

…

This Regulation shall be binding in its entirety and directly applicable in all Member States.

…

ANNEX I

Table 1

Reporting of pricing policies per rating class in force and subsequent material updates

<table>
<thead>
<tr>
<th>No.</th>
<th>Field name</th>
<th>Description</th>
<th>Type</th>
<th>Standard</th>
</tr>
</thead>
</table>

Page 24 of 50
<table>
<thead>
<tr>
<th></th>
<th>CRA identifier</th>
<th>Code used to identify the reporting credit rating agency. It is provided by ESMA the FCA upon registration.</th>
<th>Mandatory</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>CRA scope</td>
<td>Identification of the CRAs applying the pricing policy.</td>
<td>Mandatory</td>
</tr>
<tr>
<td>3</td>
<td>Pricing policy identifier</td>
<td>Unique identifier of the pricing policy that shall be maintained. All changes other than the scope of the rating types covered by the pricing policy should maintain the same unique identifier. Changes in the scope require a new pricing policy identifier.</td>
<td>Mandatory</td>
</tr>
<tr>
<td>4</td>
<td>Pricing policy validity date</td>
<td>The date from which the pricing policy is valid.</td>
<td>Mandatory</td>
</tr>
<tr>
<td>5</td>
<td>Pricing policy end date</td>
<td>The end validity date of the pricing policy.</td>
<td>Mandatory</td>
</tr>
</tbody>
</table>
The FCA understands that CRAs may operate services under more than one model and therefore it is possible that a pricing policy may be used for both types of models. In such cases I and S may both be chosen.

<table>
<thead>
<tr>
<th>No.</th>
<th>Indication of model</th>
<th>Description</th>
<th>Mandatory</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Indication of whether the pricing policy relates to issuer-pays ratings or investor-pays or subscriber-pays model. ESMA</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 2

Reporting of fee schedules per rating class in force and subsequent material updates

<table>
<thead>
<tr>
<th>No.</th>
<th>Field name</th>
<th>Description</th>
<th>Type</th>
<th>Standard</th>
</tr>
</thead>
</table>

DD) or 9999-01-01

— ‘I’ for issuer-pays model, and/or
— ‘S’ for investor-pays or subscriber-pays model
Table 3
Reporting of fee programmes per rating class in force and subsequent material updates

<table>
<thead>
<tr>
<th>No.</th>
<th>Field name</th>
<th>Description</th>
<th>Type</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CRA identifier</td>
<td>Code used to identify the reporting credit rating agency. It is provided by ESMA the FCA upon registration.</td>
<td>Mandatory</td>
<td></td>
</tr>
</tbody>
</table>

... Table 4
Reporting of pricing procedures in force and subsequent material updates

<table>
<thead>
<tr>
<th>No.</th>
<th>Field name</th>
<th>Description</th>
<th>Type</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CRA identifier</td>
<td>Code used to identify the reporting credit rating agency. It is provided by ESMA the FCA upon registration.</td>
<td>Mandatory</td>
<td></td>
</tr>
</tbody>
</table>

...
## ANNEX II

Table 1

Data to be reported to ESMA the FCA for each individual credit rating assigned under the issuer-pays model

<table>
<thead>
<tr>
<th>No.</th>
<th>Field name</th>
<th>Description</th>
<th>Type</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CRA identifier</td>
<td>Code used to identify the reporting credit rating agency. It is provided by ESMA the FCA upon registration.</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Total amount of fees charged</td>
<td>Identifies the total amount of fees billed for the rating during the prior calendar reporting year. Where no fee was paid for the individual credit rating the amount should be 0 for all but one of the ratings benefitting from the Group Fee.</td>
<td>Mandatory</td>
<td>Amount in EUR</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>GBP</td>
</tr>
<tr>
<td>10</td>
<td>Amount of initial fees paid</td>
<td>Identifies the amount of up-front/initial fees billed during the prior calendar reporting year.</td>
<td>Mandatory</td>
<td>Amount in EUR</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>GBP</td>
</tr>
<tr>
<td>11</td>
<td>Surveillance fees paid</td>
<td>Identifies the annual surveillance/monitoring fees billed in prior calendar year.</td>
<td>Mandatory</td>
<td>Amount in EUR</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>GBP</td>
</tr>
<tr>
<td>12</td>
<td>Other fees charged for rating service</td>
<td>Identifies total of other fees or compensation billed in prior calendar year.</td>
<td>If applicable</td>
<td>Amount in EUR</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>GBP</td>
</tr>
<tr>
<td></td>
<td>...</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 2
Data to be provided to ESMA the FCA for fees received on a per client basis for rating services and ancillary services

<table>
<thead>
<tr>
<th>No.</th>
<th>Field name</th>
<th>Description</th>
<th>Type</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CRA identifier</td>
<td>Code used to identify the reporting credit rating agency. It is provided by ESMA the FCA upon registration.</td>
<td>Mandatory.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Total overall fees billed</td>
<td>Total fees billed from the Client in the prior calendar year for issuer-pays rating services.</td>
<td>Mandatory.</td>
<td>Amount in EUR, GBP</td>
</tr>
<tr>
<td>5</td>
<td>Client ratings</td>
<td>Identifies how many credit ratings the Client has with the credit rating agency at 31 December of the prior calendar year.</td>
<td>Mandatory.</td>
<td>Number of ratings</td>
</tr>
<tr>
<td>6</td>
<td>Total fees for programmes</td>
<td>Total fees billed from the Client in the prior calendar year for rating services not derived from an individual rating but from a frequency issuance, relationship or other type of flat fee programme and excess issuance fees, which may cover one or more ratings.</td>
<td>Mandatory.</td>
<td>Amount in EUR, GBP</td>
</tr>
<tr>
<td></td>
<td></td>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Fees received for ancillary services</td>
<td>Total fees billed by the CRA group of companies from the Client for ancillary services in the previous calendar year.</td>
<td>Mandatory.</td>
<td>EUR, GBP</td>
</tr>
<tr>
<td>No.</td>
<td>Field name</td>
<td>Description</td>
<td>Type</td>
<td>Standard</td>
</tr>
<tr>
<td>-----</td>
<td>------------</td>
<td>-------------</td>
<td>------</td>
<td>----------</td>
</tr>
<tr>
<td>11</td>
<td>Other services</td>
<td>Indication of whether account was taken for the setting of fees for the credit rating services provided to the Client of any services provided by any entities belonging to the credit rating agency’s group within the meaning of Articles 1 and 2 of Directive 83/349/EEC Article 22(1)-(5) of Directive 2013/34/EU as well as any entity linked to the credit rating agency or other company of the credit rating agency’s group by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC Article 22(7) of Directive 2013/34/EU.</td>
<td>Mandatory.</td>
<td>—‘Y’ for Yes, —‘N’ for No.</td>
</tr>
</tbody>
</table>

ANNEX III

Table 1

Data to be provided to ESMA the FCA for fees received for subscription or investor-pays based rating services

This is to be provided on a per client basis for:

(i) the top 100 Clients in revenue terms for this type of credit rating service;
(ii) as well as all other Clients who are subscribers or pay for ratings as an investor and are also rated by the credit rating agency group.

<table>
<thead>
<tr>
<th>No.</th>
<th>Field name</th>
<th>Description</th>
<th>Type</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CRA identifier</td>
<td>Code used to identify the reporting credit rating agency. It is provided by ESMA the FCA upon registration.</td>
<td>Mandatory.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fees per client</td>
<td>Total fees billed from the Client for subscription based rating services provided in prior calendar year.</td>
<td>Mandatory.</td>
<td>Amount in EUR GBP</td>
</tr>
<tr>
<td>---</td>
<td>----------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>----------</td>
<td>--------------------</td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Fees received for ancillary services</td>
<td>Total fees billed by the CRA group of companies from the client for ancillary services in the prior calendar year.</td>
<td>Mandatory.</td>
<td>Amount in EUR GBP</td>
</tr>
</tbody>
</table>
Annex D

COMMISSION DELEGATED REGULATION (EU) 2015/2 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies make available to the European Securities and Markets Authority

Article 1

Data to be reported

1. Credit rating agencies shall report data on all their issued or endorsed credit ratings or rating outlooks in accordance with Articles 8, 9, and 11. Credit rating agencies shall report all credit ratings and rating outlooks issued at rated entity level and on all their issued debt instruments, where applicable.

2. Credit rating agencies shall ensure the accuracy, completeness and availability of the data reported to ESMA the Financial Conduct Authority (“FCA”) and shall ensure that reports are submitted in accordance with Articles 8, 9 and 11 using appropriate systems developed on the basis of technical instructions provided by ESMA the FCA.

3. Credit rating agencies shall notify ESMA the FCA immediately of any exceptional circumstances that may temporarily prevent or delay their reporting in accordance with this Regulation.

4. For groups of credit rating agencies, the members of each group may mandate one member to submit reports required under this Regulation on their behalf. Each credit rating agency on whose behalf such a report is submitted shall be identified in the data submitted to ESMA the FCA.

5. For the purposes of Article 11(2) and Article 21(4)(e) of Regulation (EC) No 1060/2009, a credit rating agency reporting on behalf of a group may include data on credit ratings and rating outlooks issued by third-country credit rating agencies belonging to the same group and not endorsed. Where a credit rating agency does not report such data it shall give an explanation in its qualitative data report, in Fields 9 and 10 of Table 1 of Part 1 of Annex I to this Regulation.

6. Credit rating agencies shall disclose the solicitation status of each reported credit rating or rating outlook by specifying whether it is unsolicited with participation or unsolicited without participation in accordance with Article 10(5) of Regulation (EC) No 1060/2009 or solicited.

Article 4

Corporate ratings
1. Credit rating agencies shall, when reporting corporate ratings, classify them within one of the following industry segments:
   (a) financial institutions, including banks, brokers and dealers;
   (b) insurance;
   (c) all other corporate entities or issuers which are not included in points (a) and (b).

2. Credit rating agencies shall classify corporate issues as one of the following issue types:
   (a) bonds;
   (b) CRR covered bonds as referred to in Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council defined in point 128A of Article 4(1) of Regulation (EU) No 575/2013 and that meet the eligibility requirements set out in paragraphs 1 to 3, 6 and 7 of Article 129 of that Regulation (EU) No 575/2013;
   (c) other types of covered bonds, for which the credit rating agency has used specific covered bond methodologies, models or key rating assumptions for issuing the credit rating and which are not included in point (b);
   (d) other types of corporate issues which are not included in points (a), (b) and (c).

3. The country code of a rated entity or its issues in Field 10 of Table 1 of Part 2 of Annex I shall be that of the country of domicile of the entity.

Article 5
Structured finance ratings

1. Structured finance ratings shall relate to a financial instrument or other assets resulting from a securitisation transaction or scheme referred to in Article 4(1)(61) of Regulation (EU) No 575/2013, point 1 of Article 2 of Regulation 2017/2402/EU.

2. Credit rating agencies shall, when reporting structured finance ratings, classify them within one of the following asset classes:

   (f) other structured finance securitisation instruments which are not included in points (a) to (e), including structured covered bonds, structured investment vehicles, insurance-linked securities and derivative product companies.

3. Where applicable, a credit rating agency shall also indicate which specific sub-asset class each rated instrument belongs to in Field 34 of Table 1 of Part 2 of Annex I.

4. The country code of structured finance securitisation instruments which shall be reported in Field 10 of Table 1 of Part 2 of Annex I and shall be that of the country of domicile of the majority of the underlying assets. Where it is not possible to identify the country of domicile of the majority of the underlying assets, the rated instrument shall be classified as ‘international’.
Article 8

Reporting for the purpose of publication on the ERP public rating database

...

Article 9

Reporting for the purpose of ESMA the FCA supervision

1. As referred to in Article 21(4)(e) of Regulation (EC) No 1060/2009, credit rating agencies shall report data on all credit ratings and rating outlooks issued or endorsed, or issued in a third country and not endorsed as referred to in Article 1(5), including information on all entities or debt instruments submitted for their initial review or for preliminary rating, as referred to in point 6 of Part I of Section D of Annex I to Regulation (EC) No 1060/2009.

2. For those credit ratings and rating outlooks to which Article 8 does not apply, credit rating agencies shall report rating data relating to the preceding calendar month on a monthly basis.

3. A credit rating agency that has fewer than 50 employees and that is not part of a group of credit rating agencies may provide the rating data referred to in paragraph 2 every two months, unless ESMA the FCA requires monthly reporting in view of the nature, complexity and range of issues of its credit ratings. That rating data shall refer to the preceding two calendar months.

4. The rating data referred to in paragraph 2 shall be submitted to ESMA the FCA within 15 days from the end of the period that is covered by the report. Where the 15th day of the month falls on a public holiday in the country of domicile of the credit rating agency, or where a credit rating agency reports on behalf of a group in accordance with Article 1(4), the country of domicile of that credit rating agency, the deadline shall be the next working day.

5. Where no credit ratings or rating outlooks referred to in paragraph 1 were issued during the preceding calendar month, the credit rating agency shall not be obliged to submit any data.

Article 10

Reporting for the purpose of historical performance

The credit ratings issued or endorsed, or issued in a third country and not endorsed as referred to in Article 1(5), shall be used by ESMA the FCA for making available the historical performance data, in accordance with Article 11(2) of Regulation (EC) No 1060/2009 and point 1 of Part II of Section E of Annex I to that Regulation.
Article 11
Initial reporting

1. Credit rating agencies registered or certified on or before 21 June 2015 exit day shall prepare a first report to be reported to ESMA the FCA by 1 January 2016 exit day, that shall contain all of the following:
   (a) information on all credit ratings and rating outlooks referred to in Articles 8 and 9, and that have been issued and not withdrawn by 21 June 2015 exit day;
   (b) credit ratings and rating outlooks referred to in Articles 8 and 9 that have been issued between 21 June 2015 and 31 December 2015.

2. Credit rating agencies registered or certified between 21 June 2015 and 31 December 2015 shall comply with this Regulation from 1 January 2016. In their first report, they shall report, in accordance with Articles 8 and 9, all the credit ratings and rating outlooks that were issued from the date of registration or certification.

3. Credit rating agencies registered or certified after 1 January 2016 exit day shall comply with this Regulation within three months after the date of registration or certification. In their first report, they shall report, in accordance with Articles 8 and 9, all the credit ratings and rating outlooks that were issued from the date of registration or certification.

4. In addition to the first report referred to in paragraphs 2 and 3, a credit rating agency that is certified after 21 June 2015 exit day shall also report, pursuant to Article 11(2) of Regulation (EC) No 1060/2009 and point 1 of Part II of Section E of Annex I to that Regulation, its historical performance data relating to at least 10 years before the date of certification or, where it started its rating activity less than 10 years before the date of certification, relating to the period since it started its rating activity. Certified credit rating agencies shall not be required to report those data, partially or totally, where they can demonstrate that this would not be proportionate in view of their scale and complexity.

Article 12
Data structure

1. Credit rating agencies shall submit to ESMA the FCA qualitative data reports in the format specified in the tables in Part 1 of Annex I together with their first report of rating data in accordance with Article 11. Any changes to those qualitative data reports shall be immediately reported to ESMA’s the FCA’s system as an update, before the rating data which are affected by those changes are submitted to ESMA the FCA. Where a credit rating agency reports on behalf of a group, as referred to in Article 1(4), one set of qualitative data reports may be submitted to ESMA the FCA.

2. Credit rating agencies shall submit rating data reports for ratings referred to in Articles 8, 9 and 11 in the format specified in the tables in Part 2 of Annex I.
Article 13

Reporting procedures

1. Credit rating agencies shall submit the qualitative data reports and rating data reports referred to in Article 12 in accordance with the technical instructions provided by ESMA the FCA and using ESMA’s the FCA’s reporting system.

2. Credit rating agencies shall store the files sent to and received by ESMA the FCA in electronic form for at least five years. Those files shall be made available to ESMA the FCA on request.

3. Where a credit rating agency identifies factual errors in data that have been reported, it shall correct the relevant data without undue delay according to the technical instructions provided by ESMA the FCA.

Article 14

Repeal and transitional provisions

1. The following Regulations are repealed with effect from 1 January 2016:
   (a) — Delegated Regulation (EU) No 446/2012;
   (b) — Delegated Regulation (EU) No 448/2012.

2. References to the Regulations set out in paragraph 1 shall be construed as references to this Regulation and read in accordance with the correlation table in Annex II.

3. Data submitted to ESMA in accordance with the Regulations set out in paragraph 1 before 1 January 2016 shall be considered as having been submitted in accordance with this Regulation and shall continue to be used by ESMA in accordance with Article 11(2) and Article 21(4)(e) of Regulation (EC) No 1060/2009 and point 1 of Part II of Section E of Annex I to that Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I

PART 1

LIST OF FIELDS FOR THE QUALITATIVE DATA FILE

Table 1

CRA identification and methodology description
This table shall include the elements that provide the identification of the reporting credit rating agency including the legal identification, methodology and policies used.

This table shall contain one line for each reporting credit rating agency.

<table>
<thead>
<tr>
<th>No</th>
<th>Field name</th>
<th>Description</th>
<th>Type</th>
<th>Standard</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CRA identifier</td>
<td>Code used to identify the reporting credit rating agency. It is provided by ESMA the FCA upon registration or certification.</td>
<td>Mandatory.</td>
<td></td>
<td>Technical</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>CRA name</td>
<td>Name used to identify the credit rating agency. It shall correspond to the name used by the credit rating agency in the registration process and all other supervisory procedures within ESMA the FCA. Where one member of a group of credit rating agencies reports for the whole group it shall be the name referring to the group of credit rating agencies.</td>
<td>Mandatory.</td>
<td></td>
<td>Public</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Geographical reporting scope</td>
<td>In the case of a credit rating agency part of a group, they should mention whether they report all the ratings issued by the group (global scope) or not</td>
<td>Mandatory.</td>
<td>Y — yes</td>
<td>Public</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>N — no</td>
<td></td>
</tr>
</tbody>
</table>
(only the EU UK and endorsed ratings). Where the coverage is not global, the credit rating agency shall explain why not. For all other CRAs it should be reported as ‘global’ (‘Y’).

Table 5

Lead analysts list

This table shall contain a list of all the lead analysts that operate in the Union UK. If a lead analyst worked in different time periods as a lead analyst (with time gaps in between) then the lead analyst should be reported in the table multiple times: one for each lead analyst appointment period. The start and end date of allocation to the function shall not overlap for the same lead analyst. The table shall contain one line for each lead analyst and distinct function period.

Table 6

Rating scale

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Rating scale used for CEREP, central repository</td>
</tr>
<tr>
<td></td>
<td>Indicates if the rating is to be used by ESMA the FCA for the central repository (CEREP) statistics calculations.</td>
</tr>
<tr>
<td></td>
<td>Mandatory. Y — yes</td>
</tr>
<tr>
<td></td>
<td>N — no</td>
</tr>
<tr>
<td></td>
<td>Technical</td>
</tr>
</tbody>
</table>
For any given period, only one rating scale per combination of rating type and time horizon can be used.

PART 2
LIST OF FIELDS FOR THE RATING DATA FILE

Table 1

Data describing the rated entity/instrument

<table>
<thead>
<tr>
<th>No</th>
<th>Field name</th>
<th>Description</th>
<th>Type</th>
<th>Standard</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CRA identifier</td>
<td>Code used to identify the reporting credit rating agency. It is provided by ESMA and the FCA upon registration or certification.</td>
<td>Mandatory.</td>
<td>Standard</td>
<td>Technical</td>
</tr>
<tr>
<td>2</td>
<td>Reporting CRA LEI</td>
<td>LEI code of the credit rating agency sending the file.</td>
<td>Mandatory.</td>
<td>ISO 17442</td>
<td>Public</td>
</tr>
<tr>
<td>3</td>
<td>Responsible CRA LEI</td>
<td>LEI code of the credit rating agency responsible for the rating, i.e. in case of:</td>
<td>Mandatory.</td>
<td>ISO 17442</td>
<td>Public</td>
</tr>
<tr>
<td></td>
<td></td>
<td>—a rating issued in the Union UK, the registered credit rating agency that has issued the rating,</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>—an endorsed rating, the registered credit rating agency</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
rating agency that endorsed the rating,
— a rating issued by a certified credit rating agency, the certified credit rating agency,
— a rating issued in a third country but not endorsed by a registered credit rating agency, the third country credit rating agency that issued the rating.

| 4 | Issuer CRA LEI | LEI code of the credit rating agency that issued the rating, that is to say in case of:
|   |   | — a rating issued in the **Union UK**, the registered credit rating agency,
|   |   | — an endorsed rating, the third country credit rating agency that has issued the endorsed rating,
|   |   | — a rating issued by a certified credit rating agency, the certified entity,
|   |   | — a rating issued in a third country but not endorsed by a registered credit rating agency, the third country credit rating agency that issued the rating.

| 5 | Rating identifier | Unique identifier of the rating, which shall be maintained unchanged over time. The rating identifier shall be
|   |   | Mandatory. | Technical

<p>|   |   | Mandatory. | ISO 17442 | Public |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>unique in all reports to ESMA the FCA.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Instrument unique identifier[deleted]</td>
<td>A combination of instrument’s attributes that uniquely identifies the instrument.</td>
<td>Optional.</td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>Corporate issues classifications</td>
<td>Classification of covered bonds.</td>
<td>Mandatory.</td>
</tr>
</tbody>
</table>
which are not included in point (b) of Article 5(2) of this Regulation. OTH — other types of corporate issues which are not included in points (a), (b) and (c) of Article 5(2) of this Regulation.

<table>
<thead>
<tr>
<th>Type of rating for ERP the public rating database</th>
<th>Identifies the credit ratings that fall under the scope of ERP the public rating database, based on the requirements set out in Article 11a of the Regulation (EC) No 1060/2009.</th>
<th>Mandatory. NXI — the rating is not exclusively produced for and disclosed to investors for a fee. EXI — the rating is exclusively produced for and disclosed to investors for a fee.</th>
<th>Technical</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant for CEREP central repository statistics calculation</td>
<td>Indicates if the rating shall be used for CEREP central repository statistics calculation.</td>
<td>Mandatory. Y — yes N — no</td>
<td>Technical</td>
</tr>
</tbody>
</table>

Table 2

Data about the individual credit rating actions

This table contains all the rating actions that are issued in relation to the credit ratings reported in Table 1. Where the press releases or the sovereign research reports are issued in multiple languages, multiple versions of the press releases or the sovereign research reports can be reported for the same rating action.
<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Action communication date and time</td>
<td>The date and time of communication of the action to the rated entity. It shall be expressed as Coordinated Universal Time (UTC). Should be reported only for the ratings issued in the Union UK.</td>
<td>Mandatory. Applicable for ‘Location of the rating issuance’ = ‘I’.</td>
<td>ISO 8601 extended date time format: YYYY-MM-DD (HH:MM:SS)</td>
</tr>
<tr>
<td>5</td>
<td>Action decision date</td>
<td>Identifies the date when the action is decided. It shall be the date of preliminary approval (such as by the rating committee) of the action where this is then communicated to the rated entity before final approval. Should be reported only for the ratings issued in the Union UK.</td>
<td>Mandatory. Applicable for ‘Location of the rating issuance’ = ‘I’.</td>
<td>ISO 8601 date format: (YYYY-MM-DD)</td>
</tr>
<tr>
<td>6</td>
<td>Action type</td>
<td>Identifies the type of action carried out by the credit rating</td>
<td>Mandatory.</td>
<td>OR — in case of outstanding rating (only)</td>
</tr>
</tbody>
</table>
agency with respect to a specific rating.

<p>| PR  | in case of preliminary rating |
| NW  | in case the rating is issued for the first time |
| UP  | in case the rating is upgraded |
| DG  | in case the rating is downgraded |
| AF  | in case the rating is affirmed |
| DF  | in case a rated issuer or instrument is assigned to or removed from a default status and the default is not linked with another rating action |
| SP  | in case the rating is suspended |
| WD  | in case the rating is withdrawn |
| OT  | in case the rating is placed to or removed from the |</p>
<table>
<thead>
<tr>
<th>Out</th>
<th>Description</th>
<th>Value</th>
<th>Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Outlook/watch/default status</td>
<td>An outlook/watch/suspension/default status is assigned, kept or removed with respect to the ratings.</td>
<td>Public</td>
</tr>
<tr>
<td>8</td>
<td>Outlook</td>
<td>Identifies the outlook/trend assigned to a rating by the CRA according to its relevant policy.</td>
<td>Public</td>
</tr>
<tr>
<td>9</td>
<td>Watch/Review</td>
<td>Identifies the watch or review status assigned to a rating by the CRA according</td>
<td>Public</td>
</tr>
</tbody>
</table>

outlook/trend status

WR — in case the rating is placed to or removed from the watch/review status

Mandatory.
Applicable for ‘Action type’ = ‘OT’, ‘WR’, ‘DF’, ‘SP’ or ‘OR’

P — status is placed
M — status is maintained
R — status is removed

Public

POS — in case of a positive outlook
NEG — in case of a negative outlook
EVO — in case of an evolving or developing outlook
STA — in case of a stable outlook

Public

POW — in case of a positive watch/review
| 10 | Watch/Review determinant | Identifies the reason for the watch/review status of a rating. Should be reported only for the ratings issued in the **Union UK**. | Mandatory. Applicable for ‘Action type’ = ‘WR’ and ‘OR’ and ‘Location of the rating issuance’ = ‘I’. | 1 — where the watch/review status is due to changes in methodologies, models or key rating assumptions  
2 — where the watch/review status is due to economic, financial or credit reasons  
3 — where the watch or review status is due to other reasons (e.g. departure of analysts, occurrence of conflicts of interests) | Public |

| ... | | | | | |
|   | Location of the rating issuance | Specifies the location of the issuance of the credit ratings by: ratings issued in the **Union UK** by a registered credit rating agency, ratings issued by third country credit rating agency belonging to the same group of credit rating agencies and endorsed in the **Union UK**, ratings issued by certified credit rating agencies or ratings issued by third country credit rating agency belonging to the same group of credit rating agencies but not endorsed in the **Union UK**. | Mandatory. | I — issued in the **Union UK**
E — endorsed
T — issued in a third country by a certified CRA
O — other (not endorsed)
N — not available (only valid before 1.1.2011). | Public |
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<tr>
<td></td>
<td>Lead analyst identifier</td>
<td>Unique identifier of the lead analyst responsible for the rating. Should be reported only for the ratings issued in the <strong>Union UK</strong>.</td>
<td>Mandatory.</td>
<td>Valid ‘Lead analyst internal identifier’, previously reported in the ‘Lead analysts list’.</td>
<td>Supervision only</td>
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|   | Press release | Press release | Specifies if the rating action was accompanied by a press release. | Mandatory. Applicable for ‘Type of rating for ERP’ = ‘NXI’. | Y — yes  
N — no. |
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<td>Press release</td>
<td>Indicates the file name under which the press release was reported.</td>
<td>Mandatory. Applicable for ‘Press release’ = ‘Y’.</td>
<td>ESMA FCA standard</td>
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<td>23</td>
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<td>Press release</td>
<td>Where the rating action is accompanied by the same press release as another rating action, it should state the ‘Action identifier’ for the action for which the common press release was firstly submitted.</td>
<td>Mandatory. Applicable for press releases that relate to more than one rating action.</td>
<td>Valid ‘Action identifier’</td>
</tr>
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<td></td>
<td>Research report</td>
<td>Research report</td>
<td>Specifies if the rating action was accompanied by a research report. Applicable only for sovereign ratings reported under the sector: ‘SV’ or ‘SM’ or ‘IF’</td>
<td>Mandatory. Applicable for ‘Rating type’ = ‘S’ and ‘Sector’ = ‘SV’ or ‘SM’ or ‘IF’</td>
<td>Y — yes</td>
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<td>26</td>
<td>Research report language</td>
<td>Research report language</td>
<td>Indicates the language under which the research report was issued.</td>
<td>Mandatory. Applicable for ‘Sovereign Research Report’ = ‘Y’</td>
<td>ISO 639-1</td>
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<td>Research report file name</td>
<td>Indicates the file name under which the research report was reported.</td>
<td>Mandatory. Applicable for ‘Sovereign Research Report’ = ‘Y’</td>
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<td>Link to research report</td>
<td>Where the rating is accompanied by the same research report as another rating action, it should state the ‘Action identifier’ for the action for</td>
<td>Optional.</td>
<td>Valid ‘Action identifier’</td>
</tr>
</tbody>
</table>
which the common research report was firstly submitted.

ANNEX II

Annex II is deleted in its entirety.

...
Powers exercised

A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

Pre-conditions to making

B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.

C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.

D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications


Commencement

G. This instrument comes into force on [29 March 2019 at 11p.m.].

Citation

H. This instrument may be cited as the Technical Standards (Alternative Investment Funds Management Directive) (EU Exit) Instrument 2019.

By order of the FCA Board

[date]
ANNEX A

COMMISSION DELEGATED REGULATION (EU) No 694/2014 of 17 December 2013
to regulatory technical standards determining types of alternative investment fund managers

…

Article 1

Types of AIFMs

1. An AIFM may be either or both of the following:
   — an AIFM of open-ended AIF(s);
   — an AIFM of closed-ended AIF(s).

…

5. For the purposes of Article 61(3) of Directive 2011/61/EU
the Alternative Investment Fund Managers Regulations 2013, an AIFM in so far as it
manages AIFs whose shares or units are, at the request of any of its shareholders or
unitholders, repurchased or redeemed prior to the commencement of its liquidation
phase or wind-down, directly or indirectly, out of the assets of the AIFs after an initial
period of at least 5 years during which redemption rights are not exercisable shall also
be considered to be an AIFM of a closed-ended AIF.

…

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Powers exercised
A. The Financial Conduct Authority (“the FCA”), being the appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards etc.) (Amendments etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the power conferred by regulation 3 of the Regulations.

Pre-conditions to making
B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation
E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Revocations
F. The FCA revokes the EU Regulations listed in column (1) below.

<table>
<thead>
<tr>
<th>(1)</th>
<th></th>
</tr>
</thead>
</table>
Commencement

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

Citation

H. This instrument may be cited as the Technical Standards (Undertakings for Collective Investment in Transferable Securities) (EU Exit) Instrument 2019.

By order of the Board
[Date]
Powers exercised

A. The Financial Conduct Authority ("the FCA"), being an appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards) (EU Exit) Regulations 2018 ("the Regulations"), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

Pre-conditions to making

B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.

C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.

D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications

F. The following EU Regulations are amended in accordance with Annexes A–C of this instrument.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission Implementing Regulation (EU) 1248/2012 of 19 December</td>
<td>Annex A</td>
</tr>
<tr>
<td>2012 laying down implementing technical standards with regard to</td>
<td></td>
</tr>
<tr>
<td>the format of applications for registration of trade repositories</td>
<td></td>
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<tr>
<td>according to Regulation (EU) 648/2012 of the European Parliament</td>
<td></td>
</tr>
<tr>
<td>and of the Council on OTC derivatives, central counterparties and</td>
<td></td>
</tr>
<tr>
<td>trade repositories.</td>
<td></td>
</tr>
<tr>
<td>supplementing Regulation (EU) 648/2012 of the European Parliament</td>
<td></td>
</tr>
<tr>
<td>and of the Council on OTC derivatives, central counterparties and</td>
<td></td>
</tr>
<tr>
<td>trade repositories with regard to regulatory technical standards</td>
<td></td>
</tr>
<tr>
<td>specifying the details of the application for registration as a</td>
<td></td>
</tr>
<tr>
<td>trade repository.</td>
<td></td>
</tr>
</tbody>
</table>
Commission Delegated Regulation (EU) 151/2013 of 19 December 2012 supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data.

Annex C
The contents of this Annex will be inserted in due course

Commencement

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

Citation

H. This instrument may be cited as the Technical Standards (European Market Infrastructure Regulation) (EU Exit) (No 1) Instrument 2019.

By order of the Board
[date]
Annex A

COMMISSION IMPLEMENTING REGULATION (EU) No 1248/2012 of 19 December 2012 laying down implementing technical standards with regard to the format of applications for registration of trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories

... 

Article 1

Format of the application

1. An application for registration shall be provided in an instrument which stores information in a durable medium as defined in Article 2(1)(m) of Directive 2009/65/EC of the European Parliament and of the Council.

2. An application for registration shall be submitted in the format set out in the Annex.

3. A trade repository shall give a unique reference number to each document it submits and shall ensure that the information submitted clearly identifies which specific requirement of the delegated act with regard to regulatory technical standards specifying the details of the application for registration of trade repositories adopted pursuant to Article 56(3) of Regulation (EU) No 648/2012 it refers to, in which document that information is provided and also provides a reason if the information is not submitted as outlined in the document references section of the Annex.

... 

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex B

COMMISSION  DELEGATED REGULATION (EU) No 150/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository

CHAPTER 1
REGISTRATION
SECTION 1
General
Article 1

Identification, legal status and class of derivatives

2. The application for registration as a trade repository shall in particular contain the following information:

(a) the corporate name of the applicant and legal address within the Union UK;

3. Upon request by ESMA the FCA, the applicants shall also send to it additional information during the examination of the application for registration where such information is needed for the assessment of the applicants’ capacity to comply with the requirements set out in Articles 56 to 59 and 58 of Regulation (EU) No 648/2012 and for ESMA the FCA to duly interpret and analyse the documentation to be submitted or already submitted.

Article 2
Policies and procedures

Where information regarding policies or procedures is to be provided, an applicant shall ensure that the policies or procedures contain or are accompanied by each of the following items:
(d) an indication of the procedure for reporting to ESMA the FCA any material breach of policies or procedures which may result in a breach of the conditions for initial registration.

... 

Article 9  
Senior management and members of the board

1. An application for registration as a trade repository shall contain the following information in respect of each member of the senior management and each member of the board:

   (a) a copy of the curriculum vitae in order to enable the assessment on the adequate experience and knowledge to adequately perform their responsibilities;

   (b) details regarding any criminal convictions in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement, notably via an official certificate if available within the relevant Member State UK;

... 

2. Any information received by ESMA the FCA under paragraph 1 shall only be used for the purpose of registration and compliance at all times with the conditions for registration of the applicant trade repository.

... 

SECTION 5  
Financial resources for the performance of the trade repository

Article 12  
Financial reports and business plans

1. An application for registration as a trade repository shall contain the following financial and business information about the applicant:
(a) a complete set of financial statements, prepared in conformity with international standards adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards;

(b) where the financial statements of the applicant are subject to statutory audit within the meaning given in Article 2(1) of the Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts (reading Article 2(1) as if, for “Union law”, there were substituted “retained EU law” as defined in the European (Union) Withdrawal Act 2018), the financial reports shall include the audit report on the annual and consolidated financial statements;

…

Article 14

Confidentiality

1. An application for registration as a trade repository shall contain the internal policies and mechanisms preventing any use of information stored in the prospective trade repository:

(a) for illegitimate purposes;
(b) for disclosure of confidential information;
(c) not permitted for commercial use.

2. The latter shall include a description of the internal procedures on the staff permissions for using passwords to access the data, specifying the staff purpose, the scope of data being viewed and any restrictions on the use of data.

3. Applicants shall provide ESMA the FCA with information on the processes to keep a log identifying each staff member accessing the data, the time of access, the nature of data accessed and the purpose.

…

Article 24

Verification of the accuracy and completeness of the application
1. Any information submitted to the ESMA FCA during the registration process shall be accompanied by a letter signed by a member of the board of the trade repository and of the senior management, attesting that the submitted information is accurate and complete to the best of their knowledge, as of the date of that submission.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

...
Annex C

[Editor’s note: The contents of this Annex will be inserted in due course. The FCA intends to consult on this Annex when H M Treasury publishes relevant material relating to the treatment of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, known as the European Market Infrastructure Regulation).]
Powers exercised

A. The Financial Conduct Authority ("the FCA"), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards) (EU Exit) Regulations 2018 ("the Regulations"), with the approval of the Treasury, makes this instrument in the exercise of the power conferred by regulation 3 of the Financial Regulators’ Powers (Technical Standards) (EU Exit) Regulations 2018 ("the Regulations").

Pre-conditions to making

B. The FCA is the appropriate regulator for the EU Regulations as specified in Part 1 of the Schedule to the Regulations.

C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5.

D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

E. In this instrument:

“the Act” means the European Union (Withdrawal) Act 2018; and
“Exit Day” has the meaning given in the Act.

Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Amendments to EU Regulations

F. The following EU Regulations are amended in accordance with Annexes A–S of this instrument.

<table>
<thead>
<tr>
<th>(1)</th>
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<tr>
<td>Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive</td>
<td>Annex A</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Regulation</th>
<th>Annex</th>
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</thead>
<tbody>
<tr>
<td>Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business.</td>
<td>Annex N</td>
</tr>
<tr>
<td>Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators.</td>
<td>Annex Q</td>
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</table>

**Revocations**

G. The FCA revokes the following EU Regulations.

| (1) |
| Commission Delegated Regulation (EU) No 2017/586 regarding the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations. |
Implementing Regulation (EU) No 2017/980 on standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities.

Implementing Regulation (EU) No 2017/981 on standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation.

Implementing Regulation (EU) No 2017/988 on standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State.

Delegated Regulation (EU) No 2017/1018 specifying information to be notified by investment firms, market operators and credit institutions.

Implementing Regulation (EU) No 2017/1111 on procedures and forms for submitting information on sanctions and measures.

Commission Implementing Regulation (EU) No 2017/1944 regarding standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm.


**Commencement**

H. This instrument comes into force on [29 March 2019 at 11.00p.m.].

**Citation**

I. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Directive) (EU Exit) (No 1) Instrument 2019.

By order of the Board

[Date]
Annex A

COMMISSION IMPLEMENTING REGULATION (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments

...
(c) a market operator operating an MTF;
(d) a market operator operating an OTF;

2. ‘asset classes’ means the categories of financial instruments as set out in Section C of Annex I to Directive 2014/65/EU.

Article 2
Information to be provided on MTFs and OTFs

1. A relevant operator shall provide its the competent authority with the following information:

(a) the asset classes of financial instruments traded on the MTF or OTF;
(b) the rules and procedures for making financial instruments available for trading, together with details of the publication arrangements used to make that information available to the public;
(c) the rules and procedures to ensure the objective and non-discriminatory access to the trading facilities together with details on the publication arrangements used to make that information available to the public;
(d) the measures and procedures to ensure that sufficient information is publicly available to users of the MTF or OTF to form an investment judgement, taking into account both the nature of the users and the classes of financial instruments traded;
(e) the systems, procedures and arrangements to ensure compliance with the conditions laid down in UK law corresponding to Articles 48 and 49 of Directive 2014/65/EU;
(f) a detailed description of any arrangements to facilitate the provision of liquidity to the system such as market making schemes;
(g) the arrangements and procedures to monitor transactions as required by UK law corresponding to Article 31 of Directive 2014/65/EU;
(h) the rules and procedures for suspension and removal of financial instruments from trading as required by UK law corresponding to Article 32 of Directive 2014/65/EU;
(i) the arrangements to comply with pre-trade and post-trade transparency obligations that apply to the financial instruments traded and the trading functionality of the MTF or OTF; that information shall be accompanied by information on any intention to use waivers under Articles 4 and 9 of Regulation (EU) No 600/2014 and deferred publication under Articles 7 and 11 of that Regulation;
(j) the arrangements for the efficient settlement of the transactions effected under its systems and for ensuring that users are aware of their respective responsibilities in this regard;
(k) a list of the members or participants of the MTF or OTF which it operates.

2. A relevant operator shall provide its the competent authority with a detailed
description of the functioning of its trading system specifying:

(a) whether the system represents a voice, electronic or hybrid functionality;
(b) in the case of an electronic or hybrid trading system, the nature of any algorithm or program used to determine the matching and execution of trading interests;
(c) in the case of a voice trading system, the rules and protocols used to determine the matching and execution of trading interests;
(d) a description explaining how the trading system satisfies each element of the definition of an MTF or an OTF.

3. A relevant operator shall provide its competent authority with information on how and in what instances the operation of the MTF or OTF will give rise to any potential conflicts between the interests of the MTF or OTF, its operator or its owners and the sound functioning of the MTF or OTF. The relevant operator shall specify the procedures and arrangements to comply with the requirements set out in UK law corresponding to Article 18(4) of Directive 2014/65/EU.

4. A relevant operator shall provide its competent authority with the following information on its outsourcing arrangements that relate to the management, operation or oversight of the MTF or OTF:

(a) the organisational measures to identify the risks in relation to those outsourced activities and to monitor the outsourced activities;
(b) the contractual agreement between the relevant operator and the entity providing the outsourced service in which the nature, scope, objectives, and service level agreements are outlined.

5. A relevant operator shall provide its competent authority with information on any links to or participation by a regulated market, MTF, OTF or systematic internaliser owned by the same relevant operator.

Article 3

Additional information to be provided on MTFs

In addition to the information set out in Article 2, a relevant operator shall provide its competent authority with the following information relating to the requirements set out in UK law corresponding to Article 19(3) of Directive 2014/65/EU:

(a) a description of the arrangements and the systems implemented to manage the risks to which the operator is exposed, to identify all significant risks to its operation and to put in place effective measures to mitigate those risks;
(b) a description of the arrangements implemented to facilitate the efficient and timely finalisation of the transactions executed under the operator's systems;
(c) having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which the operator is exposed, a description of the financial resources considered sufficient to facilitate its orderly functioning.
Article 6
Additional information to be provided on OTFs

In addition to Article 2, a relevant operator operating an OTF shall provide its competent authority with the following information:

(a) information on whether another investment firm is engaged to carry out market making on its OTF on an independent basis in accordance with UK law corresponding to Article 20(5) of Directive 2014/65/EU;

(b) a detailed description of how and under what circumstances it executes orders on the OTF on a discretionary basis in accordance with UK law corresponding to Article 20(6) of Directive 2014/65/EU;

(c) the rules, procedures and protocols which allow the operator to route the trading interest of a member or participant outside the facilities of the OTF;

(d) a description of the use of matched principal trading which complies with UK law corresponding to Article 20(7) of Directive 2014/65/EU;

(e) the rules and procedures to ensure compliance with UK law corresponding to Articles 24, 25, 27 and 28 of Directive 2014/65/EU for transactions concluded on the OTF where those rules are applicable to the relevant operator in relation to an OTF user.

Article 8
Material changes

1. A relevant operator shall provide its the competent authority with a description of any material changes to the information previously submitted in accordance with this Regulation which would be relevant to an assessment of that operator's compliance with Directive 2014/65/EU and Regulation (EU) No 600/2014.

2. Where a relevant operator sends new information to its the competent authority to correct, update or clarify information previously submitted in accordance with this Regulation, it does not need to include information which is of a purely minor or technical nature that would not be relevant to an assessment of its compliance with UK law corresponding to Directive 2014/65/EU or Regulation (EU) No 600/2014.

3. An investment firm or market operator authorised to operate an MTF under Directive 2004/39/EC which is operating at the date of application of this Regulation shall, in addition to paragraph 1 of this Article, provide its competent authority with a description of any material changes to the information previously submitted to the competent authority in respect of that MTF under that Directive.
Article 9

Format for providing the description

3. A relevant operator shall provide the information required by this Regulation to the competent authority in an electronic format.

Article 10

Notification to ESMA

A competent authority shall notify ESMA of the authorisation of a relevant operator as an MTF or an OTF in electronic format and in the format set out in Table 2 of the Annex.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

Formats

Table 2

Information to be sent to ESMA

<table>
<thead>
<tr>
<th>Notifying competent authority</th>
<th>Name of the relevant operator</th>
<th>Name of the MTF or OTF operated</th>
<th>MIC code</th>
<th>Services provided by MTF or OTF</th>
</tr>
</thead>
</table>
Annex B

COMMISSION DELEGATED REGULATION (EU) 2017/566 of 18 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions

This Regulation applies to UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

Article -1

Interpretation

1. Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.

2. Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that definition shall apply for the purposes of this Regulation.

3. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex C


... 

Article 2

Application

This Regulation applies to a ‘UK RIE’ as defined in the Glossary of the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day.

Article 1

Interpretation

1. Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.

2. Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that definition shall apply for the purposes of this Regulation.

3. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators’ requirements which would give effect to that EU legislation if the United Kingdom were a Member State.

4. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

... 

Article 2

Transferable securities — fair, orderly and efficient trading

1. When assessing whether a transferable security is capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the information required to be prepared under UK law corresponding to Directive 2003/71/EC or information that is otherwise publicly available such as:

(a) historical financial information;
(b) information about the issuer;
(c) information providing a business overview.

2. In addition to paragraph 1, when assessing whether a share is capable of being traded in a fair, orderly and efficient manner a regulated market shall take into account the distribution of those shares to the public.

3. When assessing whether a transferable security referred to in Article 4(1)(44) of Directive 2014/65/EU Article 2(1)(24) of Regulation 600/2014/EU is capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:

(a) the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;
(b) the price or other value measure of the underlying is reliable and publicly available;
(c) there is sufficient information publicly available of a kind needed to value the security;
(d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measures of the underlying;
(e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about it.

Article 3
Transferable securities — official listing

A transferable security that is officially listed in accordance with UK law corresponding to Directive 2001/34/EC, and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.

Article 4
Units and shares in collective investment undertakings

1. A regulated market shall, when admitting units or shares of a collective investment undertaking to trading, ensure that those units or shares are permitted to be marketed in the Member State of the regulated market the United Kingdom.

2. When assessing whether units or shares in an open-ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the following:
(a) the distribution of those units or shares to the public;
(b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units or shares;
(c) in the case of exchange-traded funds, whether in addition to market making arrangements appropriate alternative arrangements for investors to redeem units or shares are provided, at least in cases where the value of the units or shares significantly varies from the net asset value;
(d) whether the value of the units or shares is made sufficiently transparent to investors by means of the periodic publication of the net asset value.

3. When assessing whether units or shares in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, a regulated market shall take into account the following:

(a) the distribution of those units or shares to the public;
(b) whether the value of the units or shares is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of the net asset value.

Article 5
Derivatives

1. When assessing whether a financial instrument referred to in points 4 to 10 of Section C of Annex I to Directive 2014/65/EU paragraphs 4 to 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 are capable of being traded in a fair, orderly and efficient manner, a regulated market shall verify that the following conditions are satisfied:

(a) the terms of the contract establishing the financial instrument are clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;
(b) the price or other value measure of the underlying is reliable and publicly available;
(c) sufficient information of a kind needed to value the derivative is publicly available;
(d) the arrangements for determining the settlement price of the contract is such that the price properly reflects the price or other value measures of the underlying;
(e) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate arrangements to enable market participants to obtain relevant information about that underlying as well as adequate settlement and delivery procedures for the underlying.

2. Point (b) of paragraph 1 of this Article shall not apply to financial instruments referred to in points 5, 6, 7 and 10 of Section C of Annex I to Directive 2014/65/EU paragraphs
5, 6, 7 and 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001, where the following conditions are fulfilled:

(a) the contract establishing that instrument is likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;

(b) the regulated market ensures that appropriate supervisory arrangements are in place to monitor trading and settlement in such financial instruments;

(c) the regulated market ensures that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those financial instruments.

Article 6

Emission allowances

Any emission allowance referred to in point 11 of Section C of Annex I to Directive 2014/65/EU paragraph 11 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 recognised for compliance with the requirements of Directive 2003/87/EC, is eligible for admission to trading on a regulated market with no further requirements.

Article 7

Verification of issuer obligations

1. Regulated markets shall adopt and publish on their website procedures for verifying compliance by an issuer of a transferable security with its obligations under Union UK law.

2. Regulated markets shall ensure that compliance with the obligations referred to in paragraph 1 is checked effectively in accordance with the nature of the obligation under review taking into account the supervisory tasks performed by relevant competent authorities.

Article 8

Facilitation of access to information

Regulated markets shall have arrangements which are easily accessible, free of charge and published on their website to facilitate access of their members or participants to information which has been made public in accordance with Union UK law.
Article 9

Entry into force and application

It shall apply from the date that appears in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

...
Annex D


Article 2

Application

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

Article 1

Interpretation

(1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.

(2) Where a term it is defined in article 2 of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that definition shall apply for the purposes of this Regulation.

(3) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.


Article 1

Connection between a derivative related or referenced to a financial instrument suspended or removed from trading and the original financial instrument

A market operator of a regulated market and an investment firm or market operator operating a multilateral trading facility (MTF) or an organised trading facility (OTF) shall suspend or remove a derivative referred to in points paragraphs 4 to 10 of Section C of Annex I to Directive 2014/65/EU Part 1 of Schedule 2 to the Regulated Activities Order from trading where that derivative is related or referenced to only one financial instrument, and that financial instrument has been suspended or removed from trading.
... This Regulation shall be binding in its entirety and directly applicable in all Member States.
...
Annex E

COMMISSION DELEGATED REGULATION (EU) 2017/570 of 26 May 2016
markets in financial instruments with regard to regulatory technical standards for the
determination of a material market in terms of liquidity in relation to notifications of a
temporary halt in trading

...
Entry into force and application

This Regulation shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.
This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex F

COMMISSION DELEGATED REGULATION (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers

...
Article 2

Information on the organisation

1. An applicant seeking authorisation to provide data reporting services shall include in its application for authorisation a programme of operations referred to in Article 6(2) of Directive 2014/65/EU regulation 7 of the Data Reporting Services Regulations 2017. The programme of operations shall include the following information:

   (a) information on the organisational structure of the applicant, including an organisational chart and a description of the human, technical and legal resources allocated to its business activities;

   (b) information on the compliance policies and procedures of the data reporting services provider, including:

      (i) the name of the person or persons responsible for the approval and maintenance of those policies;

      (ii) the arrangements to monitor and enforce the compliance policies and procedures;

      (iii) the measures to be undertaken in the event of a breach which may result in a failure to meet the conditions for initial authorisation;

      (iv) a description of the procedure for reporting to the competent authority any breach which may result in a failure to meet the conditions for initial authorisation;

   (c) a list of all outsourced functions and resources allocated to the control of the outsourced functions;

2. A data reporting services provider offering services other than data reporting services shall describe those services in the organisational chart.

…

Article 4

Information on the members of the management body

1. An applicant seeking authorisation to provide data reporting services shall include in its application for authorisation the following information in respect of each member of the management body:

   (a) name, date and place of birth, personal national identification number or an equivalent thereof, address and contact details;

   (b) the position for which the person is or will be appointed;
(c) a curriculum vitae evidencing sufficient experience and knowledge to adequately perform the responsibilities;

(d) criminal records, notably through an official certificate, or, where such a document is not available in the relevant Member State, a self-declaration of good repute and the authorisation to the competent authority to inquire whether the member has been convicted of any criminal offence in connection with the provision of financial or data services or in relation to acts of fraud or embezzlement;

(e) a self-declaration of good repute and the authorisation to the competent authority to inquire whether the member:

(i) has been subject to an adverse decision in any proceedings of a disciplinary nature brought by a regulatory authority or government body or is the subject of any such proceedings which are not concluded;

(ii) has been subject to an adverse judicial finding in civil proceedings before a court in connection with the provision of financial or data services, or for misconduct or fraud in the management of a business;

(iii) has been part of the management body of an undertaking which was subject to an adverse decision or penalty by a regulatory authority or whose registration or authorisation was withdrawn by a regulatory authority;

(iv) has been refused the right to carry on activities which require registration or authorisation by a regulatory authority;

(v) has been part of the management body of an undertaking which has gone into insolvency or liquidation while the person held such position or within a year after which the person ceased to hold such position;

(vi) has been otherwise fined, suspended, disqualified, or been subject to any other sanction in relation to fraud, embezzlement or in connection with the provision of financial or data services, by a professional body;

(vii) has been disqualified from acting as a director, disqualified from acting in any managerial capacity, dismissed from employment or other appointment in an undertaking as a consequence of misconduct or malpractice;

(f) An indication of the minimum time that is to be devoted to the performance of the person's functions within the data reporting services provider;

(g) a declaration of any potential conflicts of interest that may exist or arise in performing the duties and how those conflicts are managed.

CHAPTER II

ORGANISATIONAL REQUIREMENTS
(Article 64(3), (4) and (5), Article 65(4), (5) and (6), and Article 66(2), (3) and (4) of Directive 2014/65/EU)

…

Article 6

Organisational requirements regarding outsourcing

…

6. Where a data reporting services provider outsources any critical function, it shall provide the competent authority of its home Member State with:
   (a) the identification of the third party service provider;
   (b) the organisational measures and policies with respect to outsourcing and the risks posed by it as specified in paragraph 4;
   (c) internal or external reports on the outsourced activities.

For the purpose of the first sub paragraph 6, a function shall be regarded as critical if a defect or failure in its performance would materially impair the continuing compliance of the data reporting services provider with the conditions and obligations of its authorisation or its other obligations under Directive 2014/65/EU the Data Reporting Services Regulation 2017.

Article 7

Business continuity and back-up facilities

1. A data reporting services provider shall use systems and facilities that are appropriate and robust enough to ensure continuity and regularity in the performance of the services provided referred to in Directive 2014/65/EU the Data Reporting Services Regulation 2017.

…

5. A data reporting services provider shall publish on its website and promptly inform the competent authority of its home Member State and its clients of any service interruptions or connection disruptions as well as the time estimated to resume a regular service.

6. In the case of ARMs, the notifications referred to in paragraph 5 shall also be made to any competent authority to whom the ARM submits transaction reports.
Article 8

Testing and capacity

3. A data reporting services provider shall promptly notify the competent authority of its home Member State of any planned significant changes to the IT system prior to their implementation.

4. In the case of ARMs, the notifications referred to in paragraph 3 shall also be made to any competent authority to whom the ARM submits transaction reports.

Article 9

Security

1. A data reporting services provider shall set up and maintain procedures and arrangements for physical and electronic security designed to:
   (a) protect its IT systems from misuse or unauthorised access;
   (b) minimise the risks of attacks against the information systems as defined in Article 2(a) of Directive 2013/40/EU of the European Parliament and of the Council;
   (c) prevent unauthorised disclosure of confidential information;
   (d) ensure the security and integrity of the data.

2. Where an investment firm (‘reporting firm’) uses a third party (‘submitting firm’) to submit information to an ARM on its behalf, an ARM shall have procedures and arrangements in place to ensure that the submitting firm does not have access to any other information about or submitted by the reporting firm to the ARM which may have been sent by the reporting firm directly to the ARM or via another submitting firm.

3. A data reporting services provider shall set up and maintain measures and arrangements to promptly identify and manage the risks identified in paragraph 1.

4. In respect of breaches in the physical and electronic security measures referred to in paragraphs 1, 2 and 3, a data reporting services provider shall promptly notify:
   (a) the competent authority of its home Member State and provide an incident report, indicating the nature of the incident, the measures adopted to cope with the incident and the initiatives taken to prevent similar incidents;
   (b) its clients that have been affected by the security breach.

5. In the case of ARMs, the notification referred to in paragraph 4(a) shall also be made—
to any other competent authorities to whom the ARM submits transaction reports.

Article 10
Management of incomplete or potentially erroneous information by APAs and CTPs

...

Article 11
Management of incomplete or potentially erroneous information by ARMs

...

4. An ARM shall perform periodic reconciliations at the request of the competent authority of its home Member State or the competent authority to whom the ARM submits transaction reports between the information that the ARM receives from its client or generates on the client's behalf for transaction reporting purposes and data samples of the information provided by the competent authority.

...

8. An ARM shall promptly notify the client of the details of the error or omission and provide an updated transaction report to the client. An ARM shall also promptly notify the competent authority of its home Member State and the competent authority to whom the ARM reported the transaction report about the error or omission.

Article 12
Connectivity of ARMs

1. An ARM shall have in place policies, arrangements and technical capabilities to comply with the technical specification for the submission of transaction reports required by the competent authority of its home Member State and by other competent authorities to whom the ARM sends transaction reports.

...

CHAPTER III
PUBLICATION ARRANGEMENTS
(Article 64(1) and (2) and Article 65(1) of Directive 2014/65/EU)
Article 14
Machine readability

1. APAs and CTPs shall publish the information which has to be made public in accordance with Articles 64(1) and 65(1) of Directive 2014/65/EU regulations 14(1) and 15(1) of the Data Reporting Services Regulations 2017 in a machine readable way.

2. CTPs shall publish the information which has to be made in accordance with Article 65(2) of Directive 2014/65/EU in a machine readable way.

…

Article 20
Details to be published by the CTP

A CTP shall make public:

(a) for transactions executed in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments, the details of a transaction specified in Table 2 of Annex I to Delegated Regulation (EU) 2017/587 and use the appropriate flags listed in Table 3 of Annex I to Delegated Regulation (EU) 2017/587;

(b) for transactions executed in respect of bonds, structured finance products, emission allowances and derivatives the details of a transaction specified in Table 1 of Annex II to Delegated Regulation (EU) 2017/583 and use the appropriate flags listed in Table 2 of Annex II to Delegated Regulation (EU) 2017/583.

Article 21
Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU. However, Articles 14(2) and 20(b) shall apply from the first day of the ninth month following the date of application of Directive 2014/65/EU.
This Regulation shall be binding in its entirety and directly applicable in all Member States.

...
Annex G

COMMISSION DELEGATED REGULATION (EU) 2017/573 of 6 June 2016
supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location services and fee structures

...

Article 2

Application

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

Article 1

Interpretation

(1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.

(2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that definition shall apply for the purposes of this Regulation.

(3) References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators’ requirements which would give effect to that EU legislation if the United Kingdom were a Member State.

(4) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

...

Article 3

Fair and non-discriminatory fees

1. Trading venues shall charge the same fee and provide the same conditions to all users of the same type of services based on objective criteria. Trading venues shall only
establish different fee structures for the same type of services where those fee structures are based on non-discriminatory, measurable and objective criteria relating to:

(a) the total volume traded, the numbers of trades or cumulated trading fees;

(b) the services or packages of services provided by the trading venue;

(c) the scope or field of use demanded;

(d) the provision of liquidity in accordance with UK law corresponding to Article 48(2) of Directive 2014/65/EU or in a capacity of being a market maker as defined in Article 4(1)(7) of Directive 2014/65/EU; Article 2(1)(6) of Regulation 600/2014/EU;

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex H

COMMISSION DELEGATED REGULATION (EU) 2017/574 of 7 June 2016
with regard to regulatory technical standards for the level of accuracy of business clocks

...
to record the date and time of any reportable event with UTC disseminated by a satellite
system, provided that any offset from UTC is accounted for and removed from the timestamp.

Article 2

Level of accuracy for operators of trading venues

1. Operators of trading venues shall ensure that their business clocks adhere to the levels
   of accuracy specified in Table 1 of the Annex according to the gateway to gateway
   latency of each of their trading systems.

   Gateway to gateway latency shall be the time measured from the moment a message is
   received by an outer gateway of the trading venue's system, sent through the order
   submission protocol, processed by the matching engine, and then sent back until an
   acknowledgement is sent from the gateway.

2. By derogation from paragraph 1, operators of trading venues that operate a voice
   trading system, request for quote system where the response requires human
   intervention or does not allow algorithmic trading, or a system that formalises
   negotiated transactions in accordance with Article 4(1)(b) of Regulation (EU) No
   600/2014 of the European Parliament and of the Council shall ensure that their
   business clocks do not diverge by more than one second from UTC referred to in
   Article 1 of this Regulation. The operator of the trading venue shall ensure that times
   are recorded to at least a one second granularity.

3. Operators of trading venues that operate multiple types of trading systems shall ensure
   that each system adheres to the level of accuracy applicable to that system in
   accordance with paragraphs 1 and 2.

Article 3

Level of accuracy for members or participants of a trading venue

1. Members or participants of trading venues shall ensure that their business clocks used
   to record the time of reportable events adhere to the level of accuracy specified in
   Table 2 of the Annex.

2. Members or participants of trading venues that engage in multiple types of trading
   activities shall ensure that the systems that they use to record reportable events adhere
   to the level of accuracy applicable to each of these trading activities in accordance
   with the requirements set out in Table 2 of the Annex.
Operators of trading venues and their members or participants shall establish a system of traceability to UTC. They shall be able to demonstrate traceability to UTC by documenting the system design, functioning and specifications. They shall be able to identify the exact point at which a timestamp is applied and demonstrate that the point within the system where the timestamp is applied remains consistent. They shall conduct a review of the compliance of the traceability system with this Regulation at least once a year.

…

This Regulation shall be binding in its entirety and directly applicable in all Member States.

…
Annex I

COMMISSION DELEGATED REGULATION (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions

...
execution venues relating to the quality of execution of transactions. It shall apply to trading venues, systematic internalisers, market makers, or other liquidity providers.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex J

COMMISSION DELEGATED REGULATION (EU) 2017/576 of 8 June 2016
with regard to regulatory technical standards for the annual publication by investment
firms of information on the identity of execution venues and on the quality of execution

...
execution obtained on the execution venues where they executed all client orders in the previous year. The information shall include:

(a) an explanation of the relative importance the firm gave to the execution factors of price, costs, speed, likelihood of execution or any other consideration including qualitative factors when assessing the quality of execution;

(b) a description of any close links, conflicts of interests, and common ownerships with respect to any execution venues used to execute orders;

(c) a description of any specific arrangements with any execution venues regarding payments made or received, discounts, rebates or non-monetary benefits received;

(d) an explanation of the factors that led to a change in the list of execution venues listed in the firm's execution policy, if such a change occurred;

(e) an explanation of how order execution differs according to client categorisation, where the firm treats categories of clients differently and where it may affect the order execution arrangements;

(f) an explanation of whether other criteria were given precedence over immediate price and cost when executing retail client orders and how these other criteria were instrumental in delivering the best possible result in terms of the total consideration to the client;

(g) an explanation of how the investment firm has used any data or tools relating to the quality of execution, including any data published under Delegated Regulation (EU) 2017/575;

(h) where applicable, an explanation of how the investment firm has used output of a consolidated tape provider authorised in accordance with the Data Reporting Services Regulations 2017 established under Article 65 of Directive 2014/65/EU.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex K

COMMISSION DELEGATED REGULATION (EU) 2017/578 of 13 June 2016
markets in financial instruments with regard to regulatory technical standards
specifying the requirements on market making agreements and schemes (Text with EEA
relevance)

Article -2

Application

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of
Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment)
(EU Exit) Regulations 2018].

Article -1

Interpretation

(1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the
purposes of this Regulation except where (2) applies;

(2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by
the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018,
that definition shall apply for the purposes of this Regulation

(3) References to UK law corresponding to EU legislation include any primary or
secondary legislation or regulators’ requirements which would give effect to that
EU legislation if the United Kingdom were a Member State.

(4) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this
Regulation.

...

Article 2

Content of market making agreements

1. The content of a binding written agreement referred to in UK law corresponding to
Article 17(3)(b) and Article 48(2) of Directive 2014/65/EU shall include at least:

   (a) the financial instrument or instruments covered by the agreement;

   (b) the minimum obligations to be met by the investment firm in terms of
       presence, size and spread that shall require at least posting firm, simultaneous
       two-way quotes of comparable size and competitive prices in at least one
financial instrument on the trading venue for at least 50% of daily trading hours of during which continuous trading takes place excluding opening and closing auctions and calculated for each trading day;

(c) where appropriate, the terms of the applicable market making scheme;

(d) the obligations of the investment firm in relation to the resumption of trading after volatility interruptions;

(e) the surveillance, compliance and audit obligations of the investment firm enabling it to monitor its market making activity;

(f) the obligation to flag firm quotes submitted to the trading venue under the market making agreement in order to distinguish those quotes from other order flows;

(g) the obligation to maintain records of firm quotes and transactions relating to the market making activities of the investment firm, which are clearly distinguished from other trading activities and to make those records available to the trading venue and the competent authority upon request.

2. Trading venues shall continuously monitor the effective compliance of the relevant investment firms with the market making agreements.

Article 3

Exceptional circumstances

The obligation for investment firms to provide liquidity on a regular and predictable basis laid down in UK law corresponding to Article 17(3)(a) of Directive 2014/65/EU shall not apply in any of the following exceptional circumstances:

(a) a situation of extreme volatility triggering volatility mechanisms for the majority of financial instruments or underlyings of financial instruments traded on a trading segment within the trading venue in relation to which the obligation to sign a market making agreement applies;

(b) war, industrial action, civil unrest or cyber sabotage;

(c) disorderly trading conditions where the maintenance of fair, orderly and transparent execution of trades is compromised, and evidence of any of the following is provided:

(i) the performance of the trading venue's system being significantly affected by delays and interruptions;

(ii) multiple erroneous orders or transactions;

(iii) the capacity of a trading venue to provide services becoming insufficient;

(d) where the investment firm's ability to maintain prudent risk management practices is prevented by any of the following:

(i) technological issues, including problems with a data feed or other system that is essential to carry out a market making strategy;
(ii) risk management issues in relation to regulatory capital, margining and access to clearing,

(iii) the inability to hedge a position due to a short selling ban;

(e) for non-equity instruments, during the suspension period referred to in Article 9(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council.

…

Article 5

Obligation for trading venues to have market making schemes in place

1. Trading venues shall not be required to have market making scheme as referred to in the UK law corresponding to Article 48(2)(b) of Directive 2014/65/EU in place except for any of the following classes of financial instruments traded through a continuous auction order book trading system:

   (a) shares and exchange traded funds for which there is a liquid market as defined in accordance with Article 2(1)(17) of Regulation (EU) No 600/2014 and as specified in Commission Delegated Regulation (EU) 2017/567;

   (b) options and futures directly related to the financial instruments set out in point (a);

   (c) equity index futures and equity index options for which there is a liquid market as specified in accordance with point (c) of Article 9(1) and point (c) of Article 11(1) of Regulation (EU) No 600/2014 and Commission Delegated Regulation (EU) 2017/583.

2. For the purposes of paragraph 1, a continuous auction order book trading system means a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with buy orders on the basis of the best available price on a continuous basis.

…

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex L

COMMISSION DELEGATED REGULATION (EU) 2017/584 of 14 July 2016
with regard to regulatory technical standards specifying organisational requirements of
trading venues

... 

Article -2

Application

This Regulation applies to operators of UK trading venues, as defined by article 2(1)(16A) of
Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment)
(EU Exit) Regulations 2018].

Article -1

Interpretation

1. Where a term is defined in Directive 2014/65/EU that definition shall apply for the
purposes of this Regulation except:
   (i) where it is defined in article 2 of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], in which case that definition shall apply for the purposes of this Regulation;
   (ii) in the case of ‘algorithmic trading’ and ‘direct electronic access’ or ‘DEA’ which are as defined in regulation 2(1) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
   (iii) in the case of the definition of ‘senior management’, where the definition in the Handbook of Rules and Guidance published by the Financial Conduct Authority immediately after Exit Day shall apply.

2. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators’ requirements which would give effect to that EU legislation if the United Kingdom were a Member State.

3. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

CHAPTER I

GENERAL ORGANISATIONAL REQUIREMENTS FOR TRADING VENUES
ENABLING OR ALLOWING ALGORITHMIC TRADING THROUGH THEIR SYSTEMS
Article 1

Subject matter and scope

(Article 48 of Directive 2014/65/EU)

1. This Regulation lays down detailed rules for the organisational requirements of the systems of the trading venues allowing or enabling algorithmic trading, in relation to their resilience and capacity, requirements on trading venues to ensure appropriate testing of algorithms and requirements in relation to the controls concerning DEA pursuant to the UK law corresponding to Article 48(12)(a),(b) and (g) of Directive 2014/65/EU.

2. For the purposes of this Regulation, it is considered that a trading venue allows or enables algorithmic trading where order submission and order matching is facilitated by electronic means.

3. For the purposes of this Regulation, any arrangements or systems that allow or enable algorithmic trading shall be considered ‘algorithmic trading systems’.

Article 2

Self-assessments of compliance with Article 48 of Directive 2014/65/EU

(Article 48 of Directive 2014/65/EU)

1. Before the deployment of a trading system and at least once a year, trading venues shall carry out a self-assessment of their compliance with the UK law corresponding to Article 48 of Directive 2014/65/EU, taking into account the nature, scale and complexity of their business. The self-assessment shall include an analysis of all parameters set out in the Annex to this Regulation.

2. Trading venues shall keep a record of their self-assessment for at least five years.

…

Article 6

Outsourcing and procurement

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues outsourcing all or part of their operational functions in relation to the systems allowing or enabling algorithmic trading shall ensure that:
(a) the outsourcing agreement exclusively relates to operational functions and does not alter the responsibilities of the senior management and the management body;

(b) the relationship and obligations of the trading venue towards its members, competent authorities, or any third parties, such as clients of data feed services are not altered;

(c) they meet the requirements that they must comply with in order to be authorised in accordance with the UK law corresponding to Title III of Directive 2014/65/EU.

5. Trading venues shall report to the competent authorities their intention to outsource operational functions in the following cases:

   (a) where the service provider provides the same service to other trading venues;

   (b) where critical operational functions necessary for business continuation would be outsourced, in which case the trading venues shall request a prior authorisation from the competent authority.

6. For the purposes of point (b) in paragraph 5, critical operational functions shall include those functions necessary to comply with the obligations referred to in the UK law corresponding to Article 47(1)(b), (c) and (e) of Directive 2014/65/EU.

7. Trading venues shall inform the competent authorities of any outsourcing agreements not subject to prior authorisation requirement immediately after the signature of the agreement.

CHAPTER II
CAPACITY AND RESILIENCE OF TRADING VENUES

Article 21

Pre-determination of the conditions to provide direct electronic access

(Article 48(7) of Directive 2014/65/EU)

Trading venues permitting DEA through their systems shall set out and publish the rules and conditions pursuant to which their members may provide DEA to their own clients. Those rules and conditions shall at least cover the specific requirements set out in Article 22 of Commission Delegated Regulation (EU) 2017/589.

Article 22

Specific requirements for trading venues permitting sponsored access
(Article 48(7) of Directive 2014/65/EU)

1. Trading venues shall make the provision of sponsored access subject to their authorisation and shall require that firms having sponsored access are subject to at least the same controls as those referred to in Article 18(3)(b).

2. Trading venues shall ensure that sponsored access providers are at all times exclusively entitled to set or modify the parameters that apply to the controls referred to in paragraph 1 over the order flow of their sponsored access clients.

3. Trading venues shall be able to suspend or withdraw the provision of sponsored access to clients having infringed the UK law corresponding to Directive 2014/65/EU, Regulations of the European Parliament and of the Council (EU) No 600/2014 and (EU) No 596/2014 or the trading venue's internal rules.

Article 23

Security and limits to access

(Article 48(1) of Directive 2014/65/EU)

1. Trading venues shall have in place procedures and arrangements for physical and electronic security designed to protect their systems from misuse or unauthorised access and to ensure the integrity of the data that is part of or passes through their systems, including arrangements that allow the prevention or minimisation of the risks of attacks against the information systems as defined in the UK law corresponding to Article 2(a) of Directive 2013/40/EU of the European Parliament and of the Council.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex M

COMMISSION DELEGATED REGULATION (EU) 2017/591 of 1 December 2016
regard to regulatory technical standards for the application of position limits to
commodity derivatives

...
Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘non-financial entity’ means a natural or legal person other than:
   (a) an investment firm authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2014/65/EC,
   (b) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council or a CRD credit institution,
   (c) an insurance undertaking authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Council Directive 73/239/EEC,
   (d) an assurance undertaking authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2002/83/EC of the European Parliament and of the Council,
   (e) a reinsurance undertaking authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2005/68/EC of the European Parliament and of the Council,
   (f) a UCITS or UK UCITS and, where relevant, its management company, authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or in accordance with Directive 2009/65/EC of the European Parliament and of the Council,
   (g) an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council or corresponding UK law, including an occupational pension scheme,
   (h) an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council or authorised as such by means of a Part 4A permission under the Financial Services and Markets Act 2000 or registered as such pursuant to the Alternative Fund Managers Regulations 2013,
   (i) a CCP authorised in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council or recognised as such by means of a recognition order under Part XVIII of the Financial Services and Markets Act 2000,

A third-country entity is a non-financial entity if it would not require authorisation under any of the aforementioned legislation if it was based in the United Kingdom and subject to UK law.

(2) ‘spot month contract’ means the commodity derivative contract in relation to a particular underlying commodity whose maturity is the next to expire in accordance with the rules set by the trading venue.
(3) ‘other months' contract’ means any commodity derivative contract that is not a spot month contract.

CHAPTER II

METHOD FOR CALCULATING THE SIZE OF THE NET POSITION OF A PERSON

Article 3

Aggregation and netting of positions in a commodity derivative

(Article 57(1) of Directive 2014/65/EU)

1. The net position of a person in a commodity derivative shall be the aggregation of its positions held in that commodity derivative traded on a trading venue, in commodity derivatives considered the same commodity derivative to that commodity derivative in accordance with paragraph 1 of Article 5, and in economically equivalent OTC contracts pursuant to Article 6.

... 

Article 5

Same commodity derivatives and significant volumes

(Article 57(6) of Directive 2014/65/EU)

1. A commodity derivative traded on a trading venue shall be considered the same commodity derivative as a commodity derivative traded on another trading venue where the following conditions are met:

(a) both commodity derivatives have identical contractual specifications, terms and conditions, excluding post-trade risk management arrangements;

(b) both commodity derivatives form a single fungible pool of open interest or, in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, of securities in issue by which the positions held in a commodity derivative traded on one trading venue may be closed out against the positions held in the commodity derivative traded on the other trading venue.

2. A commodity derivative shall be considered to be traded in a significant volume on a trading venue when the trading in the commodity derivative on that trading venue over a consecutive three month period:

(a) exceeds an average daily open interest of 10,000 lots in the spot and other months' combined; or

...
(b) in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, when the number of units traded multiplied by the price exceeds an average daily amount of 1 million EUR.

3. The trading venue where the largest volume of trading in the same commodity derivative takes place shall be the trading venue that over one year has:

(a) the largest average daily open interest; or

(b) in the case of commodity derivatives defined under point (c) of Article 4(1)(44) of Directive 2014/65/EU, the highest average daily amount.

Article 6

OTC contracts economically equivalent to commodity derivatives traded on trading venues

(Article 57(1) of Directive 2014/65/EU)

An OTC derivative shall be considered economically equivalent to a commodity derivative traded on a trading venue where it has identical contractual specifications, terms and conditions, excluding different lot size specifications, delivery dates diverging by less than one calendar day and different post trade risk management arrangements.

…

Article 8

Application for the exemption from position limits

(Article 57(1) of Directive 2014/65/EU)


2. The person referred to in paragraph 1 shall submit to the competent authority the following information which demonstrates how the position reduces risks directly relating to the non-financial entity's commercial activity:

(a) a description of the nature and value of the non-financial entity's commercial activities in the commodity to which the commodity derivative for which an exemption is sought is relevant;

(b) a description of the nature and value of the non-financial entity's activities in the trading of and positions held in the relevant commodity derivatives traded on trading venues and in their economically equivalent OTC contracts;
(c) a description of the nature and size of the exposures and risks in the commodity which the non-financial entity has or expects to have as a result of its commercial activities and which are or would be mitigated by the use of commodity derivatives;

(d) an explanation of how the non-financial entity's use of commodity derivatives directly reduces its exposure and risks in its commercial activities.

3. The competent authority shall approve or reject the application within 21 calendar days after it has received the application and shall notify the non-financial entity of its approval or rejection of the exemption.

4. The non-financial entity shall notify the competent authority if there is a significant change to the nature or value of the non-financial entity's commercial activities or its trading activities in commodity derivatives and the change is relevant to the information set out in point (b) of paragraph 2 and shall submit a new application for the exemption if it intends to continue to use it.

CHAPTER III
METHODOLOGY FOR THE COMPETENT AUTHORITIES AUTHORITY TO CALCULATE POSITION LIMITS

SECTION 1
Determination of baseline figures

Article 9
Methodology for determining the baseline figure for spot month limits

(Article 57(4) of Directive 2014/65/EU)

1. Competent authorities The competent authority shall determine a baseline figure for the spot month position limit in a commodity derivative by calculating 25% of the deliverable supply for that commodity derivative.

2. The baseline figure shall be specified in lots which shall be the unit of trading used by the trading venue on which the commodity derivative trades representing a standardised quantity of the underlying commodity

3. Where a the competent authority establishes different position limits for different times within the spot month period, those position limits shall decrease on an incremental basis towards the maturity of the commodity derivative and shall take into account the position management arrangements of the trading venue.

4. By way of derogation to paragraph 1, the competent authorities authority shall determine the baseline figure for the spot month position limit for any derivative contract with an underlying that qualifies as food intended for human consumption with a total combined open interest in spot and other months' contracts exceeding 50,000 lots over a consecutive three month period by calculating 20% of the deliverable supply in that commodity derivative.
Article 10

Deliverable supply

(Article 57(3) of Directive 2014/65/EU)

1. **Competent authorities** The competent authority shall calculate the deliverable supply for a commodity derivative by identifying the quantity of the underlying commodity that can be used to fulfil the delivery requirements of the commodity derivative.

2. **Competent authorities** The competent authority shall determine the deliverable supply for a commodity derivative referred to in paragraph 1 by reference to the average monthly amount of the underlying commodity available for delivery over the one year period immediately preceding the determination.

3. In order to identify the quantity of the underlying commodity meeting the conditions of paragraph 1, the competent authorities shall take into account the following criteria

   (a) the storage arrangements for the underlying commodity;

   (b) the factors that may affect the supply of the underlying commodity.

Article 11

Methodology for determining the baseline figure for other months' limits

(Article 57(4) of Directive 2014/65/EU)

1. **Competent authorities** The competent authority shall determine a baseline figure for the other months' position limit in a commodity derivative by calculating 25% of the open interest in that commodity derivative.

2. The baseline figure shall be specified in lots which shall be the unit of trading used by the trading venue on which the commodity derivative trades representing a standardised quantity of the underlying commodity.

Article 12

Open interest

(Article 57(3) of Directive 2014/65/EU)
Competent authorities The competent authority shall calculate the open interest in a commodity derivative by aggregating the number of lots of that commodity derivative that are outstanding on trading venues at a point in time.

Article 13

Methodology for determining the baseline figure in respect of certain contracts

(Article 57(4) of Directive 2014/65/EU)

1. By way of derogation to Article 9, the competent authorities shall determine the baseline figure for the spot month position limits for cash settled spot month contracts which are under C(10) of Annex I to Directive 2014/65/EU paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order and which have no measurable deliverable supply of their underlying commodities by calculating 25% of the open interest in those commodity derivative contracts.

2. By way of derogation to Articles 9 and 11, the competent authorities shall determine the baseline figure for the position limits for commodity derivatives defined under Article 4(1)(44) of Directive 2014/65/EU Article 2(1)(24) of Regulation 600/2014 by calculating 25% of the number of securities issued. The baseline figure shall be specified in number of securities.

3. By way of derogation to Articles 9 and 11, where a commodity derivative provides that the underlying is delivered constantly over a specified period of time, the baseline figures calculated pursuant to Articles 9 and 11 shall apply to related commodity derivatives for the same underlying to the extent that their delivery periods overlap. The baseline figure shall be specified in units of the underlying.

SECTION II

Factors relevant for the calculation of position limits

Article 14

Assessment of factors

(Article 57(3) of Directive 2014/65/EU)

Competent authorities The competent authority shall set the spot month and other months' position limits for a commodity derivative by taking the baseline figure determined in accordance with Articles 9, 11 and 13 and adjusting it according to the potential impact of the factors referred to in Articles 16 to 20 on the integrity of the market for that derivative and for its underlying commodity to a limit:

(a) between 5% and 35%; or

(b) between 25% and 35%, for any derivative contract with an underlying that qualifies as food intended for human consumption with a total combined open interest in spot and other months' contracts exceeding 50,000 lots over a consecutive three month period.
Article 15

New and illiquid contracts

(Article 57(3)(g) of Directive 2014/65/EU)

1. By way of derogation to Article 14,
   (a) for commodity derivatives traded on a trading venue with a total combined open interest in spot and other months' contracts not exceeding 10,000 lots over a consecutive three month period, the competent authorities shall set the limit of positions held in those commodity derivatives at 2,500 lots;
   (b) for commodity derivatives traded on a trading venue with a total combined open interest in spot and other months' contracts in excess of 10,000 but not exceeding 20,000 lots over a consecutive three month period, the competent authorities shall set the spot and other months' position limit between 5% and 40%;
   (c) for commodity derivatives as defined in Article 4(1)(44) of Directive 2014/65/EU with a total number of securities in issue not exceeding 10 million over a consecutive three month period, the competent authority shall set the limit of positions held in those commodity derivatives at 2.5 million securities;
   (d) for commodity derivatives as defined in Article 4(1)(44) of Directive 2014/65/EU with a total number of securities in issue in excess of 10 million but not exceeding 20 million over a consecutive three month period, the competent authority shall set the spot and other months' position limit between 5% and 40%.

2. The trading venue shall notify the competent authority when the total open interest of any such commodity derivative reaches any of the amounts of lots or number of securities in issue mentioned in the previous paragraph over a consecutive three month period. The competent authority shall review the position limit upon receiving such notifications.

Article 16

The maturity of the commodity derivatives contracts

(Article 57(3)(a) of Directive 2014/65/EU)

1. For spot month position limits, if the commodity derivative has a short maturity, the competent authorities shall adjust the position limit downwards.
2. For other months' position limits, where the commodity derivative has a large number of separate expiries, the competent authorities authority shall adjust the position limit upwards.

Article 17
Deliverable supply in the underlying commodity

(Article 57(3)(b) of Directive 2014/65/EU)

Where the deliverable supply in the underlying commodity can be restricted or controlled or if the level of deliverable supply is low relative to the amount required for orderly settlement the competent authorities authority shall adjust the position limit downwards. Competent authorities shall assess the extent to which this deliverable supply is used also as the deliverable supply for other commodity derivatives.

Article 18
The overall open interest

(Article 57(3)(c) of Directive 2014/65/EU)

1. Where there is a large volume of overall open interest, the competent authorities shall adjust the position limit downwards.

2. Where the open interest is significantly higher than the deliverable supply, the competent authorities shall adjust the position limit downwards.

3. Where the open interest is significantly lower than the deliverable supply, the competent authorities shall adjust the position limit upwards.

Article 19
The number of market participants

(Article 57(3)(e) of Directive 2014/65/EU)

1. Where the daily average number of market participants holding a position in the commodity derivative over a period of one year is high the competent authority shall adjust the position limit downwards.

2. By way of derogation to Article 14, the competent authorities authority shall set the spot month and other months' position limit between 5% and 50% if:
(a) the average number of market participants holding a position in the commodity derivative in the period leading up to the setting of the position limit is lower than 10; or

(b) the number of investment firms acting as a market maker in accordance with Article 4(1)(7) of Directive 2014/65/EU Article 2(1)(6) of Regulation 600/2014/EU in the commodity derivative at the time the position limit is set or reviewed is lower than 3.

For the purposes of the first subparagraph, the competent authorities may establish different position limits for different times within the spot month period, the other months' period or for both periods.

Article 20

Characteristics of the underlying commodity market

(Article 57(3)(f) of Directive 2014/65/EU)

1. Competent authorities. The competent authority shall take into account how the characteristics of the underlying market impact on the functioning and trading of the commodity derivative and on the size of the positions held by market participants, including having regard to the ease and speed of access which market participants have to the underlying commodity.

2. The assessment of the underlying commodity market referred to in paragraph 1 shall take into account:

(a) whether there are restrictions on the supply of the commodity, including the perishability of the deliverable commodity;

(b) the method of transportation and delivery of the physical commodity, including the following:
   (i) whether the commodity can be delivered to specified delivery points only;
   (ii) the capacity constraints of specified delivery points.

(c) the structure, organisation and the operation of the market, including the seasonality present in extractive and agricultural commodity markets whereby physical supply fluctuates over the calendar year;

(d) the composition and role of market participants in the underlying commodity market, including consideration of the number of market participants which provide specific services that enable the functioning of the underlying commodity market such as risk management, delivery, storage, or settlement services;

(e) macroeconomic or other related factors that influence the operation of the underlying commodity market including the delivery, storage, and settlement of the commodity;

(f) the characteristics, physical properties and lifecycles of the underlying commodity.
Article 21

Volatility of the relevant markets

(Article 57(3)(d)) of Directive 2014/65/EU)

After having applied the factors referred to in Articles 16 to 20 which are relevant to set the position limit for each contract in commodity derivatives referred to in Article 57(4) of Directive 2014/65/EU, the competent authorities shall further adjust that position limit where the following conditions are met:

(a) there is excessive volatility in the price of commodity derivative or in the underlying commodity;

(b) a further adjustment of the position limit would effectively reduce the excessive volatility in the price of that commodity derivative or in the underlying commodity.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex N

COMMISSION DELEGATED REGULATION (EU) 2017/592 of 1 December 2016

regard to regulatory technical standards for the criteria to establish when an activity is
considered to be ancillary to the main business

…

Article 2

Application

This Regulation applies to persons.

Article 1

Interpretation

(1) Where a term is defined in Directive 2014/65/EU that term shall apply for the
purposes of this Regulation except where (2) applies.

(2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by [the
Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that
definition shall apply for the purposes of this Regulation.

(3) Article 2(1)(62) of Regulation 600/2014/EU shall not apply for the purposes of this
Regulation.

(4) References in this Regulation to ‘the Union’ are to be interpreted as if the United
Kingdom continues to be a Member State.

(5) “CRD credit institution” is defined in accordance with the Glossary to the Handbook
of Rules and Guidance published by the Financial Conduct Authority, immediately
after Exit Day.

Article 1

Application of thresholds

The activities of persons referred to in points (i) and (ii) of Article 2(1)(j) of Directive
2014/65/EU An “article 2.1(i) activity”, as referred to in article 72J(1) of the Financial
Services and Markets Act 2000 (Regulated Activities) Order 2001 shall be considered to be
ancillary to the main business of the group if those activities meet the conditions set out in
Article 2 and constitute a minority of activities at group level in accordance with Article 3.
Article 2

**Overall market threshold**

1. The size of the activities referred to in Article 1 calculated in accordance with paragraph 2 divided by the overall market trading activity calculated in accordance with paragraph 3 shall, in each of the following asset classes, account for less than the following values:

   (a) 4% in relation to derivatives on metals;
   (b) 3% in relation to derivatives on oil and oil products;
   (c) 10% in relation to derivatives on coal;
   (d) 3% in relation to derivatives on gas;
   (e) 6% in relation to derivatives on power;
   (f) 4% in relation to derivatives on agricultural products;
   (g) 15% in relation to derivatives on other commodities, including freight and commodities referred to in Section C 10 of Annex I to Directive 2014/65/EU paragraph 10 of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001;
   (h) 20% in relation to emission allowances or derivatives thereof.

2. The size of the activities referred to in Article 1 undertaken in the Union by a person within a group in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts within the relevant asset class to which that person is a party.

   The aggregation referred to in the first subparagraph shall not include contracts resulting from transactions referred to in points (a), (b) and (c) of the fifth subparagraph of Article 2(4) of Directive 2014/65/EU or contracts where the person within the group that is a party to any of them is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU of the European Parliament and of the Council or in accordance with Part 4A of the Financial Services and Markets Act 2000 to provide investment services or perform investment activities or accept deposits (as a CRD credit institution).

3. The overall market trading activity in each of the asset classes referred to in paragraph 1 shall be calculated by aggregating the gross notional value of all contracts that are not traded on a trading venue within the relevant asset class to which any person located in the Union is a party and of any other contract within that asset class that is traded on a trading venue located in the Union during the relevant annual accounting period referred to in Article 4(2).

4. The aggregate values referred to in paragraphs 2 and 3 shall be denominated in EUR.

Article 3
Main business threshold

1. The activities referred to in Article 1 shall be considered to constitute a minority of activities at group level where they comply with any of the following conditions:
   (a) the size of those activities calculated in accordance with the first subparagraph of paragraph 3 does not account for more than 10% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3;
   (b) the estimated capital employed for carrying out those activities calculated in accordance with paragraphs 5 to 7 does not account for more than 10% of the capital employed at group level for carrying out the main business calculated in accordance with paragraph 9.

2. The following derogations from paragraph 1(a) shall apply:
   (a) where the size of the activities referred to in Article 1 calculated in accordance with the first subparagraph of paragraph 3 accounts for more than 10% but less than 50% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 50% of the threshold established by Article 2(1) for each relevant asset class;
   (b) where the size of the trading activities calculated in accordance with the first subparagraph of paragraph 3 accounts for equal to or more than 50% of the total size of the trading activity of the group calculated in accordance with the second subparagraph of paragraph 3, ancillary activities shall be considered to constitute a minority of activities at group level only where the size of the trading activity for each of the asset classes referred to in Article 2(1) accounts for less than 20% of the threshold established by Article 2(1) for each relevant asset class.

3. The size of the activities referred to in Article 1 undertaken by a person within a group shall be calculated by aggregating the size of the activities undertaken by that person with respect to all of the asset classes referred to in Article 2(1) in accordance with the same calculation criteria as that referred to in Article 2(2).

   The total size of the trading activity of the group shall be calculated by aggregating the gross notional value of all contracts in commodity derivatives, emission allowances and derivatives thereof to which persons within that group are a party to.

4. The aggregation referred to in the first subparagraph of paragraph 3 shall not include contracts where the person within the group that is a party to any of those contracts is authorised in accordance with Directive 2014/65/EU or Directive 2013/36/EU or in accordance with Part 4A of the Financial Services and Markets Act 2000 to provide investment services or perform investment activities or accept deposits (as a CRD credit institution).

5. The estimated capital employed for carrying out the activities referred to in Article 1 shall be the sum of the following:
(a) 15% of each net position, long or short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof;

(b) 3% of the gross position, long plus short, multiplied by the price for the commodity derivative, emission allowance or derivatives thereof.

6. For the purposes of paragraph 5, point (a), the net position in a commodity derivative, an emission allowance or derivative thereof shall be determined by netting long and short positions:

(a) in each type of commodity derivative contract with a particular commodity as underlying in order to calculate the net position per type of contract with that commodity as underlying;

(b) in an emission allowance contract in order to calculate the net position in that emission allowances contract; or

(c) in each type of emission allowance derivative contract in order to calculate the net position per type of emission allowance derivative contract.

For the purposes of paragraph 5, point (a), net positions in different types of contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying can be netted against each other.

7. For the purposes of paragraph 5, point (b), the gross position in a commodity derivative, an emission allowance or a derivative contract thereof, shall be determined by computing the sum of the absolute values of the net positions per type of contract with a particular commodity as the underlying, per emission allowance contract or per type of contract with a particular emission allowance as the underlying.

For the purposes of paragraph 5, point (b), net positions in different types of derivative contracts with the same commodity as underlying or different types of derivative contracts with the same emission allowance as underlying cannot be netted against each other.

8. The calculation of the estimated capital shall not include positions resulting from transactions referred to in points (a), (b) and (c) of subparagraph 5 of Article 2(4) of Directive 2014/65/EU.

9. The capital employed for carrying out the main business of a group shall be the sum of the total assets of the group minus its short-term debt as recorded in its consolidated financial statements of the group at the end of the relevant annual calculation period. For the purposes of the first sentence, short-term debt means debt with a maturity of less than 12 months.

10. The values resulting from the calculations referred to in this Article shall be denominated in EUR.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex O

COMMISSION IMPLEMENTING REGULATION (EU) 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments

Article -2

Application

This Regulation applies to:

Operators of “UK trading venues” as defined by article 2(1)(16A) of Regulation 600/2014/EU.

Article -1

Interpretation

(1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies.

(2) Where it is defined in article 2 of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that definition shall apply for the purposes of this Regulation.

(3) Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

(4) References to ‘GMT’ and ‘BST’ are to be read in accordance with The Summer Time Act 1972.

Article 1

Reporting deadlines

Market operators and investment firms operating trading venues referred to in Article 58(1) of Directive 2014/65/EU shall send ESMA the competent authority the weekly report referred to in point (a) of that Article regarding the aggregate positions held at the close of business of each week no later than Wednesday 17.30 CET GMT or BST (where applicable) of the following week.

Where either Monday, Tuesday or Wednesday of the week in which that report is to be submitted is not a working day for the market operator or investment firm referred to in the first paragraph, that market operator or investment firm shall submit the report as soon as possible and no later than Thursday 17.30 CET GMT or BST (where applicable) of that week.

…
This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex P

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1005 of 15 June 2017
laying down implementing technical standards with regard to the format and timing of
the communications and the publication of the suspension and removal of financial
instruments pursuant to Directive 2014/65/EU of the European Parliament and of the
Council on markets in financial instruments

...
remove a financial instrument and, where relevant, related derivatives from trading or to lift a suspension;

(b) communication of the decisions referred to in point (a) to the relevant competent authority;

(c) publication by a competent authority of its decision to suspend trading or remove from trading a financial instrument and, where relevant, related derivatives or to lift a suspension;

(d) communication by a competent authority to ESMA and other competent authorities of the decision to suspend trading or to remove from trading a financial instrument and, where relevant, related derivatives or to lift a suspension;

(e) communication by a notified competent authority to ESMA and other competent authorities of its decision on whether to follow a decision as referred to in point (d).

Article 2

Definition of the term ‘trading venue operator’

For the purposes of this Regulation, ‘trading venue operator’ means any of the following:

(a) a market operator operating a regulated market, an MTF or an OTF;
(b) an investment firm operating an MTF or an OTF.

…

Article 4

Timing of the publications and communications by trading venue operators

1. Trading venue operators shall publish the decisions referred to in point (a) of Article 1 immediately.

2. Trading venue operators shall not publish the decisions referred to in point (a) of Article 1 by other means prior to their publication in accordance with Article 3(1).

3. Trading venue operators shall communicate the decisions referred to in point (a) of Article 1 to the relevant competent authority simultaneously with its publication or immediately thereafter.

Article 5

Format of the publications and communications by competent authorities

1. The competent authority shall publish the decision referred to in point (c) of Article 1 on a website in the format set out in Table 3 of the Annex.
2. Competent authorities shall communicate the decisions referred to in points (d) and (e) of Article 1 in a standard machine readable format using the formats set out in Tables 3 and 4 of the Annex, respectively.

Article 6

Timing of the publications and communications by competent authorities

1. Competent authorities shall publish the decision referred to in point (c) of Article 1 immediately.
2. Competent authorities shall communicate the decision referred to in point (d) of Article 1 simultaneously with its publication or immediately thereafter.
3. A notified competent authority shall communicate the decision referred to in point (e) of Article 1 without undue delay upon receipt of the communication referred to in point (d) of Article 1.

…

This Regulation shall be binding in its entirety and directly applicable in all Member States.

…

ANNEX

Table 3

Format of the publication and communication by the Competent Authorities Authority of the decision to suspend or remove a financial instrument and related derivatives from trading and to lift a suspension of a financial instrument and related derivatives

<table>
<thead>
<tr>
<th>FIELD</th>
<th>DETAILS TO BE REPORTED</th>
<th>FORMAT FOR REPORTING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competent authority</td>
<td>Field to be populated with the acronym of the competent authority doing the publication / communication.</td>
<td>{ALPHANUM-10}</td>
</tr>
<tr>
<td>Member State of the competent authority</td>
<td>Field to be populated with the country-code of the Member State of the competent authority doing the publication / communication.</td>
<td>{COUNTRYCODE_2}</td>
</tr>
<tr>
<td>FIELD</td>
<td>DETAILS TO BE REPORTED</td>
<td>FORMAT FOR REPORTING</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Trading venue operator as initiator of the action</td>
<td>Field to be populated with: — true, if the initiator of the action is a trading venue operator; or — false, if the initiator of the action is not a trading venue operator but a competent authority.</td>
<td>‘True’ — Trading venue initiator 'False' — Not a trading venue initiator</td>
</tr>
</tbody>
</table>

Table 4

Format of the communication to ESMA and other competent authorities of their decisions on whether to follow a suspension, a removal or a lifting of a suspension

<table>
<thead>
<tr>
<th>FIELD</th>
<th>DETAILS TO BE REPORTED</th>
<th>FORMAT FOR REPORTING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competent authority</td>
<td>Field to be populated with the acronym of the competent authority that communicated the original action.</td>
<td>{ALPHANUM-10}</td>
</tr>
<tr>
<td>Member State of the competent authority</td>
<td>Field to be populated with the country code of the Member State of the competent authority that communicated the original action.</td>
<td>{COUNTRYCODE_2}</td>
</tr>
<tr>
<td>Competent authority initiating the current action</td>
<td>Field to be populated with the acronym of the competent authority following or not following the original action.</td>
<td>{ALPHANUM-10}</td>
</tr>
<tr>
<td>Member State of the competent authority</td>
<td>Field to be populated with the country code of the Member State of the competent authority following or not following the original action.</td>
<td>{COUNTRYCODE_2}</td>
</tr>
<tr>
<td>Original action type</td>
<td>Field to be populated with the type of the original action.</td>
<td>Suspension, removal, lifting of a suspension.--</td>
</tr>
<tr>
<td>Field to follow, if applicable</td>
<td>Field to be populated, if applicable, with:</td>
<td>‘True’ — Action is followed; or ‘False’ — Action is not followed.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Reasons for the decision not to follow a removal, suspension or lifting thereof, if applicable</td>
<td>Field to be populated with the reasons for the decision not to follow a removal, suspension or lifting thereof, if applicable.</td>
<td>{ALPHANUM-350}</td>
</tr>
<tr>
<td>Date and time of the communication</td>
<td>Field to be populated with the date and time of the communication of the current action.</td>
<td>{DATE_TIME_FORMAT}</td>
</tr>
<tr>
<td>Effective from</td>
<td>Field to be populated with the date and time from which the current action is effective.</td>
<td>{DATE_TIME_FORMAT}</td>
</tr>
<tr>
<td>Effective to</td>
<td>Field to be populated with the date and time until which the current action is effective.</td>
<td>{DATE_TIME_FORMAT}</td>
</tr>
<tr>
<td>Ongoing</td>
<td>Field to be populated with ‘true’ if the action is ongoing, or ‘false’ otherwise.</td>
<td>‘True’ — Action is ongoing; ‘False’ — Action is not ongoing.</td>
</tr>
<tr>
<td>Trading venue(s)</td>
<td>Field to be populated with the MIC or MICs of the trading venue(s) or segments thereof to which the current action relates.</td>
<td>{MIC}</td>
</tr>
</tbody>
</table>

If multiple MICs have to be provided, this field shall be populated with multiple MICs separated by comma.

<table>
<thead>
<tr>
<th>FIELD</th>
<th>DETAILS TO BE REPORTED</th>
<th>FORMAT FOR REPORTING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuer name</td>
<td>Field to be populated with the name of the issuer of the instrument to which the action relates.</td>
<td>{ALPHANUM-350}</td>
</tr>
<tr>
<td>Issuer</td>
<td>Field to be populated with the LEI of the issuer of the instrument to which the action relates.</td>
<td>{LEI}</td>
</tr>
<tr>
<td>Field</td>
<td>Description</td>
<td>Example</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Instrument identifier</td>
<td>Field to be populated with the ISIN of the instrument.</td>
<td>{ISIN}</td>
</tr>
<tr>
<td>Instrument full name</td>
<td>Field to be populated with the name of the instrument.</td>
<td>{ALPHANUM-350}</td>
</tr>
<tr>
<td>Related derivatives</td>
<td>Field to be populated with the ISINs of the related derivatives as specified in Delegated Regulation (EU) 2017/569, to which the action also relates.</td>
<td>{ISIN}-</td>
</tr>
<tr>
<td></td>
<td>If multiple ISINs have to be provided, this field shall be populated with multiple ISINs separated by comma.</td>
<td></td>
</tr>
<tr>
<td>Other related instruments</td>
<td>Field to be populated with the ISINs of the related derivatives affected by the action.</td>
<td>{ISIN}-</td>
</tr>
<tr>
<td></td>
<td>If multiple ISINs have to be provided, this field shall be populated with multiple ISINs separated by comma.</td>
<td></td>
</tr>
<tr>
<td>Comments</td>
<td>Field to be populated with comments.</td>
<td>{ALPHANUM-350}</td>
</tr>
</tbody>
</table>

Annex Q

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators

...
2. The reports referred to in paragraph 1 shall contain the aggregate of all positions held by the different persons in each of the categories set out in Table 1 to Annex I in an individual commodity derivative, emission allowance or derivative thereof that is traded on that trading venue.

Article 2

Daily reports

1. Investment firms shall provide the competent authority with the breakdown of their positions as referred to in Article 58(2) of Directive 2014/65/EU the direction in chapter 10.4.8 of the Market Conduct sourcebook published by the Financial Conduct Authority immediately after Exit Day by means of a daily position report in the format set out in the tables to Annex II to this Regulation.

2. The report referred to in paragraph 1 shall contain all positions across all maturities of all contracts.

…

This Regulation shall be binding in its entirety and directly applicable in all Member States.

…
Annex R

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1110 of 22 June 2017
laying down implementing technical standards with regard to the standard forms,
templates and procedures for the authorisation of data reporting services providers and
related notifications pursuant to Directive 2014/65/EU of the European Parliament and
of the Council on markets in financial instruments

Article -2
Application

This Regulation applies to persons.

Article -1
Interpretation

(1) Where a term is defined in Directive 2014/65/EU that definition shall apply for the
purposes of this Regulation except where (2) or (3) applies;
(2) Subject to (3), where a term is defined in the Data Reporting Services Regulations
2017, that definition shall apply for the purposes of this Regulation.
(3) Where a term it is defined in article 2 of Regulation 600/2014/EU, as amended by [the
Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that
definition shall apply for the purposes of this Regulation.

Article 1
Designation of a contact point

Competent authorities The competent authority shall designate a contact point for handling all
information received from applicants seeking authorisation as a data reporting services
provider. The contact details of the designated contact point shall be made public and
regularly updated on the competent authorities’ websites.

Article 2
Provision of information and notification to the competent authority

1. An applicant for authorisation to provide data reporting services under the provisions
of Title V of Directive 2014/65/EU Data Reporting Services Regulations 2017 shall
provide the competent authority with all information in-accordance with Article 61(2).
2. The applicant shall notify the competent authority with information of all members of its management body by filling in the notification form set out in Annex II.

3. The applicant shall clearly identify in its submission which specific requirement under the provisions of it refers to and in which document attached to its submission that information is provided.

4. The applicant shall indicate in its submission whether any specific requirement under the provisions of Title V of Directive 2014/65/EU the Data Reporting Services Regulations 2017 or Commission Delegated Regulation (EU) 2017/571 is not applicable to the data reporting service that it is applying for.

5. Competent authorities The competent authority shall indicate on their websites its website whether duly completed application forms, notifications and any related additional information are to be submitted on paper, electronically, or both.

Article 7

Entry into force and application

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex S

COMMISSION DELEGATED REGULATION (EU) 2017/1943 of 14 July 2016
with regard to regulatory technical standards on information and requirements for the
authorisation of investment firms

Article 1

Interpretation

1. Where a term is defined in Directive 2014/65/EU that term shall apply for the
purposes of this Regulation except where (2) applies;

2. Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the
[Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that
definition shall apply for the purposes of this Regulation.

Article 1

General information

An applicant seeking authorisation as an investment firm in accordance to the United
Kingdom’s legislation implementing Title II of Directive 2014/65/EU shall submit to the
competent authority an application that includes the following general information:

(a) its name (including its legal name and any other trading name to be used); legal
structure (including information on whether it will be a legal person or, where allowed
by national legislation, a natural person), address of the head office and, for existing
companies, registered office; contact details; its national identification number, where
available; as well as:

(i) for domestic branches: information on where the branches will operate;
(ii) for domestic tied agents: details on its intention to use tied agents;

(b) the list of investment services and activities, ancillary services and financial
instruments to be provided, and whether clients’ financial instruments and funds will
be held (even on a temporary basis).

(c) copies of corporate documents and evidence of registration with the national register
of companies, where applicable.

Article 2

Information on capital
An applicant seeking authorisation as an investment firm in accordance to the United Kingdom’s legislation implementing Title II of Directive 2014/65/EU shall provide to the competent authority information and, where available, evidence on the sources of capital available to it. The information shall include:

(a) details on the use of private financial resources including the origin and availability of those funds;

(b) details on access to capital sources and financial markets including details of financial instruments issued or to be issued;

(c) any relevant agreements and contracts regarding the capital raised;

(d) information on the use or expected use of borrowed funds including the name of relevant lenders and details of the facilities granted or expected to be granted, including maturities, terms, pledges and guarantees, along with information on the origin of the borrowed funds (or funds expected to be borrowed) where the lender is not a supervised financial institution;

(e) details on the means of transferring financial resources to the firm including the network used to transfer such funds.

For the purposes of point (b), information on types of capital raised shall refer, where relevant, to the types of capital specified under Regulation (EU) No 575/2013, specifically whether the capital comprises Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items.

Article 3
Information on shareholders

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom’s legislation implementing Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its shareholders:

(a) the list of persons with a direct or indirect qualifying holding in the investment firm, and the amount of these holdings and, for indirect holdings, the name of the person through which the stake is held and the name of the final holder;

(b) for persons with a qualifying holding (direct or indirect) in the investment firm the documentation required from proposed acquirers for the acquisition and increases in qualifying holdings in investment firms in accordance with Articles 3, 4 and 5 of Commission Delegated Regulation 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm;

(c) for corporate shareholders that are members of a group, an organisational chart of the group indicating the main activities of each firm within the group, identification of any regulated entities within the group and the names of the relevant supervisory authorities as well as the relationship between the financial entities of the group and other non-financial group entities.
(d) For the purposes of point (b), where the holder of a qualifying holding is not a natural person, the documentation shall also relate to all members of the management body and the general manager, or any other person performing equivalent duties.

**Article 4**

**Information on the management body and persons who direct the business**

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom’s legislation implementing Title II of Directive 2014/65/EU shall provide to the competent authority the following information:

(a) in respect of members of the management body and persons effectively directing the business and their related powers and any proxies:

(i) personal details comprising the person's name, date and place of birth, personal national identification number, where available, address and contact details;

(ii) the position for which the person is/will be appointed;

(iii) a curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed, in particular for any activities within the scope of the position sought; for positions held in the previous 10 years, when describing those activities, details shall be included on all delegated powers and internal decision-making powers held and the areas of operations under control;

(iv) documentation relating to person's reputation and experience, in particular a list of reference persons including contact information, letters of recommendation;

(v) criminal records and information on criminal investigations and proceedings relevant civil and administrative cases, and disciplinary actions opened against them (including disqualification as a company director, bankruptcy, insolvency and similar procedures), notably through an official certificate (if and so far as it is available from the relevant Member State or third country), or through another equivalent document; for ongoing investigations, the information may be provided through a declaration of honour;

…

**Article 5**

**Financial information**

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom’s legislation implementing Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its financial situation:
(a) forecast information at an individual and, where applicable, at consolidated group and sub-consolidated levels, including:
   (i) forecast accounting plans for the first three business years including:
       — forecast balance sheets;
       — forecast profit and loss accounts or income statements;
   (ii) planning assumptions for the above forecasts as well as explanations of the figures, including expected number and type of customers, expected volume of transactions/orders, expected assets under management;
   (iii) where applicable, forecast calculations of the firm's capital requirements and liquidity requirements under Regulation (EU) No 575/2013 of the European Parliament and of the Council and forecast solvency ratio for the first year;

(b) for companies that are already active, statutory financial statements, at an individual and, where applicable, at consolidated group and sub-consolidated levels for the last three financial periods, approved, where the financial statements are audited, by the external auditor, including:
   (i) the balance sheet;
   (ii) the profit and loss accounts or income statements;
   (iii) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the company financial statements and, where applicable, a report by the company's auditor of the last three years or since the beginning of the activity;

(c) an analysis of the scope of consolidated supervision under Regulation (EU) No 575/2013, including details on which group entities will be included in the scope of consolidated supervision requirements post-authorisation and at which level within the group these requirements will apply on a full or sub-consolidated basis.

Article 6

Information on the organisation of the firm

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom’s legislation implementing Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its organisation:

(a) a programme of initial operations for the following three years, including information on planned regulated and unregulated activities detailed information on the geographical distribution and activities to be carried out by the investment firm. Relevant information in the programme of operations shall include:
   (i) the domicile of prospective customers and targeted investors;
   (ii) the marketing and promotional activity and arrangements, including languages of the offering and promotional documents; identification of the Member States country where advertisements are most visible and frequent; type of promotional documents (in order to assess where effective marketing will be mostly developed);
(iii) the identity of direct marketers, financial investment advisers and distributors, geographical localisation of their activity;

(b) details of the firm's auditors, when available at time of application for authorisation;

(c) the organisational structure and internal control systems of the company, comprising:

(i) the personal details of the heads of internal functions (management and supervisory), including a detailed curriculum vitae, stating relevant education and professional training, professional experience;

(ii) the description of the resources (in particular human and technical) allocated to the various planned activities;

(iii) in relation to holding client financial instruments and funds, information, specifying any client asset safeguarding arrangements (in particular, where financial instruments and funds are held in a custodian, the name of the custodian, and related contracts);

(iv) an explanation of how the firm will satisfy its prudential and conduct requirements.

(d) information on the status of the application undertaken by the investment firm to become a member of the investor compensation scheme of the Home Member State UK or evidence of membership to the investor compensation scheme, where available;

…

Article 7

General requirements

1. The information to be provided to the competent authority of the home Member State, as set out in Articles 1 and 6, shall refer to both the head office of the firm and its branches and tied agents.

2. The information to be provided to the competent authority of the home Member State, as set out in Articles 2 to 5, shall refer to the head office of the firm.

…

Article 9

Requirements applicable to shareholders and members with qualifying holdings

The competent authority shall verify that the request of an applicant for authorisation as an investment firm, in accordance to the United Kingdom’s legislation implementing Title II of Directive 2014/65/EU, offers sufficient guarantees for a sound and prudent management of the entity by assessing the suitability of proposed shareholders and members with qualifying
holdings, having regard to the likely influence on the investment firm of each proposed shareholder or member with qualifying holdings, against all of the following criteria:

(a) the reputation and experience of any person who will direct the business of the investment firm;
(b) the reputation of the proposed shareholders and members with qualifying holdings;
(c) the financial soundness of the proposed shareholders and members with qualifying holding, in particular in relation to the type of business pursued and envisaged in the investment firm;
(d) whether the investment firm will be able to comply and continue to comply with the prudential requirements set out in the United Kingdom’s legislation implementing Article 15 of Directive 2014/65/EU and, where applicable, the United Kingdom’s legislation implementing Directives 2002/87/EC and 2013/36/EU of the European Parliament and of the Council and in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
(e) whether there are reasonable grounds to suspect that, in connection with the authorisation of the investment firm, money laundering or terrorist financing within the meaning of the United Kingdom’s legislation implementing Article 1 of Directive 2005/60/EC of the European Parliament and of the Council (3) is being or has been committed or attempted, or that the authorisation of the investment firm could increase the risk thereof.

Article 10

Effective exercise of supervisory functions

A group structure within which the investment firm will operate shall be considered to be an obstacle to the exercise of the supervisory function of the competent authority for the purposes of the United Kingdom’s legislation implementing Article 10(1) and (2) of Directive 2014/65/EU in any of the following cases:

(a) it is complex and not sufficiently transparent;
(b) it has a geographical location of group entities;
(c) it includes activities performed by the group entities that may prevent the competent authority to effectively appraise the suitability of the shareholders or members with qualifying holdings or the influence of close links with the investment firm.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Powers exercised

A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

Pre-conditions to making

B. The FCA and the Prudential Regulation Authority (“the PRA”) are the appropriate regulators for the Markets in Financial Instruments Directive EU Regulations specified in Part 4 of the Schedule to the Regulations (“the specified MiFID regulations”).

C. The FCA proposes to exercise the power in regulation 3 of the Regulations to modify the specified MiFID regulations and proposes that the specified MiFID regulations make separate provision for persons described as follows:


D. The FCA has consulted the PRA on a division of responsibility and on the modifications contained in Annexes A to C to this instrument in accordance with regulations 4 and 5 of the Regulations.

E. The FCA has prepared the instrument in accordance with regulation 6 of the Regulations.

F. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation
G. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

**Division**

H. The following EU regulations, as they have effect in domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018, are each divided into two identical versions of the same, headed “Part 1 (FCA)” and “Part 2 (PRA)” respectively:

- Commission Implementing Regulation (EU) 2017/1945

I. Immediately before Article 1 in Part 1 (FCA) in those regulations is inserted:

> **Article A1**
> This Part of the Regulation applies to persons that are firms with Part 4A permissions within the meaning of Part 4A of the Financial Services and Markets Act 2000, except PRA-authorised firms, being firms within the meaning of section 2B (5) of the Financial Services and Markets Act 2000.”

J. Immediately before Article 1 in Part 2 (PRA) is inserted:

> **Article A1**
> This Part of the Regulation applies to PRA-authorised firms.”

K. The following EU regulation, as it has effect in domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018, is divided into two identical versions of the same, headed “Part 1 (FCA)” and “Part 2 (PRA)” respectively:


L. Immediately before Article 1 in Part 1 (FCA) is inserted:

> **Article A1**
> This Part of the Regulation applies to persons that are firms with Part 4A permission within the meaning of Part 4A of the Financial Services and Markets Act 2000 or persons subject to regulation 30 and 32(2) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.”

M. Immediately before Article 1 in Part 2 (PRA) is inserted:

> **Article A1**
> This Part of the Regulation applies to PRA-authorised persons, within the meaning of section 2B (5) of the Financial Services and Markets Act 2000.”
Modifications

N. The FCA thereafter amends the following EU Regulations in accordance with Annexes A–C of this instrument.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
</table>

Commencement

O. This instrument comes into force on [29 March 2019 at 11p.m.].

Citation

P. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Directive) (EU Exit) (No 2) Instrument 2019.

By order of the Board
[date]
Annex A

COMMISSION DELEGATED REGULATION (EU) 2017/589 of 19 July 2016
with regard to regulatory technical standards specifying the organisational
requirements of investment firms engaged in algorithmic trading

Article -2
Application

(1) This Regulation applies to:
   (a) a MiFID investment firm; and
   (b) a person to whom regulation 30 or 32 (2) of the MiFI Regulations applies.

Article -1
Interpretation

(1) Where a term is defined in Directive 2014/65/EU that term shall apply for the
purposes of this Regulation except where (2) or (3) applies;

(2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by the
Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that
definition shall apply for the purposes of this Regulation;

(3) ‘Algorithmic trading’ and ‘direct electronic access’ or ‘DEA’ are defined in regulation
2(1) of the Financial Services and Markets Act 2000 (Markets in Financial
Instruments) Regulations 2017;

(4) References to UK law corresponding to EU legislation include any primary or
secondary legislation or regulators’ requirements which would give effect to that EU
legislation if the United Kingdom were a Member State; and

(5) References to ‘investment firm’ are to the persons referred to in article -2(1) above
unless the context indicates otherwise.

(6) ‘MiFID investment firm’ and the ‘MiFI Regulations’ are defined in accordance with
the Glossary to the Handbook of Rules and Guidance published by the FCA
immediately after Exit Day.
SECTION 2

Post-deployment management

Article 9

Annual self-assessment and validation

(Article 17(1) of Directive 2014/65/EU)

1. An investment firm shall annually perform a self-assessment and validation process and on the basis of that process issue a validation report. In the course of that process the investment firm shall review, evaluate and validate the following:
   (a) its algorithmic trading systems, trading algorithms and algorithmic trading strategies;
   (b) its governance, accountability and approval framework;
   (c) its business continuity arrangement;
   (d) its overall compliance with UK law corresponding to Article 17 of Directive 2014/65/EU, having regard to the nature, scale and complexity of its business.

   The self-assessment shall also include at least an analysis of compliance with the criteria set out in Annex I to this Regulation.

2. The risk management function of the investment firm, referred to in Article 23(2) of Commission Delegated Regulation (EU) 2017/565, shall draw up the validation report and, for that purpose, involve staff with the necessary technical knowledge. The risk management function shall inform the compliance function of any deficiencies identified in the validation report.

3. The validation report shall be audited by the firm's internal audit function, where such function exists, and be subject to approval by the investment firm's senior management.

4. An investment firm shall remedy any deficiencies identified in the validation report.

5. Where an investment firm has not established a risk management function referred to in Article 23(2) of Delegated Regulation (EU) 2017/565, the requirements set out in relation to the risk management function in this Regulation shall apply to any other function established by the investment firm in accordance with Article 23(2) of Delegated Regulation (EU) 2017/565 that Regulation.
This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I

Criteria to be considered in the investment firm's self-assessment as referred to in Article 9(1)

1. When considering the nature of its business, an investment firm shall consider the following, where applicable:

   (a) the regulatory status of the firm and, where applicable, of its DEA clients, including the regulatory requirements to which it is subject as an investment firm as a result of UK law corresponding to Directive 2014/65/EU, and other relevant regulatory requirements;

   …
ANNEX II

Table 3
Information relating to outgoing and executed orders

<table>
<thead>
<tr>
<th>N.</th>
<th>Field/Content</th>
<th>Description</th>
<th>Format</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Buy-Sell indicator</td>
<td>Indicates whether the order is to buy or to sell, as determined in the description of field 8 of table 2.</td>
<td>‘BUY’ — buy;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>‘SELL’ — sell</td>
</tr>
<tr>
<td>2</td>
<td>The trading capacity</td>
<td>Indicates whether the order submission results from the member, participant or client of the trading venue is carrying out matched principal trading under UK law corresponding to Article 4(38) of Directive 2014/65/EU, or is dealing on its own account under Article 4(6) of Directive 2014/65/EU as defined by article 2(1)(5) of Regulation 600/2014/EU. Where the order submission does not result from the member, participant or client of the trading venue carrying out matched principal trading or dealing on its own account, the field shall indicate that the transaction was carried out under any other capacity.</td>
<td>‘DEAL’ — Dealing on own account; ‘MTCH’ — Matched principal; ‘AOTC’ — Any other capacity</td>
</tr>
<tr>
<td>3</td>
<td>Liquidity provision activity</td>
<td>Indicates whether an order is submitted to a trading venue as part of a market making strategy pursuant to UK law corresponding to Articles 17 and 48 of Directive 2014/65/EU, or is submitted as part of another activity in accordance with Article 3 of Commission</td>
<td>‘true’;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>‘false’</td>
</tr>
<tr>
<td></td>
<td>Delegated Regulation (EU) 2017/575.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>…</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 26 | New order, order modification, order cancellation, order rejections, partial or full execution | New order: receipt of a new order by the operator of the trading venue.  
Triggered: an order which becomes executable or, as the case may be, non-executable upon the realisation of a pre-determined condition.  
Replaced by the member, participant or client of the trading venue: where a member, participant or client of the trading venue decides upon its own initiative to change any characteristic of the order it has previously entered into the order book.  
Replaced by market operations (automatic): where any characteristic of an order is changed by the trading venue operator's IT systems. This includes where a peg order's or a trailing stop order's current characteristics are changed to reflect how the order is located within the order book.  
Replaced by market operations (human intervention): where any characteristic of an order is changed by a trading venue operator's staff. This includes the situation where a member, participant or client of the trading venue has IT issues and needs its orders to be cancelled urgently.  
Change of status at the initiative of the member, participant or client of the trading venue. This includes activation and deactivation.  
Change of status due to market operations. |
|   | ‘NEWO’ — New order |
|   | ‘TRIG’ — Triggered |
|   | ‘REME’ — Replaced by the member or participant or client of the trading venue. |
|   | ‘REMA’ — Replaced by market operations (automatic). |
|   | ‘REMH’ — Replaced by market operations (human intervention). |
|   | ‘CHME’ — Change of status at the initiative of the member/participant/client of the trading venue. |
|   | ‘CHMO’ — Change of status due to market operations. |
| Cancelled at the initiative of the member, participant or client of the trading venue. | ‘CAME’ — Cancelled at the initiative of the member or participant or client of the trading venue. |
|———|———|
| Cancelled by market operations. This includes a protection mechanism provided for investment firms engaging in algorithmic trading to pursue a market making strategy as laid down in **UK law corresponding to Articles 17 and 48 of Directive 2014/65/EU.** | ‘CAMO’ -Cancelled by market operations. |
| Rejected order: an order received but rejected by the operator of the trading venue. | ‘REMO’ — Rejected order |

...
ANNEX B

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council

...

Article -1

Interpretation

1. Where a term is defined in Directive 2014/65/EU that term shall apply for the purposes of this Regulation except where (2) applies;

2. Where a term it is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.

Article 1

Designation of a contact point

Competent authorities shall designate a contact point for handling all information received from applicants seeking authorisation as an investment firm in accordance with the United Kingdom’s legislation implementing Title II of Directive 2014/65/EU. The contact details on the designated contact point shall be made public and regularly updated on the competent authorities' websites.

Article 2

Submission of the application

1. An applicant seeking authorisation as an investment firm in accordance with the United Kingdom’s legislation implementing Title II of Directive 2014/65/EU shall submit to the competent authority its application by filling in the template set out in Annex I.

2. The applicant shall notify the competent authority of the information on all members of its management body by filling in the template set out in Annex II.
Article 6

Communication of the decision

1. The competent authority shall inform the applicant of its decision to grant or not the authorisation in paper form, by electronic means or both, within the 6-month period referred to in the United Kingdom’s legislation implementing Article 7(3) of Directive 2014/65/EU.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex C

COMMISSION DELEGATED REGULATION (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm

(Text with EEA relevance)

Article 2

Application

This Regulation applies to persons.

Article 1

Interpretation

1. Where a term is defined in Directive 2014/65/EU that definition shall apply for the purposes of this Regulation except where (2) applies;

2. Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that definition shall apply for the purposes of this Regulation.


Article 13

Reduced information requirements

1. By way of derogation from Article 2, where the proposed acquirer is an entity authorised and supervised within the Union United Kingdom and the target entity meets the criteria set out in paragraph 2, the proposed acquirer shall submit the following information to the competent authority of the target entity:
(a) where the proposed acquirer is a natural person:

(1) the information set out in Article 3(1);
(2) the information set out in points (c) to (g) of Article 4;
(3) the information set out in Articles 6, 7 and 9;
(4) the information set out in Article 8(1);
(5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20 %, a document on strategy as set out in Article 10;
(6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20% and 50%, a document on strategy as set out in Article 11;

(b) where the proposed acquirer is a legal person:

(1) the information set out in Article 3(2)
(2) the information set out in points (c) to (j) of Article 5(1) and, where relevant, the information set out in Article 5(3);
(3) the information set out in Articles 6, 7 and 9;
(4) the information set out in Article 8(1);
(5) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity of up to 20 %, a document on strategy as set out in Article 10;
(6) where the proposed acquisition would result in the proposed acquirer holding a qualifying holding in the target entity between 20% and 50%, a document on strategy as set out in Article 11;

(c) where the proposed acquirer is a trust:

...

2. The target entity referred to in paragraph 1 shall meet the following criteria:

(a) it does not hold assets of its clients;
(b) it is not authorised for the investment services and activities ‘Dealing on own account’ or ‘Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis’ referred to in points (3) and (6) of Section A of Annex I of Directive 2004/39/EC Part 3 of Schedule 2 to the Regulated Activities Order;
(c) where it is authorised for the investment service of ‘portfolio management’ as referred to in point (4) of Section A of Annex I of Directive 2004/39/EC Part 3 of Schedule 2 to the Regulated Activities Order, the assets under management by the firm are below [EUR 500 million].

3. Where the proposed acquirer referred to in paragraph 1 has been assessed by the competent authority of the target entity within the previous two years regarding the information referred to in Articles 4 and 5, that proposed acquirer shall only provide those pieces of information that have changed since the previous assessment.

Where the proposed acquirer only provides those pieces of information that have changed since the previous assessment in accordance with the first subparagraph, the proposed acquirer shall sign a declaration informing the competent authority of the target entity that there is no need to update the rest of information.

…

This Regulation shall be binding in its entirety and directly applicable in all Member States.

…
Powers exercised

A. The Financial Conduct Authority ("the FCA"), being the appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards) (EU Exit) Regulations 2018 ("the Regulations"), with the approval of the Treasury, makes this instrument in the exercise of the power conferred by regulation 3 of the Financial Regulators’ Powers (Technical Standards) (EU Exit) Regulations 2018 ("the Regulations").

Pre-conditions to making

B. The FCA is the appropriate regulator for the EU Regulations as specified in Part 1 of the Schedule to the Regulations.

C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5.

D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

E. In this instrument:

“the Act” means the European Union (Withdrawal) Act 2018; and

“Exit Day” has the meaning given in the Act.

Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the Act) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the Act.

Amendments to EU Regulations

F. The following EU Regulations are amended in accordance with Annexes A–H of this instrument.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
</table>

**Commencement**

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Citation**

H. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Regulation) (EU Exit) (No 1) Instrument 2019.

By order of the Board

[date]
Annex A

COMMISSION DELEGATED REGULATION (EU) 2016/2020 of 26 May 2016
supplementing Regulation (EU) No 600/2014 of the European Parliament and of the
Council on markets in financial instruments with regard to regulatory technical
standards on criteria for determining whether derivatives subject to the clearing
obligation should be subject to the trading obligation

... 

Article -3
Application

This Regulation applies to the Financial Conduct Authority as a competent authority.

Article -2
Interpretation

1. References in this Regulation to Regulation 600/2014/EU shall mean Regulation
600/2014/EU as amended by [the Markets in Financial Instruments (Amendment) (EU
Exit) Regulations 2018].

2. For the purposes of this Regulation, where a term is defined in Article 2 of Regulation
600/2014/EU the same definition applies.

3. Paragraph 2 is subject to the specific definition set out in Article -1.

Article -1
Definitions

For the purposes of this Regulation, the following definition applies:

“trading venue” means any of the venues referred to in article 28(1)(a) to (d) of
Regulation 600/2014, as amended by [the Markets in Financial Instruments
(Amendment) (EU Exit) Regulations 2018].

Article 1
Sufficient third party buying and selling interest

When establishing whether a class of derivatives or relevant subset thereof has sufficient
third-party buying and selling interest to be considered sufficiently liquid for the trading
obligation, ESMA the competent authority shall apply the criteria in Article 32(3) of
Regulation (EU) No 600/2014, as further specified in Articles 2 to 5 below.
Article 2

Average frequency of trades

1. In relation to the average frequency of trades, *ESMA the competent authority* shall take into consideration the following elements:
   (a) the number of days on which trading took place;
   (b) the number of trades.

2. *ESMA The competent authority’s* analysis of the criteria in paragraph 1 shall take into account the distribution of trading executed on trading venues and executed OTC. *ESMA The competent authority* shall assess these criteria over a period of time of sufficient length to determine whether the liquidity of each class of derivatives or a relevant subset thereof is subject to seasonal or structural factors. *ESMA The competent authority* shall also consider whether trades are concentrated at certain points in time and over certain sizes over the period assessed and determine to what extent such concentration constitutes predictable patterns.

Article 3

Average size of trades

1. In relation to the average size of trades, *ESMA the competent authority* shall take into consideration the following elements:
   (a) the average daily turnover whereby the notional size of all trades combined shall be divided by the number of trading days;
   (b) the average value of trades whereby the notional size of all trades combined shall be divided by the number of trades.

2. *ESMA The competent authority’s* analysis of the criteria in paragraph 1 shall take into account the factors specified in Article 2(2).

Article 4

Number and type of active market participants

1. In relation to the number and type of active market participants, *ESMA the competent authority* shall take into consideration the following elements:
   (a) the total number of market participants trading in that class of derivatives or relevant subset thereof is not lower than two;
   (b) the number of trading venues that have admitted to trading or are trading the class of derivatives or a relevant subset thereof;
   (c) the number of market makers and other market participants under a binding
written agreement or an obligation to provide liquidity.

2. **ESMA** The competent authority analysis shall compare the ratio of market participants to the findings in the data obtained for the analyses of average size of trades and the average frequency of trades.

**Article 5**

**Average size of spreads**

1. In relation to the average size of spreads, **ESMA** the competent authority shall take into consideration the following elements:
   (a) the size of weighted spreads, including volume weighted spreads, over different periods of time;
   (b) spreads at different points in time of trading sessions.

2. Where information on spreads is not available, **ESMA** the competent authority shall take into consideration a proxy for the assessment of this criterion.

**Article 6**

**Entry into force and application**

...

This Regulation shall be binding in its entirety and directly applicable in all Member States.

...
Annex B

COMMISSION DELEGATED REGULATION (EU) 2016/2022 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third-country firms and the format of information to be provided to the clients

... 

Article 1

Interpretation

(1) Where a term is defined in Directive 2014/65/EU that term shall apply for the purposes of this Regulation except where (2) applies;

(2) Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that definition shall apply for the purposes of this Regulation.

Article 1

Information necessary for the registration

A third-country firm applying for the provision of investment services or performance of activities throughout the Union in the United Kingdom in accordance with the second subparagraph of Article 46(4) of Regulation (EU) No 600/2014 shall submit the following information to ESMA, the Financial Conduct Authority:

(a) full name of the firm, including its legal name and any other trading name to be used by the firm;

(b) contact details of the firm, including the head office address, telephone number and email address;

(c) contact details of the person in charge of the application, including telephone number and email address;

(d) website, where available;

(e) national identification number of the firm, where available;

(f) legal entity identifier (LEI) of the firm, where available;

(g) Business Identifier Code (BIC) of the firm, where available;
(h) name and address of the competent authority of the third country that is responsible for the supervision of the firm; where more than one authority is responsible for supervision, the details of the respective areas of competence shall be provided;

(i) the link to the register of each competent authority of the third country, where available;

(j) information on which investment services, activities, and ancillary services it is authorised to provide in the country where the firm is established;

(k) the investment services to be provided and activities to be performed in the Union United Kingdom, together with any ancillary services.

Article 2

Information submission requirements

1. The third-country firm shall inform ESMA the Financial Conduct Authority, within 30 days, of any change of the information provided under Article 1(a) to (g), (j) and (k).

2. Information provided to ESMA the Financial Conduct Authority under Article 1(j) shall be provided through a written declaration issued by a competent authority of the third country.

3. The information provided to ESMA the Financial Conduct Authority under Article 1 shall be in English, using the Latin alphabet. Any accompanying documents provided to ESMA the Financial Conduct Authority under Article 1 and in paragraph 2 of this Article shall be in English or, where they have been written in a different language, a certified English translation shall also be provided.

Article 3

Information concerning type of clients in the Union United Kingdom

1. A third-country firm shall provide the information referred to in Article 46(5) of Regulation (EU) No 600/2014 to the clients in a durable medium.

2. The information referred to in Article 46(5) of Regulation (EU) No 600/2014, shall be:

(a) provided in English or in the official language, or one of the official languages, of the Member State where the services are to be provided;

(b) presented and laid out in a way that is easy to read, using characters of readable size; (c) without using colours that may diminish the
comprehensibility of the information.

Article 4
Entry into force and application

This Regulation shall be binding in its entirety and directly applicable in all Member States.

...
Annex C

COMMISSION DELEGATED REGULATION (EU) 2017/572 of 2 June 2016

supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data.

... 

Article -2

Application

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

Article -1

Interpretation

1. Where a term is defined in article 2 Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], the same definition applies for the purposes of this Regulation.

2. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

... 

This Regulation shall be binding in its entirety and directly applicable in all Member States.

...
Annex D

COMMISSION DELEGATED REGULATION (EU) 2017/579 of 13 June 2016
supplementing Regulation (EU) No 600/2014 of the European Parliament and of the
Council on markets in financial instruments with regard to regulatory technical
standards on the direct, substantial and foreseeable effect of derivative contracts within
the Union and the prevention of the evasion of rules and obligations

...
OTC derivative contracts for an aggregated notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency divided by the percentage of the liability covered;

(b) it is at least equal to 5 per cent of the sum of current exposures, as defined in Article 272(17) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (1), in OTC derivative contracts of the financial counterparty established in the Union United Kingdom issuing the guarantee.

2. When the guarantee is issued for a maximum amount which is below the threshold set out in paragraph 1(a), the contracts covered by that guarantee shall not be considered to have a direct, substantial and foreseeable effect within the Union United Kingdom unless the amount of the guarantee is increased, in which case the direct, substantial and foreseeable effect of the contracts within the Union United Kingdom shall be re-assessed by the guarantor against the conditions set out in points (a) and (b) of paragraph 1 on the day of the increase.

3. Where the liability resulting from one or more OTC derivative contracts is below the threshold set out in paragraph 1(a), such contracts shall not be considered to have a direct, substantial and foreseeable effect within the Union United Kingdom even where the maximum amount of the guarantee covering such liability is equal to or above the threshold set out in paragraph 1(a) and even where the condition set out in paragraph 1(b) has been met.

4. In the event of an increase in the liability resulting from the OTC derivative contracts or of a decrease of the current exposure, the guarantor shall re-assess whether the conditions set out in paragraph 1 are met. Such assessment shall be done respectively on the day of the increase of liability for the condition set out in paragraph 1(a), and on a monthly basis for the condition set out in paragraph 1(b).

5. OTC derivative contracts for an aggregate notional amount of at least EUR 8 billion or the equivalent amount in the relevant foreign currency concluded before a guarantee is issued or increased, and subsequently covered by a guarantee that meets the conditions set out in paragraph 1, shall be considered as having a direct, substantial and foreseeable effect within the Union United Kingdom.

6. An OTC derivative contract shall be considered as having a direct, substantial and foreseeable effect within the Union United Kingdom where the two entities established in a third country enter into the OTC derivative contract through their branches in the Union United Kingdom and would qualify as financial counterparties if they were established in the Union United Kingdom.

This Regulation shall be binding in its entirety and directly applicable in all Member States. 

...
Annex E


... 

Article -2

Application

This Regulation applies to operators of UK trading venues as defined by article 2(1)(16A) of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

Article -1

Interpretation

1. Where a term is defined in article 2 of Regulation 600/2014/EU, as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], that definition shall apply for the purposes of this Regulation;

2. Article 2(1)(62) of Regulation 600/2014/EU shall apply for the purposes of this Regulation.

3. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators’ requirements which would give effect to that EU legislation if the United Kingdom were a Member State.

Article 1

Scope, standards and format of relevant order data

1. Operators of trading venues shall keep at the disposal of the competent authority the details of each order advertised through their systems set out in Articles 2 to 13 as specified in the second and third columns of Table 2 of the Annex insofar as they pertain to the order concerned.

2. Where the competent authorities request any of the details referred to in paragraph 1 in accordance with Article 25(2) of Regulation (EU) No 600/2014,
the operators of trading venues shall provide such details using the standards and formats prescribed in the fourth columns of Table 2 of the Annex to this Regulation.

Article 2

Identification of the relevant parties

1. For all orders, operators of trading venues shall maintain the records on the following:
   (a) the member or participant of the trading venue who submitted the order to the trading venue, identified as specified in field 1 of Table 2 of the Annex;
   (b) the person or computer algorithm within the member or participant of the trading venue to which an order is submitted that is responsible for the investment decision in relation to the order, identified as specified in field 4 of the Table 2 of the Annex;
   (c) the person or computer algorithm within the member or participant of the trading venue that is responsible for the execution of the order, identified as specified in field 5 of Table 2 of the Annex;
   (d) the member or participant of the trading venue who routed the order on behalf of and in the name of another member or participant of the trading venue, identified as a non-executing broker as specified in field 6 of Table 2 of the Annex;
   (e) the client on whose behalf the member or participant of the trading venue submitted the order to the trading venue, identified as specified in field 3 of Table 2 of the Annex.

2. Where a member or participant or client of the trading venue is authorised under the United Kingdom legislation of a Member State to allocate an order to its client following submission of the order to the trading venue and has not yet allocated the order to its client at the time of the submission of the order, that order shall be identified as specified in field 3 of Table 2 of the Annex.

3. Where several orders are submitted to the trading venue together as an aggregated order, the aggregated order shall be identified as specified in field 3 of Table 2 of the Annex.

…

Article 13

Trading phases and indicative auction price and volume
1. Operators of trading venues shall maintain a record of the order details as specified in Section K of Table 2 of the Annex.

2. Where the competent authorities request details referred to in Section K pursuant to Article 1, the details referred to in fields 9 and 15 to 18 of Table 2 of the Annex shall also be considered as details pertaining to the order concerned by that request.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

Table 2
Details of orders

Section B — Trading capacity and liquidity provision

| 7 | Trading capacity | Indicates whether the order submission results from the member or, participant of the trading venue carrying out matched principal trading under Article 4(1)(38) of Directive 2014/65/EU, or dealing on its own account under Article 4(6) of Directive 2014/65/EU Article 2(1)(5) of Regulation 600/2014/EU. Where the order submission does not result from the member or participant of the trading venue carrying out matched principal trading or dealing on its own account, the field shall indicate that the transaction was carried out under any other capacity. | DEAL’ — Dealing on own account | "MTCH’ — Matched principal | ‘AOTC’ — Any other capacity |
| 8 | Liquidity provision activity | Indicates whether an order is submitted to a trading venue as part of a market-making strategy pursuant to Articles 17 and 48 of Directive 2014/65/EU or UK law corresponding to these provisions, or is submitted as part of another activity in accordance with Article 3 of this Regulation. | true’ | ‘false’ |
Annex F

COMMISSION DELEGATED REGULATION (EU) 2017/585 of 14 July 2016
supplementing Regulation (EU) No 600/2014 of the European Parliament and of the
Council with regard to regulatory technical standards for the data standards and
formats for financial instrument reference data and technical measures in relation to
arrangements to be made by the European Securities and Markets Authority and
competent authorities

…

Article -2

Application

This Regulation applies to:
a MiFID investment firm (other than a collective portfolio management investment firm) and a
UK RIE.

Article -1

Interpretation

In this technical standard, unless the contrary intention appears:

(1) words and expressions used have the same meaning as in Regulation 600/2014/EU, as
amended by [the Markets in Financial Instruments (Amendment) (EU Exit)
Regulations 2018];

(2) in accordance with article 2(1)(62) of Regulation 600/2014/EU, as amended by [the
Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018], all
references in this technical standard to a ‘trading venue’ are to a ‘UK trading venue;

(3) references to the ‘Regulated Activities Order’ are to the Financial Services and
Markets Act 2000 (Regulated Activities) Order 2001; and

(4) ‘MiFID investment firm’, ‘collective portfolio management investment firm’ and ‘UK
RIE’ are defined in accordance with the Glossary to the Handbook of Rules and
Guidance published by the Financial Conduct Authority immediately after Exit Day.

Article 1

Content, standards, form and format of reference data
Trading venues and systematic internalisers shall provide the competent authorities with all details of financial instrument reference data (‘reference data’) referred to in Table 3 of the Annex that pertain to the financial instrument concerned. All details provided shall be submitted in accordance with the standards and formats specified in Table 3 of the Annex, in an electronic and machine-readable form and in a common XML template in accordance with the ISO 20022 methodology.

Article 2

Timing for provision of reference data to the competent authorities

Trading venues and systematic internalisers shall provide their the competent authority by 21.00 CET each day they are open for trading with the reference data for all financial instruments that are admitted to trading or that are traded, including where orders or quotes are placed through their system, before 18.00 CET on that day.

Article 4

Arrangements to ensure effective receipt of reference data

1. Competent authorities The competent authority shall monitor and assess the completeness of the reference data they receive from a trading venue or systematic internaliser, and the compliance of that data with the standards and formats specified in Table 3 of the Annex.

2. Following receipt of reference data in respect of each day on which trading venues and systematic internalisers are open for trading, the competent authorities authority shall notify trading venues and systematic internalisers of any incompleteness in that data and of any failure to deliver reference data by the deadlines set out in Article 2.

3. ESMA shall monitor and assess the completeness of reference data it receives from competent authorities, and compliance of the data with the standards and formats specified in Table 3 of the Annex.

4. Following receipt of reference data from competent authorities, ESMA shall notify them of any incompleteness in that data and of any failure to deliver reference data by the deadlines set out in Article 7(1).

Article 5
Arrangements to ensure the quality of the reference data

Competent authorities The competent authority shall conduct quality assessments regarding the content and accuracy of the reference data received pursuant to Article 27(1) of Regulation (EU) No 600/2014 on at least a quarterly basis.

Article 6

Methods and arrangements for supplying reference data

1. Trading venues and systematic internalisers shall ensure that they provide complete and accurate reference data to their competent authority pursuant to Articles 1 and 3.

2. Trading venues and systematic internalisers shall put methods and arrangements in place that enable them to identify incomplete or inaccurate reference data previously submitted. A trading venue or systematic internaliser detecting that submitted reference data is incomplete or inaccurate shall promptly notify its competent authority and transmit to the competent authority complete and correct relevant reference data without undue delay.

Article 7

Arrangements for efficient exchange and publication of reference data

1. Competent authorities shall transmit complete and accurate reference data to ESMA each day no later than 23.59 CET using the secure electronic communication channel established for that purpose between competent authorities and ESMA.

2. On the day following receipt of reference data in accordance with paragraph 1, ESMA the competent authority shall consolidate the data received from each competent authority trading venue and systematic internaliser.

3. ESMA shall make the consolidated data available to all competent authorities by 8.00 CET on the day following its receipt using the secure electronic communication channels referred to in paragraph 1.

4. Competent authorities The competent authority shall use the consolidated data in respect of a given day and other available relevant data it considers necessary to validate the transaction reports in respect of transactions executed on that given day and reported pursuant to Article 26 of Regulation (EU) No 600/2014.
5. Each competent authority shall use the consolidated data for a given day to exchange transaction reports submitted on that given day in accordance with the second subparagraph of Article 26(1) of Regulation (EU) No 600/2014.

6. ESMA The competent authority shall publish the consolidated reference data from trading venues and systematic internalisers in an electronic, downloadable and machine-readable form.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

Table 2
Details to be reported as financial instrument reference data

<table>
<thead>
<tr>
<th>N.</th>
<th>FIELD</th>
<th>CONTENT TO BE REPORTED</th>
<th>FORMAT AND STANDARDS TO BE USED FOR REPORTING</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General Fields</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Instrument identification code</td>
<td>Code used to identify the financial instrument.</td>
<td>{ISIN}</td>
</tr>
<tr>
<td>2</td>
<td>Instrument full name</td>
<td>Full name of the financial instrument.</td>
<td>{ALPHANUM M-350}</td>
</tr>
<tr>
<td>3</td>
<td>Instrument classification</td>
<td>Taxonomy used to classify the financial instrument. A complete and accurate CFI code shall be provided.</td>
<td>{CFI_CODE}</td>
</tr>
<tr>
<td></td>
<td>Commodities or emission allowance derivative indicator</td>
<td>Indication as to whether the financial instrument falls within the definition of commodities derivative under Article 2(1) (30) of Regulation (EU) No 600/2014 or is a derivative relating to emission allowances referred to in Section C(4) of Annex I to Directive 2014/65/EU, paragraph 4 of Part 1 of Schedule 2 to the Regulated Activities Order.</td>
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</tr>
<tr>
<td>---</td>
<td>------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
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<tr>
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<td></td>
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</tbody>
</table>
Annex G

COMMISSION DELEGATED REGULATION (EU) 2017/590 of 28 July 2016
supplementing Regulation (EU) No 600/2014 of the European Parliament and of the
Council with regard to regulatory technical standards for the reporting of transactions
to competent authorities

...
Meaning of transaction

For the purposes of Article 26 of Regulation (EU) No 600/2014, the conclusion of an acquisition or disposal of a financial instrument referred to in Article 26(2) of Regulation (EU) No 600/2014 shall constitute a transaction.

... 

5. A transaction for the purposes of Article 26 of Regulation (EU) No 600/2014 shall not include the following:

(a) securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council;

... 

The exclusion provided for in point (a) of the first subparagraph shall not apply to the securities financing transactions to which a member of the European System of Central Banks or Bank of England is a counterparty.

... 

Article 4

Transmission of an order

1. An investment firm transmitting an order pursuant to Article 26(4) of Regulation (EU) No 600/2014 (transmitting firm) shall be deemed to have transmitted that order only if the following conditions are met:

(a) the order was received from its client or results from its decision to acquire or dispose of a specific financial instrument in accordance with a discretionary mandate provided to it by one or more clients;

(b) the transmitting firm has transmitted the order details referred to in paragraph 2 to another investment firm (receiving firm);

(c) the receiving firm is a MiFID investment firm and is subject to Article 26(1) of Regulation (EU) No 600/2014 and agrees either to report the transaction resulting from the order concerned or to transmit the order details in accordance with this Article to another MiFID investment firm.

For the purposes of point (c) of the first subparagraph the agreement shall specify the
time limit for the provision of the order details by the transmitting firm to the receiving firm and provide that the receiving firm shall verify whether the order details received contain obvious errors or omissions before submitting a transaction report or transmitting the order in accordance with this Article;

2. The following order details shall be transmitted in accordance with paragraph 1, insofar as pertinent to a given order:

(a) the identification code of the financial instrument;
(b) whether the order is for the acquisition or disposal of the financial instrument;
(c) the price and quantity indicated in the order;
(d) the designation and details of the client of the transmitting firm for the purposes of the order;
(e) the designation and details of the decision maker for the client where the investment decision is made under a power of representation;
(f) a designation to identify a short sale;
(g) a designation to identify a person or algorithm responsible for the investment decision within the transmitting firm;
(h) country of the branch of the investment firm supervising the person responsible for the investment decision and country of the investment firm's branch that received the order from the client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client;
(i) for an order in commodity derivatives, an indication whether the transaction is to reduce risk in an objectively measurable way in accordance with Article 57 of Directive 2014/65/EU regulation 17 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
(j) the code identifying the transmitting firm.

For the purposes of point (d) of the first subparagraph, where the client is a natural person, the client shall be designated in accordance with Article 6.

For the purposes of point (j) of the first subparagraph, where the order transmitted was received from a prior firm that did not transmit the order in accordance with the conditions set out in this Article, the code shall be the code identifying the transmitting firm. Where the order transmitted was received from a prior transmitting firm in accordance with the conditions set out in this Article, the code provided pursuant to point (j) referred to in the first subparagraph shall be the code identifying the prior transmitting firm.

3. Where there is more than one transmitting firm in relation to a given order, the order details referred to in points (d) to (i) of the first subparagraph of paragraph 2 shall be transmitted in respect of the client of the first transmitting firm.
4. Where the order is aggregated for several clients, information referred to in paragraph 2 shall be transmitted for each client.

...

Article 6

**Designation to identify natural persons**

1. A natural person shall be identified in a transaction report using the designation resulting from the concatenation of the ISO 3166-1 alpha-2 (2 letter country code) of the nationality of the person, followed by the national client identifier listed in Annex II based on the nationality of the person.

2. The national client identifier referred to in paragraph 1 shall be assigned in accordance with the priority levels provided in Annex II using the highest priority identifier that a person has regardless of whether that identifier is already known to the investment firm.

3. Where a natural person is a national of more than one European Economic Area (EEA) country, the country code of the first nationality when sorted alphabetically by its which appears first in the ISO 3166-1 alpha-2 code column in Annex II and the identifier of that nationality assigned in accordance with paragraph 2 shall be used. Where a natural person has a non-EEA nationality, the highest priority identifier in accordance with the field referring to ‘all other countries’ provided in Annex II shall be used. Where a natural person has EEA and non-EEA nationality, the country code of the EEA nationality and the highest priority identifier of that nationality assigned in accordance with paragraph 2 shall be used.

...

Article 13

**Conditions upon which legal entity identifiers are to be developed, attributed and maintained**

1. **Member States** The **United Kingdom** shall ensure that legal entity identifiers are developed, attributed and maintained in accordance with the following principles:
   
   (a) uniqueness;
   
   (b) accuracy;
   
   (c) consistency;
(d) neutrality;
(e) reliability;
(f) open source;
(g) flexibility;
(h) scalability;
(i) accessibility.

Member States The United Kingdom shall also ensure that legal entity identifiers are developed, attributed and maintained using uniform global operational standards, are subject to the governance framework of the Legal Entity Identifier Regulatory Oversight Committee and are available at a reasonable cost.

2. An investment firm shall not provide a service triggering the obligation to submit a transaction report for a transaction entered into on behalf of a client who is eligible for the legal entity identifier code, prior to obtaining the legal entity identifier code from that client.

3. The investment firm shall ensure that the length and construction of the code are compliant with the ISO 17442 standard and that the code is included in the Global LEI database maintained by the Central Operating Unit appointed by the Legal Entity Identifier Regulatory Oversight Committee and pertains to the client concerned.

Article 14

Reporting transactions executed by branches

1. An investment firm shall report transactions executed wholly or partly through its branch to the competent authority of the home Member State of the investment firm unless otherwise agreed by the competent authorities of the home and host Member States.

2. Where an investment firm executes a transaction wholly or partly through its branch, it shall report the transaction only once to the competent authority.

3. Where country code details in respect of an investment firm's branch are required to be included in a transaction report in accordance with fields 8, 17, 37, 58 or 60 of Table 2 of Annex I due to the partial or full execution of a transaction through that branch, the investment firm shall provide in the transaction report the ISO 3166 country code for the relevant branch in all of the following cases:

(a) where the branch received the order from a client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client;

(b) where the branch has supervisory responsibility for the person responsible for
the investment decision concerned;

(c) where the branch has supervisory responsibility for the person responsible for execution of the transaction;

(d) where the transaction was executed on a trading venue or an organised trading platform located outside the Union United Kingdom using the branch's membership of that trading venue or an organised trading platform.

4. Where one or more of the cases provided in paragraph 3 do not apply to a branch of the investment firm, the relevant fields in Table 2 of Annex I shall be populated with the ISO country code for the home Member State of the investment firm, or, in the case of a third country firm, the country code of the country where the firm has established its head office or registered office.

5. The branch of a third country firm shall submit the transaction report to the competent authority which authorised the branch. The branch of a third country firm shall fill in the relevant fields in Table 2 of Annex I with the ISO country code for the Member State of the authorising competent authority.

Where a third country firm has set up branches in more than one Member State within the Union, those branches shall jointly choose one of the competent authorities from the Member States to whom transaction reports are to be sent pursuant to paragraphs 1 to 3.

Article 15

Methods and arrangements for reporting financial transactions

1. The methods and arrangements by which transaction reports are generated and submitted by trading venues and investment firms shall include:

(a) systems to ensure the security and confidentiality of the data reported;

(b) mechanisms for authenticating the source of the transaction report;

(c) precautionary measures to enable the timely resumption of reporting in the case of a failure of the reporting system;

(d) mechanisms for identifying errors and omissions within transaction reports;

(e) mechanisms to avoid the reporting of duplicate transaction reports, including where an investment firm relies on a trading venue to report the details of transactions executed by the investment firm through the systems of the trading venue in accordance with Article 26(7) of Regulation (EU) No 600/2014;

(f) mechanisms to ensure that the trading venue only submits reports on behalf of those investment firms that have chosen to rely on the trading venue to send reports on their behalf for transactions completed through systems of the trading venue;
(g) mechanisms to avoid reporting of any transaction where there is no obligation to report under Article 26(1) of Regulation (EU) No 600/2014 either because there is no transaction within the meaning of Article 2 of this Regulation or because the instrument which is the subject of the transaction concerned does not fall within the scope of Article 26(2) of Regulation (EU) No 600/2014;

(h) mechanisms for identifying unreported transactions for which there is an obligation to report under Article 26 of Regulation (EU) No 600/2014, including cases where transaction reports rejected by the competent authority concerned have not been successfully re-submitted.

2. Where the trading venue or investment firm becomes aware of any error or omission within a transaction report submitted to the competent authority, any failure to submit a transaction report including any failure to resubmit a rejected transaction report for transactions that are reportable, or of the reporting of a transaction for which there is no obligation to report, it shall promptly notify the relevant competent authority of this fact.

3. Investment firms shall have arrangements in place to ensure that their transaction reports are complete and accurate. Those arrangements shall include testing of their reporting process and regular reconciliation of their front-office trading records against data samples provided to them by their competent authorities to that effect.

4. Where the competent authorities do not provide data samples, investment firms shall reconcile their front-office trading records against the information contained in the transaction reports that they have submitted to the competent authorities, or in the transaction reports that ARMs or trading venues have submitted on their behalf. The reconciliation shall include checking the timeliness of the report, the accuracy and completeness of the individual data fields and their compliance with the standards and formats specified in Table 2 of Annex I.

5. Investment firms shall have arrangements in place to ensure that their transaction reports, when viewed collectively, reflect all changes in their position and in the position of their clients in the financial instruments concerned at the time transactions in the financial instruments are executed.

6. Where an ARM, in accordance with instructions from the investment firm, cancels or corrects a transaction report submitted on behalf of an investment firm, the investment firm shall retain the details of the corrections and cancellations provided to it by the ARM.

7. The reports referred to in Article 26(5) of Regulation (EU) No 600/2014 shall be sent to the competent authority of the home Member State of the trading venue.

8. Competent authorities shall use secure electronic communication channels when exchanging transaction reports with each other.
Article 16

Determination of the most relevant market in terms of liquidity:

1. In the case of a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU, an emission allowance or a unit in a collective investment undertaking, the most relevant market in terms of liquidity for that financial instrument (the most relevant market) shall be determined once each calendar year on the basis of the data of the previous calendar year, provided that the financial instrument was admitted to trading or traded at the beginning of the previous calendar year, as follows:

   (a) for instruments admitted to trading on one or more regulated markets, the most relevant market shall be the regulated market where the turnover, as defined in Article 17(4) of Commission Delegated Regulation (EU) 2017/587 (1) for the previous calendar year for that instrument is the highest;

   (b) for instruments not admitted to trading on regulated markets, the most relevant market shall be the MTF where the turnover for the previous calendar year for that instrument is the highest;

   (c) for the purposes of points (a) and (b), the highest turnover shall be calculated by excluding all transactions that benefit from pre-trade transparency waivers pursuant to Article 4(1)(a), (b) or (c) of Regulation (EU) No 600/2014.

2. By derogation from paragraph 1 of this Article, where a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU, an emission allowance or a unit in a collective investment undertaking was not admitted to trading or traded at the beginning of the previous calendar year or where there is insufficient or non-existent data to calculate the turnover in accordance with point (c) of paragraph 1 of this Article for the purpose of determining the most relevant market for that financial instrument, the most relevant market for the financial instrument shall be the market of the Member State in which a request for admission to trading was first made or where the instrument was first traded.

3. In the case of a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument whose issuer is established in the Union, the most relevant market shall be the market of the Member State where the registered office of the issuer is situated.

4. In the case of a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument whose issuer is established outside the Union, the most relevant market shall be the market of the Member State where the request for admission to trading of that financial instrument was first made or where the financial instrument was first traded on a trading venue.

5. In the case of a financial instrument which is a derivative contract or a contract for difference or a transferable security within the meaning of Article 4(1)(44)(c) of Directive 2014/65/EU, the most relevant market shall be determined as follows:
(a) where the underlying in the financial instrument is a transferable security within the meaning of Article 4(1)(44)(a) of Directive 2014/65/EU or an emission allowance which is admitted to trading on a regulated market or is traded on an MTF, the most relevant market shall be the market deemed to be the most relevant market for the underlying security in accordance with paragraph 1 or 2 of this Article;

(b) where the underlying in a financial instrument is a transferable security within the meaning of Article 4(1)(44)(b) of Directive 2014/65/EU or a money market instrument which is admitted to trading on a regulated market or traded on an MTF or an OTF the most relevant market shall be the market deemed to be the most relevant market for the underlying financial instrument in accordance with paragraph 3 or 4 of this Article;

(c) where the underlying in a financial instrument is a basket which contains financial instruments, the most relevant market shall be the market of the Member State in which the financial instrument was first admitted to trading or traded on a trading venue;

(d) where the underlying in a financial instrument is an index which contains financial instruments, the most relevant market shall be the market of the Member State in which the financial instrument was first admitted to trading or traded on a trading venue;

(e) where the underlying of the financial instrument is a derivative admitted to trading or traded on a trading venue, the most relevant market shall be the market of the Member State in which that derivative is admitted to trading or traded on a trading venue.

6. For financial instruments that are not covered by paragraphs 1 to 5, the most relevant market shall be the market of the Member State of the trading venue which first admitted the financial instrument to trading or on which the financial instrument was first traded.

...
ANNEX

Table 2

Details to be reported in transaction reports

All fields are mandatory, unless stated otherwise.

<table>
<thead>
<tr>
<th>N</th>
<th>FIELD</th>
<th>CONTENT TO BE REPORTED</th>
<th>FORMAT AND STANDARDS TO BE USED FOR REPORTING</th>
</tr>
</thead>
<tbody>
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<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Trading venue transaction identification code</td>
<td>This is a number generated by UK or Union trading venues and disseminated to both the buying and the selling parties in accordance with Article 12 of Commission Delegated Regulation (EU) 2017/580(1). This field is only required for the market side of a transaction executed on a UK or Union trading venue.</td>
<td>{ALPHANUM-52}</td>
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</tbody>
</table>
— Where the transmission is for a transmitted order that has not met the conditions for transmission set out in Article 4 the receiving firm shall treat the transmitting firm as the buyer

<table>
<thead>
<tr>
<th>7</th>
<th>Buyer identification code</th>
<th>Code used to identify the acquirer of the financial instrument. Where the acquirer is a legal entity, the LEI code of the acquirer shall be used. Where the acquirer is a non-legal entity, the identifier specified in Article 6 shall be used. Where the transaction was executed on: a UK or Union trading venue or on an organised trading platform outside of the UK or Union that utilises a central counterparty (CCP) and where the identity of the acquirer is not disclosed, the LEI code of the CCP shall be used. Where the transaction was executed on a UK or Union trading venue or an organised trading platform outside of the UK or Union that does not utilise a CCP and where the identity of the acquirer is not disclosed, the MIC code of the trading venue or of the organised trading platform outside of the UK or Union shall be used.</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Country of the branch for the buyer</td>
<td>Where the acquirer is a client, this field shall identify the country of the branch that received the order from the client or made an investment decision for a client in accordance with a discretionary mandate given to it by the client as required by Article 14(3). Where this activity was not conducted by a branch this shall be populated with the country code of the home Member State of the investment firm or the country code of the country where the investment firm has established its head office or registered office (in the case of third country firms). Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated using the information received from the transmitting firm.</td>
</tr>
</tbody>
</table>

...
Seller identification code

Code used to identify the disposer of the financial instrument.
Where the disposer is a legal entity, the LEI code of the disposer shall be used.
Where the disposer is a non-legal entity, the identifier specified in Article 6 shall be used.
Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union UK that utilises a CCP and where the identity of the disposer is not disclosed, the LEI code of the CCP shall be used.
Where the transaction was executed on a trading venue or on an organised trading platform outside of the Union UK that does not utilise a CCP and where the identity of the disposer is not disclosed, the MIC code of the trading venue or of the organised trading platform outside of the Union UK shall be used.

...
## Transaction details

| 28 | Trading date time | Date and time when the transaction was executed. For transactions executed on a **UK or Union** trading venue, the level of granularity shall be in accordance with the requirements set out in Article of Commission Delegated Regulation (EU) 2017/574 (2). For transactions not executed on a **UK or Union** trading venue, the date and time shall be when the parties agree the content of the following fields: quantity, price, currencies in fields 31, 34 and 44, instrument identification code, instrument classification and underlying instrument code, where applicable. For transactions not executed on a **UK or Union** trading venue the time reported shall be at least to the nearest second. Where the transaction results from an order transmitted by the executing firm on behalf of a client to a third party where the conditions for transmission set out in Article 4 were not satisfied, this shall be the date and time of the transaction rather than the time of the order transmission. |

---
### Venue
Identification of the venue where the transaction was executed.

Use the ISO 10383 segment MIC for transactions executed on a **UK or Union** trading venue, a **UK or Union** Systematic Internaliser (SI) or organised trading platform outside of the **UK or Union**. Where the segment MIC does not exist, use the operating MIC.

Use MIC code ‘XOFF’ for financial instruments admitted to trading, or traded on a **UK or Union** trading venue or for which a request for admission was made to a **UK or Union** trading venue, where the transaction on that financial instrument is not executed on a **UK or Union** trading venue, **UK or Union** SI or organised trading platform outside of the **UK or Union**, or where an investment firm does not know it is trading with another investment firm acting as an **UK or Union** SI.

Use MIC code ‘XXXX’ for financial instruments that are not admitted to trading or traded on a **UK or Union** trading venue or for which no request for admission has been made and that are not traded on an organised trading platform outside of the **UK or Union** but where the underlying is admitted to trading or traded on a **UK or Union** trading venue.

### Country of the branch membership
Code used to identify the country of a branch of the investment firm whose market membership was used to execute the transaction.

Where a branch's market membership was not used, this field shall be populated with the country code of the **home Member State** of the investment firm or the country where the firm has established its head office or registered office (in the case of third country firms).

This field shall only be populated for the market side of a transaction executed on a trading venue or on an organised trading platform outside of the **UK or Union**.

---

**Instrument details**
| 41 | Instrument identification code | Code used to identify the financial instrument. This field applies to financial instruments for which a request for admission to trading has been made to a United Kingdom or Union trading venue, that are admitted to trading or traded on a United Kingdom or Union trading venue or on a United Kingdom or Union systematic internaliser. It also applies to financial instruments which have an ISIN and are traded on organised trading platform outside of the Union United Kingdom where the underlying is a financial instrument traded on a United Kingdom or Union trading venue. | [ISIN] |
| 42 | Instrument full name | Full name of the financial instrument | {ALPHANUM-350} |
| 43 | Instrument classification | Taxonomy used to classify the financial instrument. A complete and accurate CFI code shall be provided. | {CFI_CODE} |
| 44 | Notional currency 1 | Currency in which the notional is denominated. In the case of an interest rate or currency derivative contract, this will be the notional currency of leg 1 or the currency 1 of the pair. In the case of swaptions where the underlying swap is single-currency, this will be the notional currency of the underlying swap. For swaptions where the underlying is multi-currency, this will be the notional currency of leg 1 of the swap. | {CURRENCYCODE_3} |
| 45 | Notional currency 2 | In the case of multi-currency or cross-currency swaps the currency in which leg 2 of the contract is denominated. For swaptions where the underlying swap is multi-currency, the currency in which leg 2 of the swap is denominated | {CURRENCYCODE_3} |

Fields 42-56 are not applicable where transactions are executed on a UK or Union trading venue or with an investment firm acting as a UK or Union SI, or field 41 is populated with an ISIN that exists on the reference data list from ESMA.
| 46 | Price multiplier | Number of units of the underlying instrument represented by a single derivative contract. Monetary value covered by a single swap contract where the quantity field indicates the number of swap contracts in the transaction. For a future or option on an index, the amount per index point. For spreadbets the movement in the price of the underlying instrument on which the spreadbet is based. The information reported in this field shall be consistent with the values provided in fields 30 and 33. | {DECIMAL-18/17} |

...  

**Trader, algorithms, waivers and indicators**

| 57 | Investment decision within firm | Code used to identify the person or algorithm within the investment firm who is responsible for the investment decision. For natural persons, the identifier specified in Article 6 shall be used. If the investment decision was made by an algorithm, the field shall be populated as set out in Article 8. Field only applies for investment decision within the firm. Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm within the receiving firm's report using the information received from the transmitting firm. | {NATIONAL_ID} – Natural persons  
{ALPHANUM-50} – Algorithms |

| 58 | Country of the branch supervising the person responsible for the investment decision | Code used to identify the country of the branch of the investment firm for the person responsible for the investment decision, as set out in Article 14(3)(b). Where the person responsible for the investment decision was not supervised by a branch, this field shall be populated with the country code of the home Member State of the investment firm or the country code of the country where the firm has established its head office or registered office (in the case of third country firms). | {COUNTRYCODE_2} |

...  

| 60 | Country of the branch supervising the person responsible for the execution | Code used to identify the country of the branch of the investment firm for the person responsible for the execution of the transaction, as set out in Article 14(3)(c). Where the person responsible was not supervised by a branch, this field shall be populated with the country code of the home Member State of the investment firm country code of the country where the firm has established its head office or registered office (in the case of third country firms). This field is not applicable when the execution was made by an algorithm. | {COUNTRYCODE_2} |
Commodity derivative indicator

Indication as to whether the transaction reduces risk in an objectively measurable way in accordance with regulation 17 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 Article 57 of Directive 2014/65/EU.

Where the transaction is for a transmitted order that has met the conditions for transmission set out in Article 4, this field shall be populated by the receiving firm in the receiving firm's reports using the information received from the transmitting firm. This field is only applicable for commodity derivative transactions.

'false' – no

ANNEX II
National client identifiers for natural persons to be used in transaction reports

<table>
<thead>
<tr>
<th>ISO 3166 — 1 alpha 2</th>
<th>Country Name</th>
<th>1st priority identifier</th>
<th>2nd priority identifier</th>
<th>3rd priority identifier</th>
</tr>
</thead>
<tbody>
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<td>GB</td>
<td>United Kingdom</td>
<td>UK National Insurance number</td>
<td>CONCAT</td>
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</tr>
<tr>
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<td>United Kingdom</td>
<td>UK National Insurance number</td>
<td>CONCAT</td>
<td></td>
</tr>
<tr>
<td>[-]</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex H

COMMISSION DELEGATED REGULATION (EU) 2017/2194 of 14 August 2017
markets in financial instruments with regard to package orders

... 

Article -2

Application

This technical standard applies in accordance with Regulation 600/2014/EU, as amended by
the [Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

Article -1

Interpretation

Where a term is defined in article 2 Regulation 600/2014/EU, as amended by [the Markets in
Financial Instruments (Amendment) (EU Exit) Regulations 2018], the same definition applies
for the purposes of this Regulation.

Article 2(1)(62) of Regulation 600/2014/EU shall also apply to references to ‘trading venue’
in this Regulation.

...

This Regulation shall be binding in its entirety and directly applicable in all Member States.

...
Powers exercised

A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3.

Pre-conditions to making

B. The FCA and the Bank of England are the appropriate regulators for the Markets in Financial Instruments Regulation EU Regulations specified in Part 5 of the Schedule to the Regulations.

C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations and regulations 28 and 29 of Regulation 600/2014/EU as amended by [the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation

E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications

F. The following EU Regulations are amended in accordance with Annexes A–C of this instrument.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>supplementing Regulation (EU) 600/2014 of the European Parliament and</td>
<td>A</td>
</tr>
<tr>
<td>of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties.</td>
<td></td>
</tr>
</tbody>
</table>
### Commission Delegated Regulation (EU) 2017/582 of 29 June 2016


### Commission Delegated Regulation (EU) 2017/2154 of 22 September 2017


### Commencement

G. This instrument comes into force on [29 March 2019 at 11 p.m.].

### Citation

H. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Regulation) (EU Exit) (No 2) Instrument 2019.

By order of the Board  
[date]
ANNEX A


...

Article 1

Interpretation

1. Where a term is defined in article 2 of Regulation 600/2014/EU, that definition shall apply for the purposes of this Regulation save where the context requires otherwise.

2. References to “trading venue” are to the defined term in article 2(1)(16) of Regulation 600/2014/EU

CHAPTER I

NON-DISCRIMINATORY ACCESS TO CCPs AND TRADING VENUES

SECTION 1

...

Article 7

Denial of access by a trading venue based on other factors creating significant undue risks

A trading venue may deny an access request on grounds of significant undue risks in any of the following cases:

(a) threat to the economic viability of the trading venue or its ability to meet minimum capital requirements under Article 47(1)(f) of Directive 2014/65/EU of the European Parliament and of the Council paragraph 1 of the Schedule to the Financial Services and Markets Act (Recognition Requirements Regulations) 2001 (1);
(b) incompatibility of trading venue rules and CCP rules that the trading venue cannot remedy in cooperation with the CCP.


CHAPTER II

CONDITIONS UNDER WHICH ACCESS MUST BE PERMITTED

Article 9

Conditions under which access must be permitted

1. The parties shall agree on their respective rights and obligations arising from the access granted, including the applicable law governing their relationships. The terms of the access agreement shall:
   (a) be clearly defined, transparent, valid and enforceable;
   (b) where two or more CCPs have access to the trading venue specify the way in which transactions on the trading venue will be allocated to the CCP that is party to the agreement;
   (c) contain clear rules concerning the moment of entry of transfer orders, construed pursuant to Directive 98/26/EC of the European Parliament and of the Council, the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, into relevant systems and the moment of irrevocability;


Article 13

Netting of economically equivalent contracts

A CCP shall apply to economically equivalent contracts referred to in Article 12(1) of this Regulation the same netting procedures irrespective of where the contracts were traded, provided that any netting procedure it applies is valid and enforceable in accordance with Directive 98/26/EC the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 and applicable insolvency law.


Article 16

Notification procedure from the competent authority to ESMA and the CCP college
Relevant competent authorities shall notify ESMA and the CCP college of every decision to approve a transitional arrangement in accordance with Article 35(5) of Regulation (EU) No 600/2014 in writing without undue delay and no later than one month from the decision, using Form 2 set out in the Annex to this Regulation.

Article 17

Notification procedure from the trading venue to its competent authority regarding the initial transitional period

Where a trading venue does not wish to be bound by Article 36 of Regulation (EU) No 600/2014, it shall submit a notification to its competent authority and ESMA in written form, using Forms 3.1 and 3.2 set out in the Annex to this Regulation.

Article 18

Notification procedure from the trading venue to its competent authority regarding an extension of the transitional period

Where a trading venue wishes to continue not to be bound by Article 36 of Regulation (EU) No 600/2014 for a further thirty months, it shall submit a notification to its competent authority and ESMA in written form, using Forms 4.1 and 4.2 set out in the Annex to this Regulation.

…

Article 20

Approval and verification method by ESMA the competent authority

1. For the purposes of verification in accordance with Article 36(6)(d) of Regulation (EU) No 600/2014, the trading venue shall submit to ESMA on request all facts and figures on which the calculation is based.

2. For the purposes of verification in accordance with Article 36(6)(d) of Regulation 600/2014, when verifying the submitted annual notional amount figures, ESMA the competent authority shall also consider relevant post-trade data and annual statistics.

3. ESMA shall approve or reject the opt-out within three months of the reception of all relevant information for the notification in accordance with either Article 16 or 17, including the information specified in Article 19.
This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

Form 2

Notification referred to in Article 16

<table>
<thead>
<tr>
<th>Name of the CCP</th>
<th>Relevant contact details</th>
<th>Date of approval decision</th>
<th>Dates of beginning and end of transitional period</th>
<th>Name(s) of trading venue(s) connected by close-links</th>
<th>Jurisdiction(s) of trading venue(s) connected by close-links</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Beginning-End:</td>
<td>1.</td>
<td>1.</td>
<td>1.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2.</td>
<td>2.</td>
<td>2.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3.</td>
<td>3.</td>
<td>3.</td>
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<tr>
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<td></td>
<td></td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

Form 3.1

General notification referred to in Article 17
### Name of the trading venue

<table>
<thead>
<tr>
<th>Name(s) and jurisdiction(s) of trading venues in the same group based in the Union</th>
<th>Name(s) and jurisdiction(s) of CCP(s) connected by close links</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1.</td>
</tr>
<tr>
<td>2.</td>
<td>2.</td>
</tr>
<tr>
<td>3.</td>
<td>3.</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

---

**Form 3.2**

**Notification of notional amount referred to in Article 17**

<table>
<thead>
<tr>
<th>Trading Venue:</th>
<th>Traded notional amount in 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asset class X:</td>
<td></td>
</tr>
<tr>
<td>Asset class Y:</td>
<td></td>
</tr>
<tr>
<td>Asset class Z:</td>
<td>...</td>
</tr>
</tbody>
</table>
General notification referred to in Article 18

<table>
<thead>
<tr>
<th>Name of the trading venue</th>
<th>Relevant contact details</th>
<th>Name(s) and jurisdiction(s) of trading venues in the same group based in the Union UK</th>
<th>Name(s) and jurisdiction(s) of CCP(s) connected by close links</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1.</td>
<td>1.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2.</td>
<td>2.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3.</td>
<td>3.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>

...
Annex B


...

Article -1

Interpretation

1. References in this Regulation to Regulation 600/2014/EU shall mean Regulation 600/2014/EU as amended by [Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018].

2. For the purposes of this Regulation, where a term is defined in Article 2 of Regulation 600/2014/EU that definition applies.

3. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this Regulation.

...

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Annex C
COMMISSION DELEGATED REGULATION (EU) 2017/2154 of 22 September 2017
supplementing Regulation (EU) No 600/2014 of the European Parliament and of the
Council with regard to regulatory technical standards on indirect clearing
arrangements.

…

Article 2
Application

This Regulation applies in accordance with Regulation 600/2014/EU, as amended by the
[Markets in Financial Instruments (Amendment) (EU Exit Regulations 2018].

Article 1
Interpretation

1. For the purposes of this Regulation, where a term is defined in Article 2 of Regulation
600/2014/EU that definition applies.
2. Article 2(1)(62) of Regulation 600/2014/EU applies for the purposes of this
Regulation.

Article 1
Definitions

For the purposes of this Regulation the following definitions apply:
(a) ‘client’ means a client as defined in Article 2(15) of Regulation (EU) No
648/2012;
(b) ‘indirect client’ means a client of a client as defined in point (a);
(c) ‘indirect clearing arrangements’ means the set of contractual relationships
between providers and recipients of indirect clearing services provided by a
client, an indirect client or a second indirect client;
(d) ‘second indirect client’ means a client of an indirect client as defined in point
(b);
(e) ‘third indirect client’ means a client of a second indirect client as defined in
point (d).

Article 2
Requirements for the provision of indirect clearing services by clients
1. A client may only provide indirect clearing services to indirect clients provided that all of the following conditions are fulfilled:
   (a) the client is an authorised credit institution or investment firm or an entity established in a third country that would be considered to be a credit institution or investment firm if that entity were established in the Union United Kingdom;
   (b) the client provides indirect clearing services on reasonable commercial terms and publicly discloses the general terms and conditions under which it provides those services;
   (c) the clearing member has agreed to the general terms and conditions referred to in point (b) of this paragraph.

2. The client referred to in paragraph 1 and the indirect client shall conclude, in writing, an indirect clearing arrangement. The indirect clearing arrangement shall include at least the following contractual terms:
   (a) the general terms and conditions referred to in paragraph 1(b);
   (b) the client's commitment to honour all obligations of the indirect client towards the clearing member with regard to the transactions covered by the indirect clearing arrangement.

   All aspects of the indirect clearing arrangement shall be clearly documented.

3. A CCP shall not prevent the conclusion of indirect clearing arrangements that are entered into on reasonable commercial terms.

---

Article 7

Requirements for the provision of indirect clearing services by second indirect clients

1. A second indirect client may only provide indirect clearing services to third indirect clients provided that all of the following conditions are met:
   (a) the indirect client and the second indirect client are authorised credit institutions or investment firms or entities established in a third country that would be considered to be a credit institution or an investment firm if those entities were established in the Union United Kingdom;
   (b) the clearing member and the client are part of the same group, but the indirect client is not part of that group;
   (c) the indirect client and the second indirect client are part of the same group, but the third indirect client is not part of that group;
   (d) the second indirect client and the third indirect client conclude, in writing, an indirect clearing arrangement. The indirect clearing arrangement shall include at least the following contractual terms:
(i) the general terms and conditions referred to in Article 2(1)(b);
(ii) the second indirect client's commitment to honour all obligations of the third indirect client towards the indirect client with regard to transactions covered by the indirect clearing arrangement;
(e) the assets and positions of the third indirect client are held by the clearing member in an account as referred to in Article 4(2)(a).

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Powers exercised
A. The Financial Conduct Authority (“the FCA”), being an appropriate regulator within the meaning of The Financial Regulators’ Powers (Technical Standards) (EU Exit) Regulations 2018 (“the Regulations”), with the approval of the Treasury, makes this instrument in exercise of the powers conferred by regulation 3 of the Regulations.

Pre-conditions to making
B. The FCA is the appropriate regulator for the EU Regulations specified in Part 1 of the Schedule to the Regulations.
C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with regulation 5 of the Regulations.
D. A draft of this instrument has been approved by the Treasury, the Minister considering that it makes appropriate provision to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law, arising from the withdrawal of the United Kingdom from the European Union.

Interpretation
E. Any reference in this instrument to any EU Regulation or EU tertiary legislation (within the meaning of section 20 of the European Union (Withdrawal) Act 2018) is, unless the contrary intention appears, to be treated as a reference to that EU regulation or EU tertiary legislation which is part of UK law by virtue of the European Union (Withdrawal) Act 2018.

Modifications
F. The following EU Regulations are amended in accordance with Annexes A–C of this instrument.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission Delegated Regulation (EU) 826/2012 of 29 June 2012 supplementing Regulation (EU) 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares.</td>
<td>Annex A</td>
</tr>
<tr>
<td>Commission Implementing Regulation (EU) 827/2012 of 29 June 2012 laying down implementing technical standards with regard to the means for public disclosure of net position in shares, the format of the information to</td>
<td>Annex B</td>
</tr>
</tbody>
</table>
be provided to the European Securities and Markets Authority in relation to net short positions, the types of agreements, arrangements and measures to adequately ensure that shares or sovereign debt instruments are available for settlement and the dates and period for the determination of the principal venue for a share according to Regulation (EU) 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps.


Annex C

**Commencement**
G. This instrument comes into force on [29 March 2019 at 11 p.m.].

**Citation**
H. This instrument may be cited as the Technical Standards (Short Selling Regulation) (EU Exit) Instrument 2019.

**By order of the Board**

[date]
In this Instrument, deleted text is shown struck through and additional text is shown underlined.

ANNEX A

COMMISSION DELEGATED REGULATION (EU) No 826/2012 of 29 June 2012 supplementing Regulation (EU) No 236/2012 of the European Parliament and of the Council with regard to regulatory technical standards on notification and disclosure requirements with regard to net short positions, the details of the information to be provided to the European Securities and Markets Authority in relation to net short positions and the method for calculating turnover to determine exempted shares

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down regulatory technical standards specifying the following:

(a) the details of the information on net short positions to be provided to competent authorities the FCA and disclosed to the public by a natural or legal person pursuant to Article 9(5) of Regulation (EU) No 236/2012;
(b) the details of the information to be provided to the European Securities and Markets Authority (hereinafter ‘ESMA’) by the competent authority pursuant to Article 11(3) of Regulation (EU) No 236/2012;
(c) the method for calculation of turnover to determine the principal venue for the trading of a share pursuant to Article 16(3) of Regulation (EU) No 236/2012.

CHAPTER II

DETAILS OF THE INFORMATION ON NET SHORT POSITIONS TO BE NOTIFIED AND DISCLOSED

(ARTICLE 9 OF REGULATION (EU) No 236/2012)

Article 2

Notification of net short positions in shares, sovereign debt and uncovered sovereign credit default swaps to competent authorities

1. A notification made under Article 5(1), Article 7(1) or Article 8 of Regulation (EU) No 236/2012 shall contain the information specified in Table 1 of Annex I to this Regulation.

The notification shall be made using a form issued by the competent authority FCA which shall take the format set out in Annex II.

2. Where the competent authority FCA has secure systems in place that allows it to fully identify the person filing the notification and the position holder, including all the...
information contained in fields 1 to 7 of Table 1 of Annex I, the corresponding fields in the form may be left blank in the notification format.

3. A natural or legal person who has submitted a notification referred to in paragraph 1 which contains an error shall send, on becoming aware of the error, a cancellation to the relevant competent authority—FCA.

The cancellation shall be made using a form issued by that competent authority—the FCA—which shall take the format set out in Annex III.

The natural or legal person concerned shall submit a new notification in accordance with paragraphs 1 and 2 if necessary.

... 

CHAPTER III
DETAILS OF THE INFORMATION TO BE PROVIDED TO ESMA IN RELATION TO NET SHORT POSITIONS
(ARTICLE 11 OF REGULATION (EU) No 236/2012)

Article 4
Periodic information

Pursuant to Article 11(1) of Regulation (EU) No 236/2012, competent authorities shall provide ESMA with the following information on a quarterly basis:

(a) the daily aggregated net short position on each individual share in the main national equity index as identified by the relevant competent authority;
(b) the end of quarter aggregated net short position for each individual share which is not in the index referred to in point (a);
(c) the daily aggregated net short position on each individual sovereign issuer;
(d) where applicable, daily aggregated uncovered positions on credit default swaps of a sovereign issuer.

Article 5
Information upon request

Information to be provided by a relevant competent authority on an ad hoc basis pursuant to Article 11(2) of Regulation (EU) No 236/2012 shall include all requested information specified by ESMA that has not previously been submitted by the competent authority in accordance with Article 4 of this Regulation.

CHAPTER IV
METHOD OF CALCULATION OF TURNOVER TO DETERMINE THE PRINCIPAL TRADING VENUE FOR A SHARE
(ARTICLE 16 OF REGULATION (EU) No 236/2012)

Article 6

Turnover calculation to determine the principal venue for the trading of a share

1. When calculating turnover pursuant to Article 16 of Regulation (EU) No 236/2012, a relevant competent authority the FCA shall use the best available information, which may include:
   (a) publicly available information;
   (b) transaction data obtained under Article 25(3) of Directive 2004/39/EC of the European Parliament and of the Council Article 26(1) and (2) of Regulation 600/2014/EU;
   (c) information from trading venues where the relevant share is traded;
   (d) information provided by another competent authority a supervisory authority of a third country, including a competent authority of a third country;
   (e) information provided by the issuer of the relevant share;
   (f) information from other third parties, including data providers.

2. In determining what constitutes the best available information, the FCA shall ensure so far as reasonably possible that:
   (a) it uses publicly available information in preference to other sources of information;
   (b) the information covers all trading sessions during the relevant period, irrespective of whether the share traded during all of the sessions;
   (c) transactions received and included in the calculations are counted only once;
   (d) transactions reported through a trading venue but executed outside it are not counted.

3. The turnover of a share on a trading venue shall be deemed to be zero where the share is no longer admitted to trading on that trading venue even if the share was admitted to trading on the trading venue during the relevant calculation period.

…

This Regulation shall be binding in its entirety and directly applicable in all Member States.

…
Chapter I

General Provisions

Article 1

Subject Matter

This Regulation lays down implementing technical standards specifying the following:

(a) the means by which information on net short positions may be disclosed to the public by natural or legal persons as well as the format of information to be provided to the European Securities and Markets Authority (hereinafter “ESMA”) by competent authorities pursuant to Article 9(6) and Article 11(4) of Regulation (EU) No 236/2012;

(b) the types of agreements, arrangements and measures that adequately ensure that the shares are available for settlement and the types of agreements or arrangements that adequately ensure that the sovereign debt is available for settlement pursuant to Article 12(2) and 13(5) of Regulation (EU) No 236/2012;

(c) the date and period for principal trading venue calculations, notification to ESMA and the effectiveness of the relevant list pursuant to 16(4) of Regulation (EU) No 236/2012.

Chapter II

Means for Public Disclosure of Significant Net Short Positions in Shares

[Article 9 of Regulation (EU) No 236/2012]

Article 2

Means by which information may be disclosed to the public

Information on net short positions in shares shall be disclosed to the public by posting it on a central website operated or supervised by the relevant competent authority FCA pursuant to Article 9(4) of Regulation (EU) No 236/2012. The information shall be disclosed to the public through means which:
CHAPTER III

FORMAT OF THE INFORMATION TO BE PROVIDED TO ESMA BY COMPETENT AUTHORITIES IN RELATION TO NET SHORT POSITIONS

[ARTICLE 11 OF REGULATION (EU) No 236/2012]

Article 3

Format of the periodic information

1. The information to be provided on a quarterly basis to ESMA on net short positions in shares, sovereign debt and credit default swaps pursuant to Article 11(1) of Regulation (EU) No 236/2012 shall be provided by relevant competent authorities in the format specified in Annex II to this Regulation.

2. The information referred to in paragraph 1 shall be sent to ESMA electronically through a system established by ESMA that ensures that the completeness, integrity and confidentiality of the information are maintained during its transmission.

Article 4

Format of the information to be provided upon request

1. A relevant competent authority shall provide the information on net short positions in shares and sovereign debt or on uncovered positions relating to sovereign credit default swaps pursuant to Article 11(2) of Regulation (EU) No 236/2012 in the format specified by ESMA in its request.

2. Where information requested relates to information contained in the notification received by the competent authority pursuant to Articles 5, 7 and 8 of Regulation (EU) No 236/2012, that information shall be provided in accordance with the requirements established in Article 2 of Commission Delegated Regulation (EU) No 826/2012.
Information requested shall be sent by the competent authority in electronic format, using a system established by ESMA for exchanging information that ensures that the completeness, integrity and confidentiality of the information are maintained during its transmission.

CHAPTER IV
AGREEMENTS, ARRANGEMENTS AND MEASURES TO ADEQUATELY ENSURE AVAILABILITY FOR SETTLEMENT

[ARTICLES 12 AND 13 OF REGULATION (EU) No 236/2012]

... 

Article 6
Arrangements and measures to be taken in relation to short sales of a share admitted to trading on a trading venue

[Article 12(1)(c) of Regulation (EU) No 236/2012]

1. Paragraphs 2, 3 and 4 shall determine the arrangements and measures to be taken in relation to short sales of a share admitted to trading on a trading venue pursuant to Article 12(1)(c) of Regulation (EU) No 236/2012.

2. Standard locate arrangements and measures shall mean arrangements, confirmations and measures that include each of the following elements:
   (a) for locate confirmations: a confirmation provided by the third party, prior to the short sale being entered into by a natural or legal person, that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions and which indicates the period for which the share is located;
   (b) for put on hold confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that it has at least put on hold the requested number of shares for that person.

3. Standard same day locate arrangements and measures shall mean arrangements, confirmations and measures that include each of the following elements:
   (a) for requests for confirmation: a request for confirmation from the natural or legal person to the third party which states that the short sale will be covered by purchases during the day on which the short sale takes place;
   (b) for locate confirmations: a confirmation provided by the third party prior to the short sale being entered into that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions, and which indicates the period for which the shares are located;
   (c) for easy to borrow or purchase confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that the share is easy to borrow or purchase in the relevant quantity taking into account the market
conditions and other information available to that third party on the supply of the shares or, in the absence of this confirmation by the third party, that it has at least put on hold the requested number of shares for the natural or legal person;

(d) for monitoring: an undertaking by the natural or legal person to monitor the amount of the short sale not covered by purchases;

(e) for instructions in the event of failure to cover: an undertaking from the natural or legal person that in the event that executed short sales are not covered by purchases in the same day, the natural or legal person will promptly send an instruction to the third party to procure the shares to cover the short sale to ensure settlement in due time.

4. Easy to borrow or purchase arrangements and measures shall mean arrangements, confirmations and measures when the natural or legal person enters into a short sale of shares that meet the liquidity requirements established in Article 22 of Commission Regulation (EC) No 1287/2006, Article 1 of Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, or other shares that are included in the main national equity index as identified by the relevant competent authority of each Member State and are the underlying financial instrument for a derivative contract admitted to trading on a trading venue, that include the following elements:

(a) for locate confirmations: a confirmation provided by the third party prior to the short sale being entered into that it considers that it can make the shares available for settlement in due time taking into account the amount of the possible sale and market conditions and indicating the period for which the share is located;

(b) for easy to borrow or purchase confirmations: a confirmation by the third party, provided prior to the short sale being entered into, that the share is easy to borrow or purchase in the relevant quantity taking into account the market conditions and other information available to that third party on the supply of the shares, or in the absence of this confirmation by the third party, that it has at least put on hold the requested number of shares for the natural or legal person; and

(c) for instructions to cover: when executed short sales will not be covered by purchases or borrowing, a undertaking that a prompt instruction will be sent by the natural or legal person instructing the third party to procure the shares to cover the short sale to ensure settlement in due time.

5. The arrangements, confirmations and instructions referred to in paragraphs 2, 3 and 4 shall be provided in a durable medium by the third party to the natural or legal person as evidence of the existence of the arrangements, confirmations and instructions.
Article 8

Third parties with whom arrangements are made

1. Where an arrangement referred to in Articles 6 and 7 is made with a third party, the third party shall be one of the following types:
   (a) in the case of an investment firm: an investment firm which meets the requirements set out in paragraph 2;
   (b) in the case of a central counterparty: a central counterparty which clears the relevant shares or sovereign debt;
   (c) in the case of a securities settlement system: a securities settlement system as defined under Directive 98/26/EC of the European Parliament and of the Council which settles payments in respect of the relevant shares or sovereign debt;
   (d) in the case of a central bank: a central bank that accepts the relevant shares or sovereign debt as collateral or conducts open market or repo transactions in relation to the relevant shares or sovereign debt;
   (e) in the case of a national debt management entity: the national debt management entity of the relevant sovereign debt issuer;
   (f) any other person who is subject to authorisation or registration requirements in accordance with Union law by a member of the European System of Financial Supervision the Financial Services and Markets Act 2000 and meets the requirements set out in paragraph 2;
   (g) a person established in a third country who is authorised or registered, and is subject to supervision by an authority in that third country and who meets the requirements set out in paragraph 2, provided that the third country authority is a party to an appropriate cooperation arrangement concerning exchange of information with the relevant competent authority FCA.

2. For the purposes of points (a), (f) and (g) of paragraph 1, the third party shall meet the following requirements:
   (a) participate in the management of borrowing or purchasing of relevant shares or sovereign debt;
   (b) provide evidence of such participation;
   (c) be able, on request, to provide evidence of its ability to deliver or process the delivery of shares or sovereign debt on the dates it commits to do so to its counterparties including statistical evidence.

CHAPTER V

DETERMINATION OF THE PRINCIPAL TRADING VENUE FOR THE EXEMPTION
[ARTICLE 16 OF REGULATION (EU) No 236/2012]

Article 9

Date and period for principal trading venue calculations

1. Relevant competent authorities. The FCA shall make any calculations determining the principal trading venue for a share by at least 35 calendar days before the date of application of Regulation (EU) No 236/2012 in respect of the period between 1 January 2010 and 31 December 2011.

2. Subsequent calculations shall be made before 22 February 2014 in respect of the period between 1 January 2012 and 31 December 2013, and every two years thereafter in respect of the subsequent two year period.

3. Where the share concerned was not admitted to trading during the whole two-year period on the trading venue in the Union and the third country trading venue, the period for calculation shall be the period during which the share was admitted to trading on both venues concurrently.

Article 10

Date of notification to ESMA

Relevant competent authorities shall notify ESMA of those shares for which the principal trading venue is outside the Union at least 35 calendar days before the date of application of the Regulation (EU) No 236/2012 and thereafter on the day before the first trading day in March every second year commencing from March 2014.

Article 11

Effectiveness of the list of exempted shares

The list of shares for which the principal trading venue is located outside the Union shall be effective as of 1 April following its publication by ESMA, except that the first list published by ESMA shall be effective from the date of entry into application of Regulation (EU) No 236/2012.

Article 12

Specific cases of review of exempted shares

1. A relevant competent authority, which determines that the principal trading venue for a share is located outside the Union following one of the circumstances set out in paragraph 2 shall ensure that:

   (a) any calculations determining the principal trading venue are made as soon as possible after the relevant circumstances arise and in respect of the two year period preceding the date of calculation;
(b) it notifies ESMA of its determination as soon as possible and, where relevant, before the date of admission to trading on a trading venue in the Union.

Any revised list shall be effective from the day following that of its publication by ESMA.

2. The provisions of paragraph 1 apply when:

(a) the shares of a company are removed from trading on a permanent basis on the principal venue located outside the Union UK;

(b) the shares of a company are removed from trading on a permanent basis on a trading venue in the Union UK;

(c) the shares of a company that was previously admitted to trading in a trading venue outside the Union UK are admitted to trading on a trading venue in the Union UK.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX II

Format of the information to be provided to ESMA on quarterly basis (Article 3)

<table>
<thead>
<tr>
<th>Information</th>
<th>Format</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Issuer identification</td>
<td></td>
</tr>
<tr>
<td>For shares: full name of the company that has shares admitted to trading on a trading venue</td>
<td></td>
</tr>
<tr>
<td>For sovereign debt: full name of the issuer</td>
<td></td>
</tr>
<tr>
<td>For uncovered sovereign credit default swaps: full name of the underlying sovereign issuer</td>
<td></td>
</tr>
<tr>
<td>2. ISIN</td>
<td>For shares only: ISIN of the main class of ordinary shares of the issuer. If there are no ordinary shares admitted to trading, the ISIN of the class of preference shares (or of the main class of preference shares admitted to trading if there are several classes of such shares)</td>
</tr>
<tr>
<td>3. Country code</td>
<td>Two-letter code for the sovereign-issuer country in accordance with ISO standard 3166-1</td>
</tr>
<tr>
<td>4. Position date</td>
<td>Date for which the position is reported. Format in accordance with ISO standard 8601:2004 (yyyy-mm-dd)</td>
</tr>
<tr>
<td>5. Daily aggregated net short position on main national index shares</td>
<td>Percentage figure rounded to 2 decimal places</td>
</tr>
<tr>
<td></td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>6.</td>
<td>End of quarter aggregated net short position on other shares</td>
</tr>
<tr>
<td>7.</td>
<td>Daily aggregated net short positions in sovereign debt</td>
</tr>
<tr>
<td>8.</td>
<td>Daily aggregated uncovered positions on credit default swaps of a sovereign issuer</td>
</tr>
</tbody>
</table>
ANNEX C


…

Article 1

Subject matter

1. This Regulation specifies the method of calculation of the 10% fall in value for liquid shares traded on a trading venue as set out in Article 23(5) of Regulation (EU) No 236/2012.

2. That method of calculation shall exclude any downward movement of a price resulting exclusively from a split or any corporate action or similar measures adopted by the issuer on its issued share capital which can result in an adjustment of the price by the relevant trading venue.

…

Article 3

Method of calculation of a significant fall in value for other non-derivative financial instruments

1. A significant fall in value for financial instruments other than shares and not falling into the categories of derivatives listed in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC Part 1 of Schedule 2 to the Regulated Activities Order 2001 shall be calculated according to the method in paragraphs 2, 3 and 4.

2. For a financial instrument for which the significant fall in value referred to in Article 23(7) of Regulation (EU) No 236/2012 is measured in relation to a price on the relevant trading venue, that fall shall be calculated from the official closing price at the relevant trading venue defined according to the applicable rules of that trading venue.

3. For a financial debt instrument issued by a sovereign issuer for which the significant fall in value referred to in Article 23(7) of Regulation (EU) No 236/2012 is measured in relation to a yield curve, that fall shall be calculated as an increase across the yield curve in comparison with the yield curve of the sovereign issuer at the close of trading of the previous trading day, as calculated based on data available for the issuer on that trading venue.
4. For a financial instrument for which the significant fall in value referred to in Article 23(7) of Regulation (EU) No 236/2012 is measured in relation to a variation of the yield, that fall shall be calculated as an increase of the current yield as compared to the yield of that instrument at the close of trading of the previous trading day, as calculated based on data available for that instrument on that trading venue.

**Article 4**

**Method of calculation of a significant fall in value for derivatives**

A significant fall in value for financial instruments falling under the categories of derivatives listed in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC Part 1 of Schedule 2 to the Regulated Activities Order 2001 and which have a sole underlying financial instrument that is traded on a trading venue and for which a significant fall in value has been specified in accordance with Article 2 or Article 3, shall be calculated by reference to the significant fall in value of the underlying financial instrument.

…

This Regulation shall be binding in its entirety and directly applicable in all Member States.

…
Appendix 3 Draft Guidance – our approach to EU non-legislative materials

The purpose of this guidance

1. This guidance sets out the FCA’s approach to non-legislative material produced by the EU and, in particular, the European Supervisory Authorities (ESAs).

2. This guidance is relevant to firms, financial institutions and other market participants operating, or intending to operate, in the United Kingdom.

What are non-legislative materials?

3. The European Supervisory Authorities (ESAs) were established in 2011 to strengthen the coordination between national regulators of financial markets within the European Union (EU) and ensure the consistent application of EU financial legislation. They have the power to produce non-legislative material, either individually or through their Joint Committee. This includes Guidelines and Recommendations on the application of EU law, ‘Questions & Answers’ documents and Opinions. Similar material was also produced by other EU bodies in the past, including the ESAs’ predecessors and, in some instances, adopted by the ESAs.

ESA Guidelines and Recommendations

4. Each of the three ESAs – the European Securities & Markets Authority (ESMA), the European Insurance & Occupational Pensions Authority (EIOPA) and the European Banking Authority (EBA) – has the power to issue non-legally binding ‘Guidelines and Recommendations’ (‘Guidelines’) under their respective ESA Regulations, as tools to promote the consistent application of EU law across jurisdictions.

5. These Guidelines are directed to competent authorities, financial market participants and financial institutions. Competent authorities, and in some circumstances other market participants, notify the relevant ESA(s) of their intention to comply, or explain why they do not propose to comply. This is commonly called the ‘comply or explain’ process, under which the addressees are expected to ‘make every effort to comply’ with the Guidelines.

6. The ESAs maintain a record of Guidelines published and corresponding ‘comply and explain’ responses by the competent authorities, including those of the FCA.

Other EU non-legislative material

7. The ESAs also publish other non-legislative material which includes, by way of example:

- Opinions
- ‘Questions & Answers’ documents

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30 The Committee of European Securities Regulators, the Committee of European Banking Supervisors, and the Committee of European Insurance and Occupational Pensions Supervisors.

31 For example, Regulation (EU) No 1095/2010 created ESMA.

32 For ease of reference the rest of this guidance refers simply to “financial market participants” or “market participants”.
supervisory briefings

peer review analyses

best practices and statements to help build a common supervisory culture and consistent supervisory practices within the EU

warnings (e.g. around the risks associated with particular complex products).

**What is happening to non-legislative EU material in the UK post-exit?**

8. Under the EUWA, the broad range of non-legislative material produced by the European Supervisory Authorities (ESAs) or their predecessor bodies (for example, CESR) has not been incorporated into UK law. However, the EU derived law to which the non-legislative material relates has largely been retained. We therefore consider that the EU non-legislative material will remain relevant post-exit day to the FCA and market participants in their compliance with regulatory requirements including provisions in our Handbook.

**What is the FCA’s expectation in relation to the application of pre-exit EU non-binding material?**

**ESA Guidelines and Recommendations**

9. The FCA’s supervisory expectation in respect of Guidelines and Recommendations remains the same. Persons requiring authorisation or recognition to continue to provide services in the UK post-exit day will become subject to these expectations.

10. In particular:

i. we expect firms and market participants to continue to apply the Guidelines to the extent that they remain relevant, as they did before exit-day, interpreting them in light of the UK’s withdrawal from the EU and the associated legislative changes that are being made to ensure the regulatory framework operates appropriately

ii. the FCA shall continue to apply such Guidelines and Recommendations in respect of its own functions in the same manner as before, interpreting them in light of the UK’s withdrawal from the EU and the associated legislative changes.

**Other EU non-legislative material**

11. We will continue to have regard to other EU non-legislative material where and if they are relevant, taking account of Brexit and ongoing domestic legislation. Firms, market participants and stakeholders should also continue to do so.

**Are there any exceptions to our expectations to non-legislative EU material?**

12. Exceptions to the above approach are set out below.

13. Where the FCA has informed the relevant ESA that it would not comply with part of or all of a pre-exit Guideline we will continue this approach. For example, the FCA has notified that it would not comply with parts of the Guidelines in the cases listed below. In those circumstances, we explained our reasons for why it would not be appropriate to comply with all or part of the guidelines and the legal consequences of the refusal to comply. For example:

i. ESMA’s short-selling guidelines: We notified ESMA that we would comply with all the Guidelines with the exception of the provisions concerning the requirement to be a member of a trading venue (i.e. that a market maker be a member of a venue on
which the instrument trades that it wishes to make markets in) and the scope of the products eligible for the exemption (i.e. that the market making exemption should not be limited to equities, sovereign debt and equity/sovereign debt derivatives). We expect stakeholders to continue applying the Guidelines, with the exception of those provisions.

ii. EBA’s sound remuneration policies: We notified the EBA that we would comply with all aspects of these Guidelines, except for the requirement that the limit on awarding variable remuneration to 100% of fixed remuneration, or 200% with shareholder approval (‘the bonus cap’), must be applied in any case to all firms subject to the Capital Requirements Directive.

iii. EBA’s internet payment security guidelines: We notified the EBA that, while fully supportive of the objectives behind the Guidelines, we did not have the power, without legislative change, to make binding rules requiring all payment service providers (credit institutions, payment institutions, and e-money institutions) to comply with the Guidelines. Implementation of the Guidelines would require some providers to make significant changes to their systems and controls, and significant additional changes would likely be necessary following implementation of the Payment Services Directive II. We noted that we indicated to participants that compliance with the Secure Pay Recommendations would be needed, in line with PSD2 transposition requirements.

iv. The Acquisitions Directive Guidelines: We notified the ESAs that we would comply with the Guidelines except for provisions relating to the identification of acquirers of indirect holdings. We noted firms should continue to use the existing methodology as laid out in Part II. We will continue to comply with the Guidelines in this way and expect firms to do so as well.

14. We have also made changes to the application of EBA Guidelines relating to the applicable notional discount rate for variable remuneration, compared to the position prior to exit-day. Pre-exit, SYSC 19A/19D required firms applying the discount rate to apply the approach prescribed in the Guidelines. This creates deficiencies as the formula is dependent on figures published by Eurostat which may cease to be produced for the UK following EU withdrawal. Therefore, post-exit we expect firms to make every effort to comply with the Guidelines.

15. Post-exit day the FCA may determine that market participants are no longer expected to apply a particular pre-exit Guideline, for example, due to changes made to the relevant legislation. In those circumstances, this guidance will be updated accordingly.

16. Finally, we maintain our approach to the ESMA MIFID Q&A ‘Appropriateness/Complex Financial Instruments’. The ESMA Q&A states that shares in non-UCITS collective investment undertakings explicitly excluded under point (i) of Article 25(4) of the MIFID II cannot be deemed non-complex financial instruments for the purposes of the appropriateness test. We stated in our MIFID 17/14 Policy Statement that, ‘in our view,
investment trusts and non-UCITS retail schemes (NURS) are neither automatically non-complex nor automatically complex, but must be assessed against the criteria set out in the MiFID II delegated regulation'. We also said that 'when firms apply these criteria, they should adopt a cautious approach if there is any doubt as to whether a financial instrument is non-complex. This remains our view of how this part of MiFID II should be interpreted, and how firms should apply these rules.'

**Post-exit non-legislative EU material**

17. The FCA may consider materials produced by the ESAs post-exit, including where pre-exit material is updated. Where we consider it appropriate to do so, we will set out our expectations as to how it should be treated.

**How to interpret non-legislative EU material**

18. As a result of the UK’s withdrawal from the EU, EU non-binding materials may include references which no longer have their intended effect (for example, references to legislation that may have been amended during the withdrawal process and may therefore no longer be correct). In these situations, we expect firms and other market participants to sensibly and purposively interpret EU non-binding material, taking into account the UK’s withdrawal from the EU, the provisions of the Act and amendments made to relevant legislation in the withdrawal process, including the FCA Handbook.

19. Examples of where non-legislative EU material needs to be interpreted in line with the UK’s withdrawal from the EU include:

   a. References to passporting across the EU. References to passporting or associated processes have been deleted from UK legislation and are no longer relevant. References in non-legislative EU material to passporting and associated processes that have been deleted from legislation can be ignored.

   b. References to reporting to the ESAs are redundant, as there are no longer requirements in UK legislation to report to the ESAs. References in non-legislative EU material to ESA reporting and associated processes that can be interpreted in light of the amendments made to the relevant legislation.

   c. References to any roles or responsibilities currently carried out by EU authorities. Those have, to the extent that they remain relevant, been reallocated to the most appropriate UK authority. Firms should interpret references to EU functions with reference to the new UK authority taking on that function. This may be the case, for example, for equivalence assessments and recognition of third-country jurisdictions for market access.