

Financial Conduct Authority



Consultation Paper

CP14/18*

Quarterly consultation

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The Financial Conduct Authority invites comments on this Consultation Paper. Comments should reach us by 5 November 2014.

Comments may be sent by electronic submission using the form on the FCA's website at www.fca.org.uk/your-fca/documents/consultation-papers/cp14-18-response-form or by email to cp14-18@fca.org.uk.

Alternatively, please send comments in writing to:

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

All responses should be sent to:

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

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

You can download this Consultation Paper from our website: www.fca.org.uk.

Abbreviations used in this paper

AIF	alternative investment fund
AIFM	alternative investment fund manager
AIFMD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010
CASS	Client Assets sourcebook
CBA	cost benefit analysis
CCA	Consumer Credit Act 1974
CMAR	client money and asset return
CP	consultation paper
DTR	Disclosure Rules and Transparency Rules sourcebook
EEA	European Economic Area
ESMA	European Securities and Markets Authority
FCA	Financial Conduct Authority
FEES	Fees manual
FRC	The Financial Reporting Council
FSMA	Financial Services and Markets Act 2000
FUND	Investment Funds sourcebook
LR	Listing Rules sourcebook
Part 4A permission	a firm's permission granted under Part IV of FSMA to carry on a regulated activity
PD	Prospectus Directive
PIP	primary information provider
PR	Prospectus Rules sourcebook

PS	policy statement
RAO	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (as amended)
RIS	Regulatory Information Service
RTS	Regulatory Technical Standard
The Code	UK Corporate Governance Code
UK	United Kingdom

1. Overview

Chapter No	Proposed changes to Handbook	Consultation Closing Period
2	Amendment to the procedure for processing a direction or determination by the FCA waiving, varying or disapplying requirements under the Consumer Credit Act 1974.	5 November 2014
3	Minor amendments to clarify Listing Regime provisions, correct and update guidance and propose a new fee for reviewing a material change to a published investment policy.	5 November 2014
4	Amend CASS 6 to apply to: (i) small AIFMs when carrying out certain activities that are not already caught by CASS 6; and (ii) all assets held by depositaries of authorised AIFs.	5 November 2014

2. Changes to the Supervision manual (SUP)

Introduction

- 2.1 This chapter sets out our proposal to amend the procedure we use when we receive an application for a direction or determination waiving, varying or disapplying the requirements in the Consumer Credit Act 1974 (CCA) under Chapter 8A of the Supervision manual (SUP).
- 2.2 The proposal will be of interest to consumer credit firms intending to apply for such a direction or determination.
- 2.3 The proposed amendment and the statutory powers it will be made under are set out in Appendix 2.

Summary of proposals

- 2.4 We are proposing to remove our stated aim of giving waiver decisions within 20 business days in SUP 8A.3.5G to bring it in line with SUP 8.3.5G, which outlines the process for waivers of non-CCA rules.
- 2.5 The proposed change will allow us to utilise our resources more effectively and economically to meet the needs of firms and those of their customers, as we will be able to respond more quickly when firms specify faster turnaround times in line with commercial requirements.
- 2.6 We will publish more information on our website to help firms understand the turnaround times for decisions on directions and determinations.

Q2.1 Do you have any comments on the proposal to remove our stated aim of giving a direction or determination decision within 20 business days?

Cost benefit analysis

- 2.7 We are not required to publish a cost benefit analysis for our proposal as it relates to guidance under section 139A of the Financial Services and Markets Act 2000 (FSMA).
- 2.8 The proposed amendment will not increase costs as it updates guidance in SUP, and will enable us to respond more effectively to firms' direction or determination applications.

Compatibility statement

- 2.9** Section 3B of FSMA requires us to have regard to the regulatory principles. The proposed change does not undermine any of these principles as it removes an unnecessary procedural measure and enables us to use our resources in the most efficient and economical way. It is also compatible with our approach of being more transparent about our regulatory activities.
- 2.10** The proposed change is not expected to have a significantly different impact on mutual societies.

Equality and diversity

- 2.11** We have considered whether equality and diversity issues arise from our proposal and have concluded that it does not give rise to discrimination and is of low relevance to the equality agenda.

3.

Minor amendments to the Listing, Prospectus and Disclosure and Transparency rules

Introduction

- 3.1** In this chapter we are proposing some minor changes to various parts of the FCA Handbook which are set out below.
- 3.2** This chapter will be of interest to:
- UK and overseas issuers with UK-listed securities or considering a listing of their securities
 - firms advising on the issuance of UK-listed securities, and
 - firms or persons investing in UK-listed securities.
- 3.3** The proposed amendments and the statutory powers they will be made under are set out in Appendix 3.

Summary of proposals

- 3.4** We are proposing minor amendments to the following sourcebooks and manual which are considered in turn below:
- Listing Rules sourcebook (LR)
 - Prospectus Rules sourcebook (PR)
 - Disclosure Rules and Transparency Rules sourcebook (DTR), and
 - Fees manual (FEES).
- 3.5** The proposed amendments clarify existing provisions, correct and update guidance and propose a new fee for reviewing a material change to a published investment policy.

Listing Rules

Approval of circulars

- 3.6** LR 13.2.1R requires that a premium listed company must not circulate or publish a circular unless it has been approved by the FCA. We are proposing to narrow the scope of circulars requiring prior approval by the FCA to the following circulars.
- Class 1 acquisition (including those relating to a reverse takeover) and disposal circulars.
 - Circulars seeking shareholder approval for related party transactions.
 - Circulars relating to buybacks where a working capital statement is required by LR 13.7.1R(2)(f).
 - Reconstruction and refinancing circulars where a working capital statement is required by LR 9.5.12R(1).
 - Circulars seeking cancellation of premium listing under LR 5.2.5R(1) or a transfer into or out of the premium listing (investment company) or a transfer from premium listing to standard listing under LR 5.4A.4R(2).
- 3.7** LR 13.2.2R sets out the types of circulars that do not require FCA approval. Consequently, we are proposing to delete LR 13.2.2R, LR13.2.2AG and LR13.2.3R.
- 3.8** These proposals clarify which circulars will require formal review and approval by the FCA, and it will benefit premium listed companies as the approval process will be more efficient and less resource intensive.
- 3.9** We are also proposing to amend the approval process in LR 15.4.8R. Although we will still continue to formally scrutinise and approve material changes to a closed-ended investment fund's investment policy (as such changes could have a bearing on the fund's continued eligibility for listing), under this proposed change, this will be on a standalone basis rather than through the approval of the circular in which the change is presented to shareholders.
- 3.10** In LR 15.4.8AR, we are proposing to exclude from the requirement a material change to an investment policy that is proposed solely to allow winding up of a fund, where such winding up is either in line with its constitution or has shareholder approval.
- 3.11** As a consequence, we will no longer review and approve certain circulars. Typical examples are circulars relating to the following:
- share buybacks that do not include a working capital statement
 - schemes of arrangement
 - ratification circulars
 - shareholder requisitioned General Meetings
 - Creditors Voluntary Arrangements
 - share splits and consolidations that have unusual features, and
 - winding up and reconstruction circulars issued by funds.

- 3.12** Our experience suggests that narrowing the scope of our review will remove uncertainty, cost and inconvenience to issuers without damaging shareholder protection. Once these changes are implemented, we hope that it will no longer be necessary for companies to seek formal FCA guidance on whether a formal review process will be undertaken.
- 3.13** LR 13 will still apply to any circular issued by a premium listed company and we will retain the ability to take action against premium listed companies and their directors where deficient circulars are issued.
- 3.14** We believe that this proposal will benefit investors as well as premium listed companies, since it will allow an increased focus of our resources on areas where greater incremental improvements in shareholder protection can be obtained.

Q3.1: Do you agree with our proposal to amend LR 13.2.1R and LR 15.4.8R, insert new LR 15.4.8AR and delete LR 13.2.2R, LR 13.2.2AG and LR 13.2.3R, which will reduce the scope of the FCA's circular review and approval activities?

Insignificant subsidiary undertaking

- 3.15** Where a premium listed company proposes to enter into a transaction with a director or substantial shareholder, it has to consider how the provisions of LR 11 (Related party transactions) apply to such a transaction by virtue of them being identified as related parties.
- 3.16** The exemption in LR 11 Annex 1R allows directors or substantial shareholders of insignificant subsidiaries to be excluded from being identified as related parties of a premium listed company in certain circumstances.
- 3.17** To qualify for the exemption, item 9 of LR 11 Annex 1R sets out certain objective tests designed to demonstrate whether the subsidiary is insignificant. These include specifying that the subsidiary undertaking must have been in the premium listed company's group for one year or more, and setting out what is meant by the relevant period for showing that the subsidiary undertaking has contributed less than 10% of the profits of, and represented less than 10% of the assets of, the premium listed company.
- 3.18** The current drafting in items 9(3) and 9(4) of LR 11 Annex 1R suggests that the subsidiary need not have been a subsidiary for the whole period provided that it was part of the premium listed company's group in some form. Therefore, we are proposing to amend these items to clarify that the subsidiary undertaking must have actually been consolidated in the premium listed company's group for the relevant period for the exemption to apply.
- 3.19** We are also proposing to clarify that the references to one year and three years in items 9(3) and 9(4) of LR 11 Annex 1R are intended to be read as references to full financial years rather than calendar years. LR 11 Annex 1R sets out the calculation that must be performed to ascertain whether a subsidiary is insignificant. It is intended to apply only once this insignificance has been demonstrated based on the full period under review of at least one set of audited consolidated group accounts.

- 3.20** Our proposals clarify the insignificant subsidiary exemption for related party transactions.

Q3.2: Do you agree with our proposal to amend item 9 of LR 11 Annex 1R to allow the use of the insignificant subsidiary exemption only where such subsidiary has been consolidated within the premium listed company's group accounts for more than one full financial year?

Acquisition or disposal of mineral resources

- 3.21** LR 6.1.10R(2) enables a mineral company that does not hold controlling interests in a majority (by value) of its mineral assets to be eligible for premium listing, where it has a reasonable spread of direct interests in such assets and has rights to participate actively in their extraction (whether by voting or through other rights).
- 3.22** When such entities are undertaking a class 1 acquisition or disposal of such rights, the wording of LR 13.4.6R could be read to suggest that a mineral expert's report with accompanying glossary of technical terms is not required. This is because the text refers merely to mineral resources rather than rights to any such resources. This was not our policy intention. Therefore, we are proposing to amend the wording of LR 13.4.6R to also refer to 'rights to' mineral resources.
- 3.23** The proposal better aligns the requirements for class 1 transactions by mineral companies with the business models that they may adopt.

Q3.3: Do you agree with our proposal to amend LR 13.4.6R to also refer to 'rights to' mineral resources?

Accounting policies

- 3.24** LR 13.5.4R(2) sets out a list of exceptions to LR 13.5.4R(1) which requires that a premium listed company must present all financial information that it discloses in a class 1 circular in a form that is consistent with the accounting policies adopted in its own latest annual consolidated accounts. LR 13.5.4R(2) was amended in CP12/2¹ to reflect those instances where LR 13 allows issuers to deviate from this principle in producing a class 1 circular. These amendments omitted a reference to profit forecasts and estimates.
- 3.25** Therefore, we are proposing to clarify that the requirement to disclose all financial information using accounting policies adopted in the latest annual accounts does not apply when financial information is presented in line with LR 13.5.32R for profit forecasts and profit estimates, and to expand the list of exceptions in LR 13.5.4R(2).
- 3.26** LR 13.5.32R requires the company to comply with Annex 1 of the Prospectus Directive Regulation for the profit forecast or profit estimate. Item 13.3 of Annex 1 states that the profit forecast or profit estimate must be prepared on a basis comparable with the historical financial information and any further direction regarding accounting policies is superfluous.

¹ CP12/2 *Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules* (January 2012)

- 3.27** The proposed amendment is in LR 13.5.4R(2)(g). This requirement would apply to a profit forecast or a profit estimate of either the listed company or its target.
- 3.28** These proposals clarify the accounting policies that are permitted to be used when presenting a profit forecast in a circular for a class 1 transaction.

Q3.4: Do you agree with our proposal to amend LR 13.5.4R(2) to allow a profit forecast or a profit estimate included in class 1 circulars to be prepared in accordance with LR 13.5.32R?

Historical financial information

- 3.29** To be eligible for a premium listing, a new applicant must (amongst other things) have published or filed financial information that represents at least 75% of the applicant's business for a period of at least three years (track record period).
- 3.30** Where a new applicant falls short of the 75% requirement as a result of acquisitions that have occurred during its track record period, it must provide historical financial information relating to the pre-acquisition period for the acquired entity or entities to make up the full three years and meet the 75% threshold.
- 3.31** LR 6.1.3DR(1) suggests that target financial information should be presented from the start of the applicant's three year track record until the date of acquisition by the applicant where such acquisition(s) has occurred after the last balance sheet date of the three year track record presented by the applicant's group. As such, for these later acquisitions, this requirement ostensibly requires that a track record of more than three years is presented for the target.
- 3.32** Therefore, we are proposing to clarify that audited financial information covering three years is sufficient in this circumstance for both applicant and target. The proposed amendment to LR 6.1.3DR clarifies that the historical financial information on the acquired entity must cover the period up to the earlier of the balance sheet date of the most recent audited financial information (this is the date referred to in LR 6.1.3R(1)(b)) or of the date of acquisition by the new applicant. In all other respects the rule remains unchanged.
- 3.33** For example, in a situation where the new applicant and the acquired entity's year end falls on 31 December, the prospectus is being published in May and the acquisition that triggered LR 6.1.3DR took place in February (ie after the most recent balance sheet date but prior to the publication of the prospectus), the historical financial information on the acquired entity would have to cover the period of 3 years up to 31 December. This is because the balance sheet date of the most recent audited financial information as at 31 December is earlier than the date of the acquisition, which is in February.
- 3.34** We recognise that there may be cases where the financial information for the acquirer and the acquired entity is not aligned with the accounting periods. We would be willing to consider, on a case by case basis, waiver requests proposing to include target financial information with a more recent balance sheet date than that of the acquirer, provided that such target audited financial information covers a period of at least 3 years.
- 3.35** These proposals correct an anomaly in the rules.

Q3.5: Do you agree with our proposal to amend LR 6.1.3DR(1) to clarify the period that needs to be covered by the historical financial information where LR 6.1.3DR applies?

Definition of 'investment trust'

- 3.36** The definition of 'investment trust' within LR Appendix 1 still refers to the Corporation Taxes Act 1988, so we are proposing to update the reference to the Corporation Tax Act 2010.

Q3.6: Do you agree with the proposed amendment to the definition of investment trust in LR Appendix 1?

UK Corporate Governance Code

- 3.37** The Financial Reporting Council (FRC) is responsible for promoting confidence in corporate governance and reporting. The UK Corporate Governance Code (the Code) also falls under the responsibilities of the FRC. The Code sets out standards for listed companies of good practice for leadership, effectiveness, accountability and communication.
- 3.38** The provisions of the Code are supported in the LR as the LR requires premium listed issuers to report on the extent to which they comply or do not comply with the provisions of the Code and to explain their reasons. The LR also requires premium listed companies to state how they have applied the principles of the Code. The DTR also refer to a number of provisions of the Code. Therefore, whenever the Code is revised we have to assess how these revisions impact the LR and the DTR.
- 3.39** The FRC published a new edition of the Code in September 2012 (2012 Code). It applies to reporting periods beginning on or after 1 October 2012. Therefore, we are proposing to amend the LR and DTR to update the definition of the Code and to make a number of other consequential changes.
- 3.40** We are proposing to revise LR 9.8.10R, which requires a premium listed company to ensure that the auditors have reviewed various statements made by the company in its annual report in respect of a number of the Code provisions.
- 3.41** While some provisions referred to in LR 9.8.10R(2) remained the same, several provisions have been expanded.
- C.1.1 (explanation of the board's responsibilities in preparing the annual report and accounts) has been expanded to require the directors to state that they consider the annual report to be fair, balanced and understandable.
 - C.3.2 (list of the audit committee's main roles and responsibilities) has been expanded to require the committee to report to the board on how it has discharged its responsibilities.
 - While provision C.3.3 has not changed substantively, it has been split into provisions C.3.3 and C.3.8 (previously provision C.3.7), which sets out certain items that need to be included when describing the work of the committee in the annual report.

- C.3.4 is new and requires the committee, where requested by the board, to advise on whether the annual report is fair, balanced and understandable.
- C.3.6 (now C.3.7, recommending the appointment or removal of the external auditor) has been expanded to say that FTSE 350 companies should put the external audit contract out to tender at least every ten years.
- C.3.7 (safeguarding objectivity and independence of the auditor providing non-audit services) has been retained as part of the expanded provision in C.3.8.

3.42 We are proposing to amend LR 9.8.10R so that auditors would have to review parts of the statement that relate to provisions C.1.1, C.2.1, C.3.1 to C.3.8 of the Code. We do not believe that these changes will affect premium listed companies because we understand that companies already apply the 2012 Code.

3.43 We are also proposing to amend DTR 7.1.7G and DTR 7.2.8G to include a reference to provision C.3.8. This is because provision C.3.3 has been split so the requirement to describe the work of the committee in discharging its responsibilities has been moved to C.3.8 and has been expanded to provide a description of the specific items that should be included in the report to comply with this provision.

Q3.7: Do you agree with the proposal to amend LR 9.8.10R(2), DTR 7.1.7G and DTR 7.2.8G?

3.44 The FRC has recently consulted on its two-yearly review of changes to the Code following earlier consultations on directors' remuneration (October 2013) and risk management, internal control and the going concern basis of accounting (November 2013). This consultation was published in April 2014 and closed on 27 June 2014. We intend to consult on any changes to LR and DTR that may be required as a result of the FRC's latest consultation at a later date.

Definition of the Code

3.45 LR Appendix 1 and the Glossary define the Code and refer to the edition of the Code published by the FRC in May 2010 (2010 Code). This requires updating to refer to the 2012 Code.

3.46 We are proposing to amend the definition of the Code in LR Appendix 1 to refer to the 2012 Code by partitioning the definition of the Code in the Glossary so that where the Code is used in relation to the LR and the DTR, it is defined by reference to the 2012 Code. The effect of the partitioning is that where the Code is used in the remainder of the Handbook, the definition remains unchanged and continues to refer to the 2010 Code.

Q3.8: Do you agree with the proposal to amend the definition of the Code in LR Appendix 1 and the Glossary?

Transitional provisions for LR and DTR

3.47 To facilitate the application of the 2012 Code and to ensure that companies and other relevant stakeholders are clear about which edition of the Code is relevant to a specific provision of the LR or the DTR, we are proposing to introduce transitional provisions for LR and DTR.

- 3.48** In relation to the LR, where a premium listed company has an accounting period ending before 30 September 2013, it must apply the 2010 Code.
- 3.49** Premium listed companies with an accounting period ending on or after 30 September 2013, but before the effective date² will have a choice. They will be able to apply either the 2010 Code or the 2012 Code. This means that premium listed companies that have continued to report against the 2010 Code during the relevant period will not be in breach of the LR. Equally, premium listed companies that have already applied the 2012 Code, while LR still referred to the 2010 Code, will not be in breach of the LR for applying the 2012 Code. We are also proposing to include guidance so that where a company chooses not to apply the 2012 Code, we would expect it to disclose this fact in the relevant statement contained in their annual report.
- 3.50** Where a premium listed company has an accounting period ending after the effective date, it must apply the 2012 Code.
- 3.51** In relation to the DTR, we have introduced transitional provisions so that for issuers with an accounting period ending before 30 September 2013, references to the Code are to the 2010 Code. For issuers with an accounting period ending on or after 30 September 2013, but before the effective date, references to the Code may be read as either the 2010 Code or the 2012 Code. For issuers with an accounting period ending after the effective date, references to the Code are to the 2012 Code.

Q3.9: Do you agree with the proposal on transitional provisions set out in LR TR 13 and DTR TP 24 and 25?

Disclosure Rules and Transparency Rules

Incorrect reference to RIS

- 3.52** An 'RIS' is defined in the Handbook as a 'regulatory information service' and is an umbrella term for 2 types of information providers:
- FCA approved primary information providers (PIP), and
 - incoming EEA information society service providers.
- 3.53** We have become aware of an incorrect reference in DTR 6.2.3G to an 'RIS'. This guidance relates to DTR 6.2.2R, which requires an issuer or person who discloses regulated information to file that information with the FCA at the same time. DTR 6.2.3G sets out that this requirement can be met by using an 'RIS' to disseminate the information in accordance with DTR 6.3.
- 3.54** However, as set out in DTR 8.4.30R (and as was the case under the now deleted RIS Criteria), only an FCA approved PIP is required to supply the regulated information it receives to the FCA (via the FCA's agent, the National Storage Mechanism (Morningstar)). Incoming EEA information society service providers are not subject to this requirement and so regulated information provided to them will not be automatically received by the FCA. Therefore, we are proposing to amend DTR 6.2.3G to refer to using a PIP. This means that an issuer who uses an RIS who is not an FCA approved PIP to disseminate regulated information on its behalf will be required to file regulated information with the FCA directly to satisfy DTR 6.2.2R.

² The effective date refers to the commencement date of the instrument that will be made after this consultation.

Q3.10: Do you agree with the proposed change to DTR 6.2.3G?

Prospectus Rules

- 3.55** PR 1.1.6G sets out a list of documents that need to be considered altogether when determining the effect of the Prospectus Directive (PD). We are proposing to amend the introductory wording to PR 1.1.6G and to update the list within it. We are also proposing to define these terms and to include them in PR Appendix 1 and the Glossary.
- 3.56** In relation to the proposed defined term 'Prospectus RTS Regulation', relevant extracts from the European Commission Delegated Regulation³, which sets out Regulatory Technical Standards (RTS) relating to the publication of supplements to the prospectus, have been copied out in PR 3.4.4 for the convenience of the reader. This definition will be updated as and when the Commission introduces further RTS.
- 3.57** In relation to the proposed defined term 'ESMA Prospectus Questions and Answers', we are proposing to include ESMA Prospectus Questions and Answers on prospectuses in the list of documents in PR 1.1.6G.
- 3.58** In relation to the proposed defined term 'ESMA Prospectus Opinion', we are proposing to include ESMA Opinion on the 'Format of the base prospectus and consistent application of Article 26(4) of the PD Regulation' in the list of documents in PR 1.1.6G.
- 3.59** 'ESMA recommendations' is already a defined term in PR Appendix 1, LR Appendix 1 and the Glossary. For consistency with our proposed new definitions, we are proposing to amend this term to 'ESMA Prospectus Recommendations'. Consequently, we are proposing to make some minor amendments to the following parts of the Handbook, which currently refer to 'ESMA recommendations': the definition of 'mineral expert's report' in the Glossary and LR Appendix 1, LR 13.4.8R and PR 5.6.5G.
- 3.60** We are also proposing to make consequential changes to PR 1.1.7G and PR 1.1.8G to reflect the new or amended defined terms and the policy intention set out above.
- 3.61** If the 'ESMA Prospectus Recommendations' or the 'ESMA Prospectus Questions and Answers' are updated during the consultation period, we will update the relevant definitions accordingly in the final rules.

Q3.11: Do you agree with the proposed amendments to PR 1.1.6G, PR 1.1.7G, PR 1.1.8G, PR 5.6.5G, LR 13.4.8R and the proposed defined terms?

Fees proposals

- 3.62** As noted above, where a premium listed closed-ended investment fund proposes a material change to its published investment policy under LR 15.4.8R, we are proposing to formally review and approve the material changes to the published investment policy on a standalone

³ (EU) No 382/2014

basis. We are proposing a fee of £650 for completing this review. The proposed fee has been included in FEES 3 Annex 5 (Document vetting and approval fees in relation to listing and prospectus rules).

Q3.12: Do you have any comments on our proposed fee for approving a material change to a closed-ended investment fund's investment policy?

Cost benefit analysis

- 3.63** Section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis when proposing draft rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.
- 3.64** We do not anticipate the proposed changes to the LR, PR and DTR having any significant cost implications. Therefore, a detailed cost benefit analysis has not been prepared.

Listing Rules

- 3.65** Our proposed changes are intended to reflect existing practice so we do not anticipate any increase in costs.
- 3.66** We anticipate that the proposals relating to the scope of FCA circular approval activities to be cost saving for premium listed companies while maintaining an appropriate degree of protection for consumers.

Disclosure Rules and Transparency Rules

- 3.67** The purpose of amending the DTR is to update references to the UK Corporate Governance Code and amend an incorrect reference to an RIS. This means the requirement to meet the obligations of DTR 6.2.2R are slightly more onerous as an issuer will need to use a person who is a PIP, rather than any other type of RIS, if they wish to avoid having to file regulated information with the FCA directly. We do not believe this will result in any significant increase in costs.

Prospectus Rules

- 3.68** Our proposed changes to the PR are intended to update a list of documents that we consider together determine the effect of the PD. This reflects current legislation, ESMA measures and UKLA practice so no additional costs will arise from these proposed changes.

Q3.13: Do you agree that our assessments of the costs are reasonable?

Compatibility statement

- 3.69** Under section 138I of FSMA, we are required to include an explanation of why we believe that making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and how we have had regard to the regulatory principles in section 3B of FSMA. We are also required, by section 138K(2) of FSMA, to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

- 3.70** The proposals set out in this chapter are compatible with the FCA's strategic objective of ensuring that the relevant markets function well, as they assist in ensuring that the LR, PR and DTR remain effective. The proposals will advance our operational objectives of enhancing market integrity and securing an appropriate degree of protection for investors by ensuring that the LR, PR and DTR reflect current market practice and remain effective.
- 3.71** We have had regard to all of the regulatory principles set out in section 3B FSMA. In particular, the proposals will:
- have minimal impact on our resources and our proposed reduced role in approving circulars will enable us to use these resources in other higher priority areas
 - not significantly increase the administrative burden on issuers and in relation to circulars will reduce the administrative burden on premium listed issuers, and
 - provide greater transparency to the rule making process.
- 3.72** In preparing the proposals we have also had regard to the FCA's duty to promote effective competition in the interests of consumers under section 1B(4) of FSMA.
- 3.73** We believe that the impact of our proposals do not significantly differ on mutual societies.

Equality and diversity

- 3.74** We consider that these proposals are of low relevance to the equality and diversity agenda.

4. The application of CASS 6 to certain alternative investment fund managers

Introduction

- 4.1** In CP13/9⁴, we consulted on making amendments to the custody rules (CASS 6) in the Client Assets sourcebook (CASS) to ensure that they were consistent with the Alternative Investment Fund Management Directive (AIFMD) and to make it clear how CASS 6 would apply to alternative investment fund (AIF) depositaries and alternative investment fund managers (AIFMs). These changes were implemented in PS13/5.⁵
- 4.2** In the course of implementing AIFMD an amendment was made to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) such that a firm with permission to carry on the regulated activity of 'managing an AIF' would not be deemed to be carrying on 'safeguarding and administering investments'⁶ in respect of any custodial activities carried on in connection with or for the purposes of managing an AIF.
- 4.3** It has come to our attention that, as a result of this combination of amendments to CASS 6 and the RAO, a number of small AIFMs who would not be required to appoint a depositary to hold AIF assets (to whom CASS 6 and FUND 3.11 would apply) do not themselves fall within the scope of CASS 6, even though they are carrying on activities which would otherwise constitute safeguarding and administering investments. Therefore, we are proposing to amend the rules to reflect our policy intention and make other minor amendments.
- 4.4** This chapter may be of interest to small authorised UK AIFMs, small registered UK AIFMs, full-scope AIFMs and depositaries of authorised AIFs.
- 4.5** The proposed amendments and the statutory powers they will be made under are set out in Appendix 4.

Summary of proposals

Small authorised UK AIFMs

- 4.6** Broadly, a small authorised UK AIFM is an AIFM with Part 4A permission to carry on the regulated activity of 'managing an AIF' and whose AIF assets under management do not exceed certain values prescribed in legislation.⁷

⁴ CP13/9 *Implementation of the Alternative Investment Fund Managers Directive Part 2* (March 2013)

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

⁶ Article 72AA(2) RAO

⁷ The Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773)
www.legislation.gov.uk/uksi/2013/1773/pdfs/ukxi_20131773_en.pdf

- 4.7** Guidance in CASS 6 currently sets out that ‘The custody rules do not apply to a firm that is managing an AIF...in relation to activities which are carried on by that firm in connection with or for the purposes of, managing the AIF...’⁸. As a result of the exclusion in article 72AA(2) RAO, firms who have permission for ‘managing an AIF’ are not deemed to be ‘safeguarding and administering investments’ so CASS 6 would not apply to the assets that these firms hold in the course of their AIF management which leaves them unprotected by CASS 6.
- 4.8** We are proposing to amend CASS 6 (and certain related rules including SUP 16.14 and client money and asset return (CMAR) guidance in SUP 16 Annex 29R) to ensure that a small authorised UK AIFM is required to apply CASS 6 when, in connection with or for the purposes of managing an AIF, it carries out activities that would have otherwise amounted to ‘safeguarding and administering investments’. In our view assets held in custody by small AIFMs require CASS 6 protection notwithstanding the exclusion in the RAO and, at the time of AIFMD implementation, there was no intention to remove them from the scope of CASS 6.

Q4.1: Do you agree with our proposals affecting small authorised UK AIFMs? If not, please provide reasons.

Small registered UK AIFMs

- 4.9** Under Schedule 8 of the RAO, small registered UK AIFMs do not require Part 4A permission for ‘managing an AIF’ so the exclusion in Article 72AA(2) RAO does not apply to them. To the extent that these firms are ‘safeguarding and administering investments’, they are already subject to CASS 6.
- 4.10** However, small registered UK AIFMs may act in a dual capacity as both a small registered UK AIFM for one or more funds, and a small authorised UK AIFM for other funds. Firms acting in a dual capacity will require Part 4A permission for ‘managing an AIF’ and would appear to benefit from the exclusion in Article 72AA(2) RAO in respect of all activities carried on in connection with or for the purposes of managing any AIF, including those that the firm is managing in its capacity as a small registered AIFM.
- 4.11** In order to ensure that assets that would have otherwise been subject to CASS 6 are kept within its scope, the amendments proposed ensure that both small authorised UK AIFMs and small registered UK AIFMs are subject to CASS 6 where they carry on activities which would otherwise constitute safeguarding and administering investments.

Q4.2: Do you agree with our proposals affecting small registered UK AIFMs? If not, please provide reasons.

Depositories of authorised AIFs

- 4.12** As currently drafted, CASS 6⁹ may not apply in respect of all the non-AIF custodial assets that may be held by a depository of an authorised AIF. This gap in the application of CASS 6 is unintended and we are proposing to amend CASS 6 to ensure that all assets held by a depository of an authorised AIF are afforded protection under the custody rules.

⁸ CASS 6.1.16BAG

⁹ CASS 6.1.1BR

Q4.3: Do you agree with our proposal to ensure all the assets held by the depositaries of authorised AIFs are protected under CASS 6? If not, please provide reasons.

Client money and asset return

- 4.13** We are also proposing to make consequential changes to the CMAR guidance in SUP 16 Annex 29R to reflect the wording and terminology that are used in the proposed rules. The proposed changes ensure it is clear that small AIFMs who are subject to CASS 6 must complete the CMAR when also caught by the application provisions in SUP 16.14.

Q4.4: What, if any, further clarification would be helpful for completing Section 6 of the CMAR? Please give details.

Cost benefit analysis

- 4.14** Section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.
- 4.15** CP13/32, CP13/9 and PS13/5 contained cost benefit analyses relating to the implementation of AIFMD. Given that the firms impacted by the proposals in this chapter are currently subject to CASS 6 or, until very recently, were subject to CASS 6 and currently continue to apply CASS 6, in our view these proposed changes are expected to impose no costs or costs of only minimal significance. For example, most small AIFMs continue to report their custody assets and comply with CASS 6 following AIFMD taking full effect on 22 July 2014.
- 4.16** The main benefit in this proposal is to ensure there are appropriate levels of consumer protection.

Compatibility statement

- 4.17** Section 138I(2)(d) of FSMA requires us to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B of FSMA. In addition, section 138K(2) of FSMA requires us to state whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
- 4.18** The proposals in this chapter are intended to advance our operational objective of securing appropriate levels of consumer protection by ensuring that the CASS 6 protections are applicable to assets held by small AIFMs and all assets held by depositaries of authorised AIFs.
- 4.19** In preparing the proposals set out in this chapter, we have had regard to the regulatory principles set out in s3B of FSMA and the importance of taking action intended to minimise financial crime as part of s1B(5)(b) of FSMA.

- 4.20** Our proposed changes refer to firms in the investment sector affected by AIFMD and do not refer to mutual societies. Therefore, we do not believe that the changes described in this chapter will have a different impact on mutual societies compared to other authorised persons.

Equality and diversity

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

Appendix 1

List of questions

- Q2.1:** Do you have any comments on the proposal to remove our stated aim of giving a direction or determination decision within 20 business days?
- Q3.1:** Do you agree with our proposal to amend LR 13.2.1R and LR 15.4.8R, insert new LR 15.4.8AR and delete LR 13.2.2R, LR13.2.2AG and LR13.2.3R, which will reduce the scope of the FCA's circular review and approval activities?
- Q3.2:** Do you agree with our proposal to amend item 9 of LR 11 Annex 1R to allow the use of the insignificant subsidiary exemption only where such subsidiary has been consolidated within the premium listed company's group accounts for more than one full financial year?
- Q3.3:** Do you agree with our proposal to amend LR 13.4.6R to also refer to 'rights to' mineral resources?
- Q3.4:** Do you agree with our proposal to amend LR 13.5.4R(2) to allow a profit forecast or a profit estimate included in class 1 circulars to be prepared in accordance with LR 13.5.32R?
- Q3.5:** Do you agree with our proposal to amend LR 6.1.3DR(1) to clarify the period that needs to be covered by the historical financial information where LR 6.1.3DR applies?
- Q3.6:** Do you agree with the proposed amendment to the definition of investment trust in LR Appendix 1?
- Q3.7:** Do you agree with the proposal to amend LR 9.8.10R(2), DTR 7.1.7G and DTR 7.2.8G?
- Q3.8:** Do you agree with the proposal to amend the definition of the Code in LR Appendix 1 and the Glossary?

- Q3.9:** Do you agree with the proposal on transitional provisions set out in LR TR 13 and DTR TP 24 and 25?
- Q3.10:** Do you agree with the proposed change to DTR 6.2.3G?
- Q3.11:** Do you agree with the proposed amendments to PR 1.1.6G, PR 1.1.7G, PR 1.1.8G, PR 5.6.5G, LR 13.4.8R and the proposed defined terms?
- Q3.12:** Do you have any comments on our proposed fee for approving a material change to a closed-ended investment fund's investment policy?
- Q3.13:** Do you agree that our assessments of the costs are reasonable?
- Q4.1:** Do you agree with our proposals affecting small authorised UK AIFMs? If not, please provide reasons.
- Q4.2:** Do you agree with our proposals affecting small registered UK AIFMs? If not, please provide reasons.
- Q4.3:** Do you agree with our proposal to ensure all the assets held by the depositaries of authorised AIFs are protected under CASS 6? If not, please provide reasons.
- Q4.4:** What, if any, further clarification would be helpful for completing Section 6 of the CMAR? Please give details.

Appendix 2

Direction or determination applications

**SUPERVISION MANUAL (DIRECTION OR DETERMINATION PROCESS)
INSTRUMENT 2014**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers in 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 [*date*].

Amendments to the Handbook

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

Citation

- D. This instrument may be cited as the Supervision Manual (Direction or Determination Process) (Amendment) Instrument 2014.

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

Annex

Amendments to the Supervision manual (SUP)

In this Annex, striking through indicates deleted text.

8A.3 Applying for a direction or determination by the FCA waiving, varying or disapplying CCA requirements

...

Procedure on receipt of an application

- 8A.3.5 G The *FCA* will acknowledge an application promptly and, if necessary, will seek further information from the *firm*. The time taken to determine an application will depend on the issues it raises. ~~However, the *FCA* will aim to give decisions within 20 business days of receiving an application which includes sufficient information. If the *FCA* expects to take longer, it will tell the *firm* and give an estimated decision date.~~ A *firm* should make it clear in the application if it needs a decision within a specific time.

...

Appendix 3

Listing regime

**LISTING, PROSPECTUS AND DISCLOSURE AND TRANSPARENCY RULES
(MISCELLANEOUS AMENDMENTS NO 3) INSTRUMENT 2014**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 84 (Prospectus rules);
 - (3) section 89C (Transparency rules);
 - (4) section 89O (Corporate governance rules);
 - (5) section 96 (Obligations of issuers of listed securities);
 - (6) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA;
 - (7) section 137A (General rule-making power);
 - (8) section 137T (General supplementary powers); and
 - (9) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the FCA Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Listing Rules sourcebook (LR)	Annex C
Prospectus Rules sourcebook (PR)	Annex D
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex E

Notes

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

Citation

- F. This instrument may be cited as the Listing, Prospectus and Disclosure and Transparency Rules (Miscellaneous Amendments No 3) Instrument 2014.

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

Annex A

Amendments to the Glossary of definitions

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

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

<i>ESMA Prospectus Opinion</i>	the opinion published by the European Securities and Markets Authority on the ‘Format of the base prospectus and consistent application of Article 26(4) of the Prospectus Regulation’ (ESMA/2013/1944).
<i>ESMA Prospectus Questions and Answers</i>	the Questions and Answers for prospectuses published by the European Securities and Markets Authority (ESMA/2014/35).
<i>Prospectus RTS Regulation</i>	the 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.

Amend the following definitions as shown.

...

<i>ESMA recommendations Prospectus Recommendations</i>	the <u>ESMA update of the CESR recommendations for the</u> The consistent implementation of the European Commission’s Commission Regulation on Prospectuses (EC) No 809/2004 published by the European Securities and Markets Authority implementing the Prospectus Directive (ESMA/2011/81 2013/319).
--------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

...

<i>mineral expert's report</i>	(in <i>LR</i>) a competent person's report prepared in accordance with paragraph 133 of the ESMA recommendations <u>ESMA Prospectus Recommendations</u> .
--------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------

...

<i>UK Corporate Governance Code</i>	(1) (except in <i>LR</i> and <i>DTR</i>) the UK Corporate Governance Code published in May 2010 by the Financial Reporting Council.
	(2) <u>(in <i>LR</i> and <i>DTR</i>) the UK Corporate Governance Code published in September 2012 by the Financial Reporting Council.</u>

...

Annex B

Amendments to the Fees manual (FEES)

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

3
Annex 5 **Document vetting and approval fees in relation to listing and prospectus rules**

R Part 1

Fee type	Fee amount £
----------	-----------------

Transaction vetting fees
 Transaction vetting fees relate to specific events or transactions that an *issuer* might be involved in during the year.

...

<u>Category</u> <u>2A</u>	<u>Approval of a material change to the published investment policy of a <i>closed-ended investment fund</i> under LR 15.4.8R</u>	<u>650</u>
------------------------------	-----------------------------------------------------------------------------------------------------------------------------------	------------

...

Annex C

Amendments to the Listing Rules sourcebook (LR)

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

6 Additional requirements for premium listing (commercial company)

6.1 Application

...

Historical financial information

...

- 6.1.3D R Where the *new applicant* has made an acquisition or series of acquisitions such that its own consolidated financial information is insufficient to meet the 75% requirement in LR 6.1.3BR, there must be historical financial information relating to the acquired entity or entities which has been published or filed and that:
- (1) covers the period from at least three years prior to the date under LR 6.1.3R(1)(b) up to ~~at least the date of acquisition by the *new applicant*~~; the earlier of:
 - (a) the date in LR 6.1.3R(1)(b); or
 - (b) the date of acquisition by the *new applicant*;

...

...

9 Continuing obligations

...

9.8 Annual financial report

...

Auditors report

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

...

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

...

- (c) C.3.1 to C.3.78.

...

11 Related party transactions: Premium listing

...

11 Annex 1 Transactions to which related party transaction rules do not apply

11 Annex R
1.1

...		
9	...	
	(3)	The <i>subsidiary undertaking</i> or each of the <i>subsidiary undertakings</i> (as the case may be) have been in the <i>listed company's group group</i> for 1 <u>one full financial</u> year or more.
	(4)	In paragraph (2), "relevant period" means:
	(a)	if the <i>subsidiary undertaking</i> or each of the <i>subsidiary undertakings</i> (as the case may be) have <u>has been part of consolidated in the listed company's group group</u> for more than 1 <u>one full financial</u> year but less than 3 <u>three full financial</u> years, each of the <u>full financial</u> years before the date of the transaction or arrangement for which accounts have been published; and
	(b)	if the <i>subsidiary undertaking</i> or any of the <i>subsidiary undertakings</i> (as the case may be) have <u>has been part of consolidated in the listed company's group group</u> for 3 <u>three full financial</u> years or more, each of the 3 <u>three full financial</u> years before the date of the transaction or arrangement for which accounts have been published.

...

13.2 Approval of circulars

Circulars to be approved

- 13.2.1 R A listed company must not circulate or publish a any of the following types of circular unless it has been approved by the FCA:
- (1) a class 1 circular or a circular which relates to a transaction which must comply with the requirements of a class 1 transaction;
 - (2) a related party circular;
 - (3) a circular that proposes the purchase by a listed company of its own shares which is required by LR 13.7.1R(2) to include a working capital statement;
[Note: LR 12.4.10G]
 - (4) a circular that proposes a reconstruction or a refinancing of a listed company which is required by LR 9.5.12R to include a working capital statement;
 - (5) a circular that proposes a cancellation of listing which is required to be sent to shareholders under LR 5.2.5R(1); or
 - (6) a circular that proposes a transfer of listing which is required to be sent to shareholders under LR 5.4A.4R(2).

Circulars not requiring approval

- 13.2.2 R ~~A circular does not need to be approved under LR 13.2.1R if:~~
- ~~(1) it is of a type referred to in LR 13.8, or only relates to a proposed change of name, or is an information only circular which does not relate to a shareholder vote, other than of a type referred to in LR 13.4.3R(3);~~
 - ~~(2) it complies with LR 13.3 and also, if it is a circular referred to in LR 13.8, any relevant requirements in that section; and~~
 - ~~(3) neither it, nor the transaction or matter to which it relates, has unusual features. [deleted]~~
- 13.2.2A G ~~The FCA may agree to waive the requirement for approval of a circular in circumstances other than those set out in LR 13.2.2R. [deleted]~~

When circulars about purchase of own equity shares need approval

- 13.2.3 R (1) ~~A circular relating to a resolution to give a listed company authority to purchase its own equity shares must be approved by the FCA under LR 13.2.1R if:~~

- (a) ~~the purchase by the *company* of its own *equity shares* is to be made from a *related party* (whether directly or through intermediaries); or~~
 - (b) ~~the exercise in full of the authority sought would result in the purchase of 25% or more of the *company's* issued *equity shares* (excluding *treasury shares*). [deleted]~~
- (2) ~~A *circular* referred to in paragraph (1)(a) does not need to be approved if:~~
- (a) ~~a tender is made to all holders of the *class* of *securities* on the same terms; or~~
 - (b) ~~for a market purchase under a general authority granted by shareholders, it is made without prior understanding, arrangement or agreement between the *company* and any *related party*. [deleted]~~

...

13.4 Class 1 circulars

...

Acquisition or disposal of mineral resources

- 13.4.6 R If a *class 1 transaction* relates to an acquisition or disposal of *mineral resources* or rights to mineral resources the *class 1 circular* must include:

...

...

Acquisition of a scientific research based company or related assets

- 13.4.8 R If a *class 1 transaction* relates to the acquisition of a *scientific research based company* or related assets, the *class 1 circular* must contain an explanation of the transaction's impact on the acquirer's business plan and the information set out in Section 1c of Part III (Scientific research based companies) of the *ESMA recommendations* *Prospectus Recommendations*.

...

13.5 Financial information in Class 1 Circulars

...

Accounting policies

- 13.5.4 R ...

- (2) The requirement set out in (1) does not apply when financial information is presented in accordance with:

...

- (f) the accounting policies to be used in the *issuer's* next financial statements, provided the *issuer's* last published annual consolidated accounts have been presented on a restated basis consistent with those to be used in its next accounts on or before the date of the *class 1 circular*; or

- (g) LR 13.5.32R (in relation to a *profit forecast* or a *profit estimate*).

...

15 Closed-Ended Investment Funds: Premium Listing

...

15.4 Continuing obligations

...

~~Shareholder approval for material~~ Material changes to investment policy

- 15.4.8 R ~~Unless LR 15.4.8AR applies, A a closed-ended investment fund must: obtain the prior approval of its shareholders to any material change to its published investment policy~~

- (1) submit any proposed material change to its published investment policy to the FCA for approval; and

- (2) having obtained the FCA's approval, obtain the prior approval of its shareholders to any material change to its published investment policy.

- 15.4.8A R A closed-ended investment fund is not required to seek the FCA's approval for a material change to its published investment policy if:

- (1) the change is proposed to enable the winding up of the closed-ended investment fund; and

- (2) the winding up:

- (a) is in accordance with the constitution of the closed-ended investment fund; and

- (b) will be submitted for approval by the shareholders of the closed-ended investment fund at the same time as the

proposed material change to the investment policy.

...

App 1 Relevant definitions

App 1.1 Relevant definitions

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

App 1.1.1

...		
<i>ESMA recommendations Prospectus Recommendations</i>		the <u>ESMA update of the CESR recommendations for the</u> : The consistent implementation of the European Commission's Commission Regulation on Prospectuses (EC) No 809/2004 published by the European Securities and Markets Authority implementing the Prospectus Directive (ESMA/2011/842013/319).
...		
<i>investment trust</i>		a <i>company listed in the United Kingdom or another EEA State</i> which:
	(a)	is approved by the Commissioners for HM Revenue and Customs under section <u>sections 842 1158 and 1159 of the Income and Corporation Taxes Act 1988 Corporation Tax Act 2010</u> (or, in the case of a newly formed <i>company</i> , has declared its intention to conduct its affairs so as to obtain such approval); or
	...	
...		
<i>mineral expert's report</i>		a competent person's report prepared in accordance with paragraph 133 of the <i>ESMA recommendations Prospectus Recommendations</i> .
...		
<i>UK Corporate Governance Code</i>		in relation to an issuer, the UK Corporate Governance Code published in May 2010 <u>September 2012</u> by the Financial Reporting Council.
...		

Insert the following text after LR TR 12. The text is not underlined.

Transitional Provisions for the UK Corporate Governance Code

TR 13 Transitional Provisions for the UK Corporate Governance Code

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1.	LR 9.8.6R(5), LR 9.8.6R(6) and LR 15.6.6R(2)	R	<p>(1) Where a <i>listed company</i> or a <i>closed-ended investment fund</i> has an accounting period ending before 30 September 2013, a reference to a Main Principle, principle or provision in the <i>UK Corporate Governance Code</i> is a reference to the Main Principle, principle or provision in the UK Corporate Governance Code published by the Financial Reporting Council in May 2010.</p> <p>(2) Where a <i>listed company</i> or a <i>closed-ended investment fund</i> has an accounting period ending on or after 30 September 2013 but before [effective date] 2014, a reference to a Main Principle, principle or provision in the <i>UK Corporate Governance Code</i> may be read as:</p> <p>a) a reference to the Main Principle, principle or provision in the UK Corporate Governance Code published by the Financial Reporting Council in May 2010; or</p> <p>b) a reference to the Main Principle, principle or provision in the UK Corporate Governance</p>	From [effective date] 2014	[Effective date] 2014

			Code published by the Financial Reporting Council in September 2012.		
2.	<i>LR 9.8.6R(5)</i> , <i>LR 9.8.6R(6)</i> and <i>LR 15.6.6R(2)</i>	G	Where <i>LR TR 13.1R(2)</i> applies, and a <i>listed company</i> or a <i>closed-ended investment fund</i> has applied the UK Corporate Governance Code published by the Financial Reporting Council in May 2010, the <i>FCA</i> expects a <i>listed company</i> or a <i>closed-ended investment fund</i> to disclose this in any statement required under <i>LR 9.8.6R(5)</i> (Application of main principles), <i>LR 9.8.6R(6)</i> (Comply or explain) or <i>LR 15.6.6R(2)</i> (Closed-ended investment fund with no executive directors).	From [effective date] 2014	[Effective date] 2014
3.	<i>LR 9.8.10R</i>	R	(1) Where a <i>listed company</i> or a <i>closed-ended investment fund</i> has an accounting period ending before 30 September 2013, the <i>listed company</i> or <i>closed-ended investment fund</i> must ensure that the auditors review each of the following before the annual report is published: a) <i>LR 9.8.6R(3)</i> (Statement by the directors that the business is a going concern); and b) parts of the statement required by <i>LR 9.8.6R(6)</i> (Comply or explain) that relate to provisions C.1.1, C.2.1 and C.3.1 to C.3.7 of the UK Corporate Governance Code published by the Financial Reporting Council in May 2010. (2) Where a <i>listed company</i> or a <i>closed-ended investment</i>		From [effective date] 2014

			<p><i>fund</i> has an accounting period ending on or after 30 September 2013 but before [effective date] 2014, the <i>listed company</i> must:</p> <p>a) comply with LR 9.8.10R (Auditors report); or</p> <p>b) ensure that the auditors review each of the following before the annual report is published:</p> <p>(i) LR 9.8.6R(3) (statement by the directors that the business is a going concern); and</p> <p>(ii) parts of the statement required by LR 9.8.6R(6) (Comply or explain) that relate to provisions C.1.1, C.2.1 and C.3.1 to C.3.7 of the UK Corporate Governance Code published by the Financial Reporting Council in May 2010.</p>		
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Annex D

Amendments to the Prospectus Rules sourcebook (PR)

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

1 Preliminary

1.1 Preliminary

...

Provisions implementing the prospectus directive

- 1.1.6 G The FCA considers that the following documents ~~need to be considered~~ together to determine the effect of the *prospectus directive*:

...

(3) these *rules*; ~~and~~

(4) the ~~ESMA recommendations~~; Prospectus Recommendations;

(5) the ESMA Prospectus Questions and Answers;

(6) the ESMA Prospectus Opinion; and

(7) the Prospectus RTS Regulation.

- 1.1.7 G To assist readers, extracts from the *Act* ~~and~~, the *PD Regulation* and the Prospectus RTS Regulation are reproduced in the text of these *rules*. Readers should however consult those documents themselves to see the full text.

ESMA ~~recommendations~~ materials

- 1.1.8 G In determining whether Part 6 of the *Act*, these *rules* ~~and~~, the *PD Regulation* and the Prospectus RTS Regulation have been complied with, the *FCA* will ~~take into account~~ consider whether a *person* has ~~complied~~ acted in accordance with the ~~ESMA recommendations~~ Prospectus Recommendations, the ESMA Prospectus Questions and Answers and the ESMA Prospectus Opinion.

...

5.6 Miscellaneous

...

Property Valuation Reports

5.6.5 G To comply with paragraph 130 of the ~~ESMA recommendations~~ Prospectus Recommendations, the FCA would expect a valuation report for a property company to be in accordance with either:

...

...

Insert the following new definitions in the appropriate alphabetical position. Amend the existing definitions. Underlining indicates new text and striking through indicates deleted text.

App 1.1 Relevant definitions

App 1.1.1 **Note:** The following definitions relevant to the *prospectus rules* are extracted from the *Glossary*.

...	
<u>ESMA Prospectus Opinion</u>	<u>the opinion published by the European Securities and Markets Authority on the 'Format of the base prospectus and consistent application of Article 26(4) of the Prospectus Regulation' (ESMA/2013/1944).</u>
<u>ESMA Prospectus Questions and Answers</u>	<u>the Questions and Answers for prospectuses published by the European Securities and Markets Authority (ESMA/2014/35).</u>
...	
ESMA recommendations <u>Prospectus Recommendations</u>	<u>the ESMA update of the CCSR recommendations for the consistent implementation of the European Commission's Commission Regulation on Prospectuses (EC) No 809/2004 published by the European Securities and Markets Authority implementing the Prospectus Directive (ESMA/2011/842013/319).</u>
...	
<u>Prospectus RTS Regulation</u>	<u>the 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.</u>
...	

Annex E

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

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

6 Continuing obligations and access to information

...

Filing of information with the FCA

...

- 6.2.3 G An *issuer* or *person* that discloses regulated information may comply with *DTR* 6.2.2R by using a ~~RIS~~ primary information provider to disseminate the information in accordance with *DTR* 6.3.

...

7 Corporate Governance

...

Audit committees and their functions

...

- 7.1.7 G In the *FCA's* view, compliance with provisions A.1.2, C.3.1, C.3.2, ~~and~~ C.3.3 and C3.8 of the *UK Corporate Governance Code* will result in compliance with *DTR* 7.1.1R to *DTR* 7.1.5R.

...

Corporate governance statements

...

- 7.2.8 G In the *FCA's* view, the information specified in provisions A.1.1, A.1.2, B.2.4, D.2.1, ~~and~~ C.3.3 and C3.8 of the *UK Corporate Governance Code* will satisfy the requirements of *DTR* 7.2.7 R.

...

TP 1 Disclosure and transparency rules

DTR Sourcebook - Transitional Provisions

(1)	(2) Material to which the Transitional provisions applies	(3)	(4) Transitional provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					
<u>24</u>	<u>DTR 7.1.7G</u> and <u>DTR 7.2.8G</u>	R	<p>(1) <u>Where an issuer has an accounting period ending before 30 September 2013, a reference to a provision in the UK Corporate Governance Code is a reference to the provision in the UK Corporate Governance Code published by the Financial Reporting Council in May 2010.</u></p> <p>(2) <u>Where an issuer has an accounting period ending on or after 30 September 2013 but before [effective date] 2014, a reference to a provision in the UK Corporate Governance Code may be read as:</u></p> <p>(a) <u>a reference to the provision in the UK Corporate Governance Code published by the Financial Reporting Council in May 2010; or</u></p> <p>(b) <u>a reference to the provision in the UK Corporate Governance Code published by the Financial Reporting Council in September 2012.</u></p>	From <u>[effective date] 2014</u>	<u>[Effective date] 2014</u>
<u>25</u>	<u>DTR 7.2.4G</u>	R	(1) <u>Where an issuer has an accounting period ending before 30 September 2013, a</u>	From <u>[effective</u>	<u>date]</u>

			<p><u>reference to the UK Corporate Governance Code is a reference to the UK Corporate Governance Code published by the Financial Reporting Council in May 2010.</u></p> <p>(2) <u>Where an issuer has an accounting period ending on or after 30 September 2013 but before [effective date] 2014, a reference to the UK Corporate Governance Code may be read as:</u></p> <p>(a) <u>a reference to the UK Corporate Governance Code published by the Financial Reporting Council in May 2010; or</u></p> <p>(b) <u>a reference to the UK Corporate Governance Code published by the Financial Reporting Council in September 2012.</u></p>	<u>date] 2014</u>	<u>2014</u>
--	--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------	-------------

Appendix 4

Alternative investment fund managers

CLIENT ASSETS SOURCEBOOK (AMENDMENT NO 7) INSTRUMENT 2015**Powers exercised**

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

Commencement

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

Amendments to the FCA Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Client Assets sourcebook (CASS)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Client Assets Sourcebook (Amendment No 7) Instrument 2015.

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

Annex A

Amendments to the Glossary of definitions

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

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

<i>excluded custody activities</i>	any activities of a <i>firm</i> with <i>Part 4A permission for managing a UCITS</i> or for <i>managing an AIF</i> that are carried on in connection with, or for the purposes of, managing a <i>UCITS</i> or an <i>AIF</i> (as the case may be) and which would amount to <i>safeguarding and administering investments</i> but for the exclusion in article 72AA of the <i>RAO</i> .
------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Amend the following definition as shown.

<i>safe custody asset</i>	...
	(b) in relation to <i>safeguarding and administering investments</i> that is not <i>MiFID business</i> and/or <i>acting as trustee or depositary of a UCITS, a safe custody investment</i> ; or
	(c) when <i>acting as trustee or depositary of an AIF, an AIF custodial asset</i> ; <u>or</u>
	(d) <u>in relation to <i>excluded custody activities</i> carried on by a <i>firm</i> acting as a <i>small AIFM, a safe custody investment</i>.</u>

Annex B

Amendments to the Client Assets sourcebook (CASS)

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

1A CASS firm classification and operational oversight

1A.1 Application

1A.1.1 R ...

(4) This chapter does not apply to a *firm* to which only CASS 6 applies, applied or is projected to apply, merely because ~~it is, was, or is projected to be a *firm* which arranges *safeguarding and administration of assets*;~~

(a) it is, was or is projected to be a *firm* which arranges *safeguarding and administration of assets*; or

(b) when acting as a *small AIFM* and in relation to *excluded custody activities*, it would be, would have been or would be projected to be a *firm* which arranges *safeguarding and administration of assets* but for the exclusion in article 72AA of the *RAO*.

...

6 Custody rules

6.1 Application

6.1.1 R This chapter (the *custody rules*) applies to a *firm*:

...

(1E) in respect of any arrangement for a *client* to transfer full ownership of a *safe custody asset* to the *firm* which is:

...

but the application of the *custody rules* to a *firm* under this paragraph is limited to the *rules* and *guidance* in CASS 6.1.6R to CASS 6.1.9G₂ and

(1F) when, acting as a *small AIFM*, it is carrying on *excluded custody activities*.

6.1.1A- R In applying the *custody rules* to a *small AIFM*'s *excluded custody activities* falling under CASS 6.1.1R(1F), any reference to a *firm* carrying on the

- 1 regulated activities of safeguarding and administering investments, safeguarding and administering assets (without arranging) or arranging safeguarding and administration of assets includes those excluded custody activities carried on by the firm that would, but for the exclusion in article 72AA of the RAO, amount to whichever of those regulated activities is referred to.
- ...
- 6.1.1B R ~~Firms to which the custody rules apply by virtue of CASS 6.1.1R (1B), (1C) or (1D) must also apply the custody rules to those custody assets which are not safe custody investments in a manner appropriate to the nature and value of those custody assets.~~
- (1) Firms to which the custody rules apply by virtue of CASS 6.1.1R(1B), (1D) or (1E) must also apply the custody rules to those custody assets which are not safe custody investments in a manner appropriate to the nature and value of those custody assets.
- (2) Firms to which the custody rules apply by virtue of CASS 6.1.1R (1C) must also apply the custody rules:
- (a) to those custody assets which are not AIF custodial assets but are safe custody investments; and
- (b) in a manner appropriate to the nature and value of those custody assets, to those custody assets which are neither AIF custodial assets nor safe custody investments.
- ...
- 6.1.16B G ~~The~~ Other than where a firm acting as a small AIFM is carrying on excluded
A custody activities (see CASS 6.1.1R(1F)), the custody rules do not apply to a firm that is managing an AIF or managing a UCITS in relation to excluded custody activities activities which are carried on by that firm in connection with, or for the purposes of, managing the AIF or UCITS. But the custody rules can, in any case, apply to a firm with Part 4A permission for managing an AIF or for managing a UCITS for activities that are not excluded custody activities. For example, where the firm holds financial instruments belonging to a client in the course of its MiFID business (see CASS 6.1.1R(1A)), or is safeguarding and administering investments in the course of business that is not MiFID business (see CASS 6.1.1R(1B)).
- ...
- 6.1.16I R ...
A
-
- (2) When a firm is acting as trustee or depositary of an AIF that is an authorised AIF the firm must, in addition to the custody rules set out in (1), also comply with the custody rules in the table below:
-

Reference	Rule
<i>CASS 6.1.1BR(2) and (3)</i>	...
...	...

...

8 Mandates

8.1 Application

...

8.1.2A R The *mandate rules* do not apply to a *firm*:

...

(2) in relation to ~~*safe custody assets*~~ *custody assets* that the *firm* is holding, or in respect of which the *firm* is *carrying on safeguarding and administration of assets (without arranging), acting as trustee or depositary of an AIF or acting as trustee or depositary of a UCITS* in accordance with *CASS 6*; or

(2A) in relation to *custody assets* for which a *firm* acting as a *small AIFM* is carrying on those *excluded custody activities* that would amount to *safeguarding and administration of assets (without arranging)* but for the exclusion in article 72AA of the *RAO*, and is doing so in accordance with *CASS 6*; or

...

...

10 CASS resolution pack

10.1 Application

...

10.1.1 R (1) Subject to (2) this chapter applies to a *firm* when it:

(a) holds *financial instruments*, is *safeguarding and administering investments*, is *acting as trustee or depositary of an AIF* or is *acting as trustee or depositary of a UCITS*, in accordance with *CASS 6*; ~~and/or~~

(aa) is acting as a *small AIFM* and carries on *excluded custody activities* in accordance with *CASS 6*; or

- (b) ...
- (2) This chapter does not apply to a *firm* to which *CASS 6* applies merely because it is a *firm* which ~~arranges safeguarding and administration of assets~~:
- (a) a firm which arranges safeguarding and administration of assets; or
- (b) when acting as a small AIFM, carrying on those excluded custody activities that would amount to arranging safeguarding and administration of assets but for the exclusion in article 72AA of the RAO.

Annex C

Amendments to the Supervision sourcebook (SUP)

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

16 Reporting requirements

...

16.14 Client money and asset return

...

16.14.4 R For the purposes of the *CMAR*:

...

(2) *safe custody assets* are those to which the *custody rules* in *CASS 6* apply but only in relation to ~~the holding of financial instruments (in the course of MiFID business), the safeguarding and administration of assets (without arranging) (in the course of business that is not MiFID business), acting as trustee or depositary of an AIF and acting as trustee or depositary of a UCITS;~~

- (a) the holding of financial instruments (in the course of MiFID business);
- (b) the safeguarding and administration of assets (without arranging) (in the course of business that is not MiFID business);
- (c) acting as trustee or depositary of an AIF, and in this case also include any safe custody investments to which the firm, when acting as trustee or depositary of an AIF that is an authorised AIF, is required to apply the custody rules under CASS 6.1.1BR(2) by virtue of CASS 6.1.16IAR(2);
- (d) acting as trustee or depositary of a UCITS; and
- (e) those excluded custody activities carried on by a firm acting as a small AIFM, that would amount to the safeguarding and administration of assets (without arranging) but for the exclusion in article 72AA of the RAO.

16.14.5 G For the avoidance of doubt, the effect of *SUP 16.14.4R* is that the following are to be excluded from any calculations which the *CMAR* requires:

...

- (2) any *safe custody assets* in respect of which the *firm* is merely *arranging safeguarding and administration of assets* in accordance with *CASS 6*; and
- (2A) any *safe custody assets* in respect of which the *firm*, when acting as a *small AIFM*, is carrying on those *excluded custody activities* that would merely amount to *arranging safeguarding and administration of assets* but for the exclusion in article 72AA of the *RAO*, in accordance with *CASS 6*; and

...

16 Annex 29AG

Guidance notes for the data item in SUP 16 Annex 29R

Client Money and Asset Return (CMAR)

This annex contains *guidance* on the *CMAR* and is therefore addressed only to a *firm* which is subject to *SUP 16.14*.

General

Terms used in the *CMAR* bear the meaning ascribed to those terms in the *Glossary*, even though they do not appear in italicised form on the face of the *data item*, unless a contrary indication is given in this *guidance*.

In applying the *CMAR* and this *guidance* to a *small AIFM's excluded custody activities* falling under *SUP 16.14.4R(e)*, any reference to a *firm* carrying on the *regulated activity of safeguarding and administering investments* includes *excluded custody activities*.

A *firm* is reminded that the effect of *SUP 16.14.4R* is that in relation to a *firm* to which *CASS 5* (Client money: insurance mediation activity) and *CASS 7* (Client money rules) apply, that *firm* should not report in the *data item* shown in *SUP 16 Annex 29R* any *client money* that it holds in accordance with *CASS 5*.

SUP 16.14.4R also has the effect that the data reported by a *firm* on the *CMAR* should only relate to *client money* and/or *safe custody assets* held by the *firm*, and should not relate to *client money* and/or *safe custody assets* in respect of which the *firm* merely has a *mandate* or any *safe custody assets* in respect of which the *firm* merely *arranges safeguarding and administration of assets*. The meaning of *safe custody assets* for the purposes of the *CMAR* and this *guidance* is set out in *SUP 16.14.4R(2)*.

...

Financial Conduct Authority



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