

# Quarterly Consultation No.12

March 2016





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The Financial Conduct Authority invite comments on this Consultation Paper. Comments should reach us by 18 April 2016 for Chapter 2 and 18 May 2016 for all other chapters (see the Overview section for further details).

Comments may be sent by electronic submission using the form on the FCA's website at [www.the-fca.org.uk/cp168-response-form](http://www.the-fca.org.uk/cp168-response-form) or by email to [cp16-08@fca.org.uk](mailto:cp16-08@fca.org.uk).

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

All responses should be sent to:

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## Abbreviations used in this paper

<b>AD</b>	Accounting Directive (2013/34/EU)
<b>AIFMD</b>	Alternative Investment Fund Managers Directive
<b>APRC</b>	annual percentage rate of charge
<b>BIPRU</b>	Prudential sourcebook for Banks, Building Societies and Investment Firms
<b>BIS</b>	the Department for Business, Innovation & Skills
<b>CBA</b>	cost benefit analysis
<b>CP</b>	Consultation Paper
<b>CREDS</b>	Credit Unions sourcebook
<b>DEPP</b>	Decision Procedure and Penalties manual
<b>DTR</b>	Disclosure Rules and Transparency Rules sourcebook
<b>EEA</b>	European Economic Area
<b>EG</b>	the Enforcement Guide
<b>ELTIFs</b>	European Long-Term Investment Funds
<b>ELTIF Regulation</b>	European Long-Term Investment Fund Regulation
<b>ESMA</b>	European Securities and Markets Authority
<b>ESIS</b>	European Standardised Information Sheet
<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>Gabriel</b>	GAthering Better Regulatory Information Electronically
<b>LR</b>	Listing Rules sourcebook
<b>MCD</b>	Mortgage Credit Directive

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<b>MCOB</b>	Mortgages and Home Finance: Conduct of Business sourcebook
<b>MIPRU</b>	Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
<b>MLAR</b>	Mortgage Lenders and Administrators Return
<b>NAP2</b>	Open Governments Partnership's National Action Plan 2
<b>NSM</b>	National Storage Mechanism
<b>PD</b>	Prospectus Directive (2003/71/EC)
<b>PIF</b>	Personal Investment Firm
<b>PR</b>	Prospectus Rules sourcebook
<b>PRA</b>	Prudential Regulation Authority
<b>RAG</b>	Regulated Activities Group
<b>RDC</b>	Regulatory Decisions Committee
<b>RIS</b>	Regulatory Information Service
<b>SM&amp;CR</b>	Senior Managers and Certification Regime
<b>SUP</b>	Supervision manual
<b>The Treasury / HMT</b>	Her Majesty's Treasury
<b>TD</b>	Transparency Directive (2004/109/EC)
<b>TDAD</b>	Transparency Directive Amending Directive (2013/50/EU)
<b>XML</b>	Extensible Markup Language

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# 1. Overview

<b>Chapter No.</b>	<b>Proposed changes to Handbook</b>	<b>Consultation Closing Period</b>
2	To make changes to the Glossary, SUP, MCOB and MIPRU to signpost how rules implementing the Mortgage Credit Directive apply to passporting firms.	18 April 2016
3	To make changes to the Listing Rules, the Disclosure Rules and Transparency Rules, the Prospectus Rules and the Glossary.	18 May 2016
4	To make changes to the Enforcement Guide to address the situation where a Final Notice is issued following the prior publication of a Warning Notice Statement.	18 May 2016
5	To make changes to the regulatory reporting requirements set out in the Supervision manual. The proposals amend the notes for the completion of Product Sales Data, conduct breach reporting, credit union prudential reporting requirements, annual reports and accounts reporting, consumer credit forms, non-EEA sub-group reporting and MLAR notes.	18 May 2016
6	To amend the Enforcement Guide and the Decision Procedure and Penalties manual to reflect the FCA powers over UK ELTIFs and to set out a decision making procedure.	18 May 2016





## 2. Mortgage Credit Directive: Confirming our approach to passporting firms

### Introduction

- 2.1** In September 2014 we published CP14/20 which set out our proposals for the implementation of the Mortgage Credit Directive (MCD) and the application of our mortgage regime to second charge mortgages.<sup>1</sup> The final rules were published in March 2015 in PS15/9.<sup>2</sup>
- 2.2** The MCD seeks to promote cross-border mortgage activity and describes the respective responsibilities of home and host member states. We are now consulting on additional rules and guidance, primarily in the Mortgages and Home Finance: Conduct of Business (MCOB) sourcebook, to clarify these responsibilities. These changes are only relevant where a firm is looking to passport into or out of the UK.

### Summary of proposals

#### Division of responsibilities between competent authorities for credit intermediaries passporting into or out of the UK

- 2.3** With effect from 21 March 2016, the MCD allows credit intermediaries to do business in European Economic Area (EEA) member states other than their home member state without being subject to additional admission requirements from the host member state. This is known as 'passporting' and can be done either by establishing a physical presence in the host member state ('branch' business) or remotely from the home member state ('services' business).
- 2.4** A credit institution carrying out activities covered by the Capital Requirements Directive,<sup>3</sup> is already able to passport its lending activities, and any advice given in respect of this lending. Except for this, EEA firms carrying on mortgage activities in the UK up to now have had to be authorised by the FCA and must meet all of our Handbook obligations (and this has included credit institutions where giving advice on mortgages other than their own).
- 2.5** The MCD does not alter the ability of competent authorities to set national standards on matters that are not addressed in the Directive, or to set more stringent standards than those required by the Directive.<sup>4</sup> But on matters that are addressed by the MCD the Directive assigns different responsibilities to the competent authorities in the home and host member states,

<sup>1</sup> CP14/20 *Implementing the Mortgage Credit Directive and the new regime for second charge mortgages* (September 2014)

<sup>2</sup> PS15/9 *Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages, feedback to CP14/20 and final rules* (March 2015)

<sup>3</sup> Directive 2013/36/EU.

<sup>4</sup> Except in relation to the European Standardised Information Sheet (ESIS) and the calculation of the annual percentage rate of charge (APRC).

depending on the specific conduct requirement and how the firm is carrying out business. For branch business many MCD requirements will be delivered by the branch meeting the national rules in the host member state and being supervised by the competent authorities in that country. So, for example, mortgage advertising published by a branch passporting into the UK has to comply with UK rules<sup>5</sup> that transpose the MCD requirements.

- 2.6** Conversely, UK firms passporting out under the MCD will need to have regard to relevant MCOB requirements transposing the MCD. If they are passporting out and carrying out branch business activity in another member state they will need to satisfy some of the host member state's measures implementing the MCD.
- 2.7** Responsibility for services businesses, both in terms of the MCD conduct requirements and in terms of supervising these requirements, rests with the competent authorities in the home member state.
- 2.8** We propose to amend the FCA Handbook MCOB application provisions to set out the relevant chapters and sub-chapters that apply to firms passporting into the UK, as well as to firms passporting from the UK to other member states. As set out in Appendix 2 this involves adding new rules and guidance in MCOB 1.3 and making Glossary changes linked to this. We are also taking the opportunity to clarify the territorial application of MIPRU and to put right an incorrect cross-reference in a Handbook annex that addresses the application of our rules to incoming EEA firms.

**Q2.1: Do you agree with our proposed approach to confirming the application of MCOB to passporting firms?**

### Cost benefit analysis

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- 2.9** Under section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) we are required to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA provides that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.
- 2.10** CP14/20, CP15/6 and PS15/9 contained cost benefit analyses relating to the implementation of the MCD. The changes proposed in this QCP are minor amendments to ensure our intended policy is achieved and the MCD is clearly implemented, and we consider that there will be no increase in costs.

### Impact on mutual societies

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- 2.11** Section 138K of FSMA requires us to provide an opinion on whether the impact of proposed rules on mutual societies is significantly different to the impact on other authorised persons. We are satisfied that the proposed amendments do not impact on mutual societies more than on other authorised firms.

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<sup>5</sup> In MCOB 3A.5.

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### Compatibility statement

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- 2.12** Section 1B of FSMA requires us, so far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in section 1C(2) of FSMA and the regulatory principles in section 3B. In this case our proposals are intended to advance our operational objective of securing appropriate levels of consumer protection by ensuring that our intended policy in implementing the MCD is achieved.
- 2.13** In preparing the proposals as set out in this consultation, we have considered the FCA's duty to promote effective competition in the interests of consumers. We believe that the changes we propose will have a positive impact on competition, as they support MCD passporting arrangements intended to lessen the burden on firms looking to carry out business beyond their home member state.

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### Equality and diversity

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

# 3.

## Changes to the requirements in the Listing Rules, Disclosure Rules and Transparency Rules, and Prospectus Rules, and Glossary

### Introduction

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- 3.1** In this chapter we propose changes to the following parts of the FCA Handbook:
- Listing Rules sourcebook (LR)
  - Disclosure Rules and Transparency Rules sourcebook (DTR)
  - Prospectus Rules sourcebook (PR), and
  - Glossary
- 3.2** This chapter will be of interest to:
- UK and overseas issuers with UK listed securities
  - issuers of transferable securities admitted to trading on a regulated market where:
    - the UK acts as home Member State
    - the FCA's DTRs apply, and
    - the issuers are or may be active in the extractive or logging of primary forest industries
  - UK and overseas issuers of transferable securities, and other persons who make public offers of transferable securities or seek to admit transferable securities to regulated markets in the UK
  - firms advising issuers
  - firms advising persons investing or dealing in listed securities or transferable securities, and
  - firms or persons investing or dealing in listed securities or transferable securities
- 3.3** The proposed amendments, and statutory powers they will be made under, are set out in Appendix 3.

## Summary of proposals

- 3.4** This chapter of the Consultation Paper (CP) is divided into three sections in which we set out the following proposals:
- Proposed modifications to the LR to make the link between the definition of a reverse takeover in LR 5 and the aggregation provisions in LR 10 clearer. Our aim is to ensure that transactions cannot be artificially broken up to avoid being classified as a reverse takeover.
  - Proposed amendments to the DTR to implement a prescribed reporting format for the annual reports on payments to governments prepared under the Transparency Directive (2004/109/EC) (TD) in accordance with DTR 4.3A.
  - Proposed amendments to the PR to reflect further European Securities and Markets Authority (ESMA) publications. In particular, we propose to update the list of documents in PR 1.1.6G that need to be considered together when determining the effect of the Prospectus Directive (2003/71/EC) (PD).

## Definition of reverse takeover in LR 5

### Background

- 3.5** In January 2012 we published CP12/2 relating to amendments to the LR, PR and DTR.<sup>6</sup> Chapter 2 of CP12/2 included our proposal to insert new rule LR 5.6.4R relating to the definition of a reverse takeover which had previously been included in LR 10. We stated that the purpose of the new rule was to provide a clear, standalone definition of a reverse takeover, removing any uncertainty as to which structures result in a reverse takeover.
- 3.6** In paragraph 2.6 of CP12/2 we also stated that in proposing the new rule LR 5.6.4R we followed the approach set out in our Technical Note,<sup>7</sup> which said that we would consider the substance of a transaction over its legal form. The LR 5.6.4R definition is relevant for both premium and standard listings and has been moved to the more suitable location of LR 5, which has the new title 'Suspending, cancelling and restoring listing and reverse takeovers'.<sup>8</sup>
- 3.7** The reverse takeover provision in LR 5.6.4R refers to the class tests defined in Annex 1 of Chapter 10 of the LR. Chapter 10 of the LR relates to our rules on significant transactions undertaken by premium listed issuers. The class tests are used to determine the percentage ratio of a transaction; LR 5.6.4R references the percentage ratio to determine whether the transaction is a reverse takeover.
- 3.8** Given that the rule only refers directly to the specification of the class tests which are outlined in LR 10 Annex 1, there is no wider reference to the remainder of LR 10 and the aggregation provisions in LR 10.2.10R. By removing the definition from LR 10, the clear linkage to the requirements in the body of LR 10 on aggregating transactions has been lost. As a result, the requirements fail to make clear that the transaction cannot be artificially broken up to avoid being classified as a reverse takeover. This would represent an obvious circumvention of the safeguards provided by LR 5.6.4R – that corporate entities that are, in substance, new entrants to the market receive the appropriate level of scrutiny for new applicants for listing.

<sup>6</sup> CP12/2 *Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules* (January 2012)

<sup>7</sup> UKLA Publications, *Technical Note, Reverse Takeovers* (October 2012)

<sup>8</sup> *Handbook Notice 123* (September 2012)

### **Proposals**

- 3.9** To address the problem outlined above, we are proposing to amend LR 5.6.4R to make explicit reference to the aggregation provisions in LR 10.2.10R to ensure that it is clear to issuers that a transaction cannot be artificially broken up to avoid the reverse takeover requirements. This is in line with our previously stated policy that we will consider the substance of a transaction over its legal form. Therefore, we propose to amend LR 5.6.4R to state that issuers must apply the aggregation provisions in LR 10.2.10R, in addition to the class tests, when calculating the percentage ratio of a transaction. We have also taken this opportunity to propose a minor drafting amendment to LR 5.6.4R.

**Q3.1 Do you agree with our proposal to amend LR 5.6.4R to state that when calculating the percentage ratio the issuer must apply the class tests and LR 10.2.10R (Aggregating transactions)?**

### **Prescribed reporting format for the TD reports on payments to governments**

#### **Background**

- 3.10** In August 2014 we published CP14/17<sup>9</sup> which set out our proposals to implement early certain amendments made to the TD by the Transparency Directive Amending Directive 2013/50/EU (TDAD) through creating new rules and guidance in Chapter 4 of the DTRs. The TDAD introduced a requirement for issuers who are active in the extractive or logging of primary forest industries to prepare an annual report on payments made to governments in the countries in which they operate ('reports on payments to governments' or 'country by country reporting'). The Treasury asked that we implement this new requirement early and our new DTRs in DTR 4.3A took effect with respect to financial years beginning on or after 1 January 2015.<sup>10</sup>
- 3.11** Respondents to CP14/17 commented that the FCA should provide open and machine-readable output for data users, in the same way as was being considered for the reports on payments to governments required under the Accounting Directive 2013/34/EU (AD). They suggested that this would maximise the value of the reports on payments to governments. Our response was not to prescribe a reporting format because the revised TD does not (at this stage) specify the format for reports on payments to governments. However, we recognised that a number of EU issuers would be caught by both the AD and the TD requirements to report on payments to governments. To relieve the reporting burden for these issuers, we ensured that the designated TD filing system or National Storage Mechanism (NSM) in the UK could accept reports prepared under the AD for the TD reports. This allowed issuers to prepare one report to meet the requirements of both Directives.
- 3.12** The Government committed in the Open Governments Partnership's National Action Plan (NAP2),<sup>11</sup> that in 2016 'UK listed and UK registered extractive companies will start to publish data under the EU Directives in an open and accessible format'. We have considered our rules in light of this commitment, together with the feedback received following CP14/17, and now propose a prescribed reporting format for all relevant TD issuers, whether EU or third country. The Treasury has advised us that this aligns with the NAP2 commitment.

#### **Proposals**

- 3.13** Given the Government's commitment to a more precise requirement on format, we consider it appropriate to propose the same reporting format which is prescribed in the UK for the

<sup>9</sup> CP14/17 *Early implementation of the Transparency Directive's requirements for reports on payments to governments* (August 2014)

<sup>10</sup> PS15/1 *Early implementation of the Transparency Directive's requirements for reports on payments to governments* (January 2015)

<sup>11</sup> Cabinet Office, Open Government Partnership UK National Action Plan 2013-2015 (October 2015)

AD reports on payments to governments. We are also mindful of the potential cost and administrative burden that would occur if we attempted to develop an alternative reporting format for the TD reports on payments to governments.

- 3.14** When implementing the AD, the Department for Business, Innovation and Skills (BIS) prescribed the use of an electronic reporting format in Part 4 of the Reports on Payments to Governments Regulations 2014 (SI 2014/3209).<sup>12</sup> The Regulations require that ‘a report or consolidated report delivered under this regulation must be delivered to the registrar by electronic means’. The Registrar’s (Electronic Form) Rules 2012,<sup>13</sup> which set out rules governing the filing of documents at Companies House in electronic form, were subsequently updated and Part 6 of those rules (which came into effect on 1 January 2016) provides more detail as to the required AD reporting format. The Registrar’s rules require that the report must be delivered as an XML document via the new extractives service.<sup>14</sup> The report must also be in the form of a prescribed data schema which is split into three parts: the extractives report schema definition; the ISO country code schema; and the ISO currency codes.<sup>15</sup> Guidance on the Companies House extractives service was published the same day the new rules entered into force.<sup>16</sup>
- 3.15** Based on our review of these AD reporting format requirements we consider that there is a clear benefit to requiring a report under the TD to be prepared in XML format which uses the same data schema as is required under the AD. This will ensure that issuers who fall within scope of both the AD and TD reporting requirements can prepare a report which meets the requirements of both Directives in one format. For those issuers who are not required to use the reporting format prescribed in the UK for the AD reports on payments to governments, the introduction of a prescribed reporting format for the TD reports on payments to governments will impose an additional administrative burden. However, to achieve a level playing field and comparability of reporting we propose prescribing the reporting format for all TD issuers who are required to prepare a report on payments to governments.

**Q3.2 Do you agree with the proposal to use the same prescribed reporting format for TD reports on payments to governments as the one prescribed by BIS and Companies House for AD reports on payments to governments?**

- 3.16** The AD reports on payments to governments are filed directly with Companies House. We propose introducing a specific requirement for all TD reports on payments to governments to be filed with the FCA. We also propose requiring issuers to file those TD reports on payments to governments by uploading them to the system identified by the FCA on our website as the NSM for regulatory announcements and certain documents published by issuers. To implement these requirements, we propose introducing two new rules:
- DTR 4.3A.10R(1) which will set out the requirement for filing; and
  - DTR 4.3A.10R(2) which will set out the requirement to upload the reports to the NSM.

<sup>12</sup> <http://www.legislation.gov.uk/ukdsi/2014/9780111122235/part/4>

<sup>13</sup> <http://resources.companieshouse.gov.uk/about/policyDocuments/registrarRules/volume1.pdf>

<sup>14</sup> <https://extractives.companieshouse.gov.uk/>

<sup>15</sup> <http://xmlgw.companieshouse.gov.uk/extractives.shtml>

<sup>16</sup> <https://www.gov.uk/government/publications/filing-reports-for-the-extractives-industries/guidance-for-the-companies-house-extractives-service>

**Q3.3 Do you agree with the proposal to introduce new rules in DTR 4.3A.10R(1) and DTR 4.3A.10R(2) to require issuers to file TD reports on payments to governments with the FCA and to upload them to the system identified by the FCA on our website as the NSM for regulatory announcements and certain documents published by issuers?**

- 3.17** We also propose introducing a new rule in DTR 4.3A.10R(3) which will require the reports on payments to governments to be in XML format, specify the data schema that must be used, and state that the technical requirements for the schema are specified on the FCA website.
- 3.18** The FCA will retain discretion as to whether any changes BIS or Companies House might make to the AD payments to governments reporting requirements in the future will also be implemented in the TD payments to governments regime. We will assess each change that might be made and analyse whether it is appropriate and practical to copy the change across to the FCA rules. We expect that it will be beneficial to keep the two regimes aligned, and we will work closely with BIS and Companies House to minimise any potential divergence.

**Q3.4 Do you agree with the proposal to introduce a new DTR 4.3A.10R(3), which will specify the new prescribed reporting format and the relevant schema?**

- 3.19** We also propose to introduce a transitional provision which will provide that DTR 4.3A.10R applies in relation to a financial year of an issuer beginning on or after 1 August 2016.

**Q3.5 Do you agree with the proposal to introduce a transitional provision?**

- 3.20** It is important to note that these proposed new filing requirements will be in addition to (and not instead of) the existing DTR requirements for the disclosure, dissemination and filing of regulated information.
- 3.21** While XML meets the ‘open and accessible’ format referred to in the Government’s commitment in NAP2, it is not a human readable format, therefore filing in this format alone would not meet the TD requirements for regulated information.
- 3.22** We do not intend to change the existing DTR requirements for reports on payments to governments. Issuers must also continue to disclose, disseminate and file a human readable version of the report as set out in:
- DTR 4.3A.5R which states that the report on payments to governments must be made public at the latest six months after the end of the financial year
  - DTR 6.3.2R which states that an issuer or person must disclose regulated information in the manner set out in DTR 6.3.3R to DTR 6.3.8R, and
  - DTR 6.2.2R which states that an issuer or person that discloses regulated information must, at the same time, file that information with the FCA
- 3.23** We acknowledge this will result in duplicate filing of the TD reports on payments to governments.



**Q3.6 Do you agree that the existing disclosure, dissemination and filing requirements for TD reports on payments to governments should remain unchanged?**

**Changes to PR**

**Background**

**3.24** PR 1.1.6G sets out a list of documents that need to be considered together when determining the effect of the PD. We are proposing to update the list of documents to reflect further ESMA publications.

**Proposals**

**3.25** We propose to change PR 1.1.6G(6) to refer to 'ESMA Prospectus Opinions' in the plural and to update the relevant definition to reflect that there are now four ESMA opinions. The three additional ESMA opinions are:

- 'Framework for the assessment of third country prospectuses under article 20 of the Prospectus Directive' (ESMA/2013/317)
- 'ESMA assessment of Israeli laws and regulations on prospectuses' (ESMA/2015/1015), and
- 'ESMA assessment of Turkish laws and regulations on prospectuses' (ESMA/2016/268).

**3.26** We also propose that the definition of 'ESMA Prospectus Question and Answers', which appears at PR 1.1.6G(3), is updated to refer to the last version published by ESMA on 15 December 2015.

**3.27** We are proposing to make a consequential change to PR 1.1.8G to reflect the change to PR 1.1.6G(6) set out above.

**3.28** If ESMA publish a further opinion regarding prospectuses or version of the 'Prospectus Question and Answers' during the consultation period, we propose updating the relevant definitions accordingly in the final rules.

**Q3.7 Do you agree with the proposed amendments to PR 1.1.6G(6), PR 1.1.8G and the relevant defined terms?**

**Cost benefit analysis**

**3.29** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules unless we consider the proposals will not give rise to any increase in costs or the increase in costs will be of minimal significance.

**LR aggregation rules**

**3.30** Our intention in moving the definition of a reverse takeover to LR 5 was not to weaken the link to the requirements regarding aggregating transactions. Additionally, this move did not change our position on considering the substance of the transaction over its legal form. The proposals outlined above are intended to clarify this position and therefore do not represent any increased cost implications for issuers. Rather, the benefit of the proposals is that it should become

clearer that when calculating the percentage ratio as part of defining a reverse transaction, the issuer must apply the class tests and LR 10.2.10R (Aggregating transactions).

- 3.31** Given that we do not anticipate the proposed changes will have any increased cost implications, we have not prepared a detailed CBA.

**Q3.8 Do you agree with our analysis of the impact of our proposed amendments to the LR?**

**Prescribed reporting format for TD reports on payments to governments**

- 3.32** The requirements that we are proposing in this consultation paper will impact three different types of issuers:

***Issuers incorporated in the UK and who are subject to Chapter 10 of the AD***

- 3.33** One of the key considerations that we made in developing our proposals was to minimise the reporting burden for issuers that are subject to both the TD and the AD in the UK. Therefore, we are proposing to use the same reporting format and schema as required by BIS and Companies House for the AD reports on payments to governments. Given that UK issuers already have to prepare an XML version of the report and file this with Companies House, the only additional requirement in our proposals would be the filing of the XML version with the NSM. We do not anticipate this imposing an additional cost to these issuers.

***Issuers incorporated outside the UK and who are subject to Chapter 10 of the AD***

- 3.34** For EU issuers who have chosen the UK as their home member state, it is possible these issuers will not be subject to a prescribed reporting format for the AD reports on payments to governments in their country of incorporation. Therefore, our proposals would impose an additional requirement for these issuers to prepare TD reports on payments to governments in XML. It is our understanding that the cost of converting an Excel report into XML is relatively low and the number of issuers falling into this category will be small. The benefit will be that all reports filed in the UK will be in the same format which will increase the usefulness of the data by making it more comparable.

***Issuers incorporated outside the UK and who are not subject to Chapter 10 of the AD***

- 3.35** Third country issuers will not be subject to the AD requirements. Therefore, our proposals would impose a new prescribed reporting format on these issuers. As above, it is our understanding that the cost of preparing a report in XML format is relatively low. There is a benefit to creating a level playing field in respect of the TD reports on payments to governments and imposing the same requirements on all issuers within scope.

**Q3.9 Do you agree with our analysis of the impact of introducing a prescribed reporting format for TD payments to governments reports?**

**Changes to PR**

- 3.36** The intention of our proposal to amend PR 1.1.6G(6), PR 1.1.8G and the relevant defined terms is to ensure that our rules and definitions are up to date. We do not anticipate the proposed changes will have any increased cost implications, so we have not prepared a CBA.

**Q3.10 Do you agree with our analysis of the impact of our proposed amendments to the PR?**

### Impact on mutual societies

- 3.37** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared with other authorised persons. The relevant rules we propose to introduce in the DTRs, and the relevant rules we propose to amend in the LRs, DTRs and PRs, will apply equally to issuers – regardless of whether they are a mutual society or another authorised person.
- 3.38** We therefore believe that the impact of our proposals would not significantly differ between mutual societies or other authorised persons.

### Compatibility statement

- 3.39** When consulting on new rules, we are required by section 138I of FSMA to include an explanation of why we believe the proposed rules are compatible with our strategic objective, advance one or more of our operational objectives and have regard to the regulatory principles in section 3B of FSMA.
- 3.40** The proposals set out in this chapter of the CP are compatible with our strategic objective of ensuring that the relevant markets function well and are primarily intended to advance our operational objectives, as set out below:
- *Enhancing market integrity* – by protecting and enhancing the integrity of the UK financial system through ensuring that the LRs, DTRs and PRs remain proportionate and effective.
  - *Delivering consumer protection* – maintaining and securing an appropriate degree of protection for consumers, including by ensuring that issuers are subject to a level of scrutiny that is appropriate for new applicants for listing, and ensuring that information is made available to investors.
- 3.41** In preparing our proposals, we have considered the regulatory principles in section 3B of FSMA. In particular:

#### **The need to use our resources in the most efficient and economic way**

The proposals in this chapter of the CP will have minimal impact on our resources.

#### **The principle that a burden or restriction should be proportionate to the benefits**

We believe the proposals in this chapter of the CP are proportionate to the benefits.

#### **The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons**

We do not believe that our proposals discriminate against any particular business model or approach.

**The desirability of publishing information relating to persons**

We believe that our proposals do not undermine this principle.

**The principle that we should exercise our functions as transparently as possible**

We believe that by consulting on our proposals we are acting in accordance with this principle.

**Equality and diversity**

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- 3.42** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 3.43** Overall, we do not consider that the proposals in this Consultation Paper adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 3.44** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 3.45** In the interim we welcome any input to this consultation on such matters.

## 4.

# Warning Notice Statements: Amendments to the Enforcement Guide

### Introduction

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- 4.1** Warning Notices are notices we give to firms and individuals of action we propose to take. In October 2013 we obtained, and said we would use, the power to publish Warning Notice Statements following the substitution of a new section 391(1)(1ZB) for the previous section 391(1) by the Financial Services Act 2012. This power only applies to Warning Notices listed under this sub-section and which are disciplinary outcomes; it does not apply to non-disciplinary outcomes.
- 4.2** We had previously outlined the FCA's proposals for publishing such information about the matter to which a Warning Notice relates in the March 2013 Consultation Paper (CP13/8),<sup>17</sup> and the following Policy Statement (PS13/9).<sup>18</sup> We consulted on proposed changes to Part 6 of the Enforcement Guide (EG).
- 4.3** We indicated that Warning Notice Statements would contain a brief summary of the facts and be published so that consumers, firms and market users could have more information on the nature of the regulator's concerns. We also stated that Warning Notice Statements would promote early transparency of enforcement proceedings. In this instance, specific firms would usually be identified. PS13/9 specified that individuals would be treated differently from firms, and the presumption would be not to name individuals but to publish anonymous details. The Policy Statement also indicated circumstances where publication of details would be necessary.
- 4.4** We are now consulting on proposed changes to EG to address the situation where a Final Notice is issued following the prior publication of a Warning Notice Statement.

### Summary of proposals

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- 4.5** EG 6.10C sets out how we deal with Warning Notice Statements if we subsequently decide not to take any further action, or where we publish a Decision Notice and the subject of the enforcement action successfully refers the matter to the Upper Tribunal. We will make it clear on the FCA's website, normally by publishing a notice of discontinuance with the consent of the subject to whom it relates, that the Warning Notice no longer applies.
- 4.6** We do not intend to change EG 6.10C save for the proposed additional guidance.

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<sup>17</sup> CP13/8 *FSA Publishing information about enforcement warning notices* (March 2013)

<sup>18</sup> PS13/9 *Publishing information about enforcement warning notices* (October 2013)

- 4.7** At present, where a Warning Notice Statement has been issued and the matter has been progressed to the issue of a Final Notice, the Enforcement Guide does not provide guidance on whether the Warning Notice Statement should be endorsed with an appropriate statement indicating the subsequent action and/or be de-anonymised. We believe that this lack of transparency could lead to speculation as to what may have occurred between the issue of the Warning Notice Statement and the later publication of a Final Notice. We propose to provide further guidance on how to handle a Warning Notice Statement when it is progressed to a Final Notice.
- 4.8** Our proposed approach in these circumstances is to consider on a case by case basis whether to update our website to explain what the outcome was of the case described in the Warning Notice Statement. Where the Warning Notice Statement was issued on an anonymised basis, we will at the same time consider the extent to which it is appropriate to identify the subject of the statement.
- 4.9** This proposal should reduce speculation as to the progress of specific cases with Warning Notice Statements. The risk of unfairness towards subjects is reduced (in comparison to, for example, a blanket approach of endorsing with an appropriate statement indicating the subsequent action and/or de-anonymising in all cases).
- 4.10** The proposed amendment to EG 6.10C is set out in Appendix 4.

**Q4.1: Do you agree with our proposed approach to endorsing and/or de-anonymising Warning Notice Statements?**

### **Cost benefit analysis**

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- 4.11** Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing to draft rules. These proposals do not relate to rule changes or guidance on rules but are instead concerned with the description of the FCA's approach to enforcement.
- 4.12** The changes we are proposing to make to EG follow on from the earlier amendments outlined in CP13/8 Enforcement: publishing information about warning notices (March 2013), and the subsequent Policy Statement, PS13/9. We expect there may be a minimal increase in costs in the FCA making a decision about whether to endorse the Warning Notice Statement with an appropriate disclosure indicating the subsequent action and/or de-anonymise and assess the representations made by the subject of the investigation. The subjects may face additional costs as a result of making representations on whether endorsement and/or de-anonymisation is appropriate.
- 4.13** We think that the adoption of our proposal should reduce speculation as to what may have happened to specific cases with Warning Notice Statements due to the improvement in transparency.

### **Compatibility statement**

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- 4.14** 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

consider the regulatory principles in section 3B of FSMA. A compatibility statement relating to the policy for using the Warning Notice publicity power was set out in Annex 2 of CP13/8. We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles.

### **Equality and diversity**

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- 4.15** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 4.16** Overall, we do not consider that the proposals in this Consultation Paper adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 4.17** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 4.18** In the interim we welcome any input to this consultation on such matters.

## 5. Changes to the Supervision manual

### Introduction

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- 5.1** The FCA collects a range of regulatory data to assist us in the supervision of firms. Many of those reporting requirements are set out in the Supervision manual (SUP) contained in the FCA Handbook. Through the supervisory process and engagement with firms we look to clarify and improve our reporting requirements and remove data requirements that are no longer applicable. To meet this aim this chapter sets out a number of changes to SUP, focusing on the manual's regulatory reporting forms and accompanying guidance.

### Summary of proposals

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#### Changes to Product Sales Data

- 5.2** We want to provide clarifications for firms who complete the forms PSD001 (Transaction and affordability data for mortgages) and PSD0007 (Mortgage performance sales data).
- 5.3** First, we have altered the notes in SUP 16 Annex 21R to clarify that basic household expenditure in PSD001 should be a monthly figure.
- 5.4** Secondly, we have changed the guidance for PSD007. For the date of balance we have added extra notes to SUP Annex 21R to explain that this date should be within the reporting period of the return.

**Q5.1: Do you have any comments on our proposals to amend the guidance notes relating to PSD001 and PSD007?**

#### Conduct breach reporting

- 5.5** Form H is part of the Senior Managers and Certification Regime (SM&CR) that came into force on 7 March 2016. The form is an annual notification of disciplinary action taken against staff (other than senior managers) related to breaches of the conduct rules in the Code of Conduct sourcebook (COCON). It provides information on which conduct rules have been broken and what disciplinary action was taken by the firm for each breach.
- 5.6** We are consulting on a proposal to mandate the collection of this information through Gabriel rather than by the methods set out in SUP 15.7. We intend to have this in place for the first data submission by firms in Q4 2016. Credit unions will not be mandated to use Gabriel and will continue to be able to submit returns by all the submission methods as stated in SUP 15.7. This is in line with other reporting that credit unions submit to us.



- 5.7** This form applies to credit unions, banks, building societies and Prudential Regulation Authority (PRA) designated investment firms; which, excluding credit unions, is approximately 350 firms. These 350 firms already use the Gabriel reporting system.
- 5.8** We are also consulting on three further changes to the reporting regime for Form H:
- We propose to extend the amount of time firms will have to report this return to us, from one month to two months, bringing the form in line with other annual returns in Gabriel.
  - Firms required to use Gabriel will need to report a nil return to us if they have no conduct breaches or updates to previous returns within the reporting period. This allows us to distinguish between late submissions and nil submissions.
  - The inclusion of an additional column of data to ask firms whether the person specified in the breach has been certified as a material risk taker (FCA-specified significant-harm function (7)) at any point during the reporting period. The data will allow supervisors to identify breaches by material risk takers, which will be especially relevant to remuneration discussions with the firm, and will be of broader interest as an indicator of management issues.

**Q5.2: Do you have any comments on our proposals to require conduct breach reporting to be submitted via the Gabriel system for all relevant firms other than credit unions?**

**Q5.3: Do you have any comments on our proposals to extend the submission period for firms required to complete a conduct breach report?**

**Q5.4: Do you have any comments on our proposals to require a nil return if no breaches occurred and there was nothing to update during the reporting period?**

**Q5.5: Do you have any comments on our proposals to add a column to the conduct breach report (Form H) to allow us to recognise which conduct breaches have been made by material risk takers?**

#### **Removal of credit union prudential requirements from the FCA Handbook**

- 5.9** We are consulting on the removal of the requirement for credit unions to submit annual and quarterly prudential forms (CQ and CY) to the PRA, from the SUP manual in the FCA Handbook. As the requirements are for credit unions to submit these reports to the PRA rather than to the FCA, we believe that the inclusion of this rule in the FCA Handbook is redundant. The first step in the removal of this requirement from the FCA handbook was the removal of a similar requirement from our Credit Unions sourcebook (CREDS), which we implemented as part of PS16/1.<sup>19</sup> We are now taking the step to remove the requirement from our SUP manual and we are also making consequential changes such as the deletion of SUP 16.3.14R(2) as well. As set out in PS16/1, the FCA notes that the PRA has retained its own requirements for credit unions to submit these prudential returns to the PRA. The FCA will, via its Memorandum of Understanding with the PRA, still be able to access data from these returns when necessary.

<sup>19</sup> PS16/1 *Reform of the legacy Credit Unions sourcebook* (February 2016)

**Q5.6: Do you have any comments on our proposals to remove the prudential reporting requirements of credit unions from the FCA Handbook?**

**Changes to SUP 16.7A – Annual report and accounts**

- 5.10** We have clarified that the rules in SUP 16.7A, which sets the requirements for submitting a firm’s annual report and accounts, do not apply to category B personal investment firms (PIFs). As currently drafted, the rules bring these firms within scope of the reporting requirement. This is a legacy inconsistency in the Handbook and the proposed change realigns the stated rule with the original intention and the reality in our reporting system, Gabriel. We are therefore amending the requirements in Regulated Activity Groups (RAGs) 6 and 8 to clarify that this reporting requirement does not apply to category B PIFs.

**Q5.7: Do you have any comments on our proposals to remove the reporting requirements to provide the FCA with an annual report and accounts from category B PIFs?**

**Changes to consumer credit reporting**

- 5.11** In response to firms’ comments we propose to make a minor change to each of the forms CCR002 and CCR003 on consumer credit reporting. We propose to include a row to separate out overdrafts from other running account credit. To ensure our systems continue to refer to the correct row when analysing the data they will be numbered rows 13 and 11 respectively.
- 5.12** The addition of this row will ensure that overdraft figures do not skew the other running-account credit figures when reported. This data was already collected and reported by firms, but this change will mean firms need to provide this figure separately from other running-account credit.

**Q5.8: Do you have any comments on our proposals to split out overdrafts from other running-account credit on forms CCR002 and CCR003?**

**Change to non-EEA subsidiary group reporting (FSA028)**

- 5.13** We have reviewed the form FSA028 (non-EEA sub-group reporting) and do not now envisage a situation where a firm completing FSA028 would meet its reporting requirements via another data item other than FSA028. Therefore we propose to remove questions 1 and 2 from Form FSA028 in SUP 16 Annex 24 ‘Data items for SUP 16.12’ and the associated notes set out in SUP 16 Annex 25 ‘Guidance notes for data items in SUP 16 Annex 24R’.
- 5.14** In addition, we propose to remove all references to BIPRU 8 Annex 3 in the guidance set out in SUP 16 Annex 24, as this rule no longer exists. These references will be replaced with BIPRU 8.3, which sets out the scope and basic consolidation requirements for non-EEA sub-groups, helping firms to identify a non-EEA sub-group.

**Q5.9: Do you have any comments on our proposals to remove questions 1 and 2 from FSA028?**

**Q5.10: Do you have any comments on our proposals to alter the guidance for FSA028?**

### **Clarification on the applicability of capital adequacy reporting in the Mortgage Lenders and Administration Return (MLAR)**

- 5.15** We propose to add a new note 5, in SUP 16.12.18BR, to highlight that MLA-C (capital adequacy) is only required from those firms to which MIPRU 4.2 applies. This return is required to be completed by firms with a home finance administration or home finance providing activity permission.

**Q5.11: Do you have any comments on our proposals to clarify the circumstances under which MLA-C applies?**

### **Cost benefit analysis**

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

### **Changes to Product Sales Data**

- 5.17** This change will not directly result in any increase in firm costs. The guidance alterations are to help firms comply with the existing reporting requirements. However the clarification may result in some firms altering the figures that they report to us. This change could result in some minimal costs to some firms.

### **Conduct breach reporting**

- 5.18** Changing the submission method to mandate Gabriel reporting will be of minimal cost. We believe this to be the case as we are highlighting our intention to change the method of submission well in advance of the first submission of data for Form H (Q4 2016). This should ensure any processes for alternative submission methods will not yet be fully implemented. Additionally, as the firms affected already use Gabriel we assessed that the cost difference between using Gabriel and using the submission methods set out in SUP 15.7, which currently apply, would be minimal. The changes to the length of the submission period and the requirement to report nil returns will be of no or minimal cost.

- 5.19** The addition of a new column to include an extra question on whether the specified person is a material risk taker may result in some increased costs for firms. However, we judge this cost to be minimal, based on previous estimates of costs for reporting changes.

### **Removal of credit unions' prudential requirements from the FCA Handbook**

- 5.20** This change has no cost implications for firms; it merely removes redundant Handbook text.

### **Changes to SUP 16.7AR – Annual report and accounts**

- 5.21** This will reduce the burden on firms by not requiring category B PIFs to submit an annual report and accounts.

### **Changes to consumer credit reporting**

- 5.22** We expect this change will have minimal cost implications for firms. Firms already collect overdraft information for the Forms CCR002 and CCR003, so no new data collection processes

are required. We have estimated that the insertion of two additional form rows will result in low one-off costs to firms to instigate the change. We have based this conclusion on previous estimates of reporting alterations. We therefore consider that we are not required to produce a cost benefit analysis for this proposal by virtue of section 138L(3) of FSMA.

#### **Change to non-EEA subsidiary group reporting (FSA028)**

- 5.23** This will reduce costs on firms in the long term by not requiring firms to complete two questions. There may be some system costs associated with removing the questions from the form initially but ongoing costs to firms should be lower.

**Q5.12: Do you have any comments about any of our cost assessments?**

#### **Impact on mutual societies**

- 5.24** Credit unions will be affected by the changes to reporting conduct rule breaches on Form H differently from other firms because many of the proposals do not apply to them. The only changes that will apply to them are the proposed change to the length of the submission period and the additional column on material risk takers for the conduct breach form (Form H). We believe extending the length of the submission period will be helpful to credit unions as it allows more time for submissions to be provided. The new column will have a negligible effect on the amount of time required to complete the form. We think that not applying the other changes will be beneficial to credit unions.

#### **Compatibility statement**

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

#### **Equality and diversity**

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

- 5.30** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 5.31** In the interim we welcome any input to this consultation on such matters.

## 6. UK European Long-Term Investment Funds and our decision making procedure

### Introduction

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- 6.1** European Long-Term Investment Funds (ELTIFs) are a new type of European alternative investment fund that will invest in assets with a long-term time horizon, such as infrastructure projects and unlisted small or medium-sized enterprises. The European Long Term Investment Funds Regulation (ELTIF Regulation) aims to create a cross-border framework for long-term investments, to stimulate demand from institutional and/or retail investors for assets requiring 'patient capital'. Investors' money will be locked in for a considerable amount of time, with few opportunities to redeem it.
- 6.2** In September 2015, we published CP15/27 which set out our proposal on Handbook changes in relation to the ELTIF Regulation.<sup>20</sup> We published final rules in relation to these proposals in December 2015,<sup>21</sup> except for changes in relation to consumer redress, which will be dealt with separately.
- 6.3** The European Long-term Investment Funds Regulations 2015 make the necessary changes to UK legislation to give effect to the ELTIF Regulation.
- 6.4** We are now consulting on amendments to the Enforcement Guide (EG) and the Decision Procedure and Penalties manual (DEPP) in relation to the European Long-term Investment Funds Regulations 2015. We are proposing to:
- amend EG 19.131 to include reference to the ELTIF Regulation
  - amend DEPP 2 Annex 1 to set out the decision making process relating to the refusal of applications for authorisation and the revocation of authorisation of an ELTIF by the FCA

### Summary of proposals

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#### Amendments to EG

- 6.5** The European Long-term Investment Funds Regulations 2015 add a new part to the Alternative Investment Fund Managers Regulations 2013 in relation to the authorisation and revocation of authorisation of an ELTIF by the FCA. To reflect this, we are proposing to amend EG 19.131 to make reference to the ELTIF Regulation.

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<sup>20</sup> CP15/27 *UCITS V implementation and other changes to the Handbook affecting investment funds* (September 2015)

<sup>21</sup> *Handbook Notice No. 28* (December 2015)

**Q6.1: Do you have any comments on the proposed approach to amend EG 19.131?**

**Amendments to DEPP 2 Annex 1**

- 6.6** We are proposing to amend DEPP 2 Annex 1 to set out the decision-making procedure to be followed when proposing or deciding to refuse an application for authorisation as a UK ELTIF, or to revoke that authorisation under Part 3A of the Alternative Investment Fund Managers Regulations 2013.
- 6.7** We propose that:
- A decision to propose to refuse an application for the authorisation of a UK ELTIF will be taken by the FCA under executive procedure in accordance with DEPP 4.1. If no representations are made in response to the proposed action within the period specified, the final decision will be taken under executive procedure in accordance with default procedures under DEPP 2.3.2G. If representations are made in response to the proposed action within the period specified, then the Regulatory Decision Committee (RDC) will, in accordance with DEPP 3.2, take the decision whether to grant or refuse an application.
  - A decision to propose and the final decision to revoke the authorisation of a UK ELTIF will be taken under the RDC procedure in accordance with DEPP 3.2. When the FCA exercises this power, it will issue separate notices to both the manager of the alternative investment fund and the depositary.

**Q6.2: Do you have any comments on the proposed approach to amending DEPP 2 Annex 1?**

**Cost benefit analysis**

- 6.8** Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA provides that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance.
- 6.9** Annex 1 of CP15/27 contained a CBA relating to proposed Handbook changes in relation to the ELTIF Regulation. The amendments proposed in this chapter either do not add to the costs estimated in the CBA at all, or any increase is of minimal significance. The changes set out a decision-making procedure applying the current decision-making policy, so we do not expect these proposals to result in costs additional to those already identified in the main CP15/27.

**Impact on mutual societies**

- 6.10** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. Expected effect on mutual societies was set out in Annex 2 of CP15/27. The proposed amendments do not have a negative impact on this.

### Compatibility statement

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- 6.11** 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.
- 6.12** A compatibility statement in relation to the implementation of ELTIF Regulation was set out in Annex 2 of CP15/27. We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles.

### Equality and diversity

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- 6.13** We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper.
- 6.14** Overall, we do not consider that the proposals in this Consultation Paper adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 6.15** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 6.16** In the interim we welcome any input to this consultation on such matters.



# Appendix 1

## List of questions

- Q2.1:** Do you agree with our proposed approach to confirming the application of MCOB to passporting firms?
- Q3.1:** Do you agree with our proposal to amend LR 5.6.4R to state that when calculating the percentage ratio, the issuer must apply the class tests and LR 10.2.10R (Aggregating transactions)?
- Q3.2:** Do you agree with the proposal to use the same prescribed reporting format for TD reports on payments to governments as the one prescribed by BIS and Companies House for AD reports on payments to governments?
- Q3.3:** Do you agree with the proposal to introduce new rules in DTR 4.3A.10R(1) and DTR 4.3A.10R(2) to require issuers to file TD reports on payments to governments with the FCA and to upload them to the system identified by the FCA on our website as the NSM for regulatory announcements and certain documents published by issuers ?
- Q3.4:** Do you agree with the proposal to introduce a new DTR 4.3A.10R(1) and DTR 4.3A.10R(3), which will specify the new prescribed reporting format and the relevant schemas?
- Q3.5:** Do you agree with the proposal to introduce a transitional provision?
- Q3.6:** Do you agree that the existing disclosure, dissemination and filing requirements for TD reports on payments to governments should remain unchanged?
- Q3.7:** Do you agree with the proposed amendments to PR 1.1.6G(6), PR 1.1.8G and the relevant defined terms?
- Q3.8:** Do you agree with our analysis of the impact of our proposed amendments to the LR?

- Q3.9:** Do you agree with our analysis of the impact of introducing a prescribed reporting format for TD payments to governments reports?
- Q3.10:** Do you agree with our analysis of the impact of our proposed amendments to the PR?
- Q4.1:** Do you agree with our proposed approach to endorsing and/or de-anonymising Warning Notice Statements?
- Q5.1:** Do you have any comments on our proposals to amend the guidance notes relating to PSD001 and PSD007?
- Q5.2:** Do you have any comments on our proposals to require conduct breach reporting to be submitted via the Gabriel system for all relevant firms other than credit unions?
- Q5.3:** Do you have any comments on our proposals to extend the submission period for firms required to complete a conduct breach report?
- Q5.4:** Do you have any comments on our proposals to require a nil return if no breaches occurred and there was nothing to update during the reporting period?
- Q5.5:** Do you have any comments on our proposals to add a column to the conduct breach report (Form H) to allow us to recognise which conduct breaches have been made by material risk takers?
- Q5.6:** Do you have any comments on our proposals to remove the prudential reporting requirements of credit unions from the FCA Handbook?
- Q5.7:** Do you have any comments on our proposals to remove the reporting requirements to provide the FCA with an annual report and accounts from category B PIFs?
- Q5.8:** Do you have any comments on our proposals to split out overdrafts from other running-account credit on Forms CCR002 and CCR003?
- Q5.9:** Do you have any comments on our proposals to remove questions 1 and 2 from FSA028?
- Q5.10:** Do you have any comments on our proposals to alter the guidance for FSA028?

- Q5.11:** Do you have any comments on our proposals to clarify under which circumstances MLA-C applies?
- Q5.12:** Do you have any comments about any of our cost assessments?
- Q6.1:** Do you have any comments on the proposed approach to amend EG 19.131?
- Q6.2:** Do you have any comments on the proposed approach to amending DEPP 2 Annex 1?

# Appendix 2

## MCD approach to passporting firms

**MORTGAGE CREDIT DIRECTIVE (AMENDMENT NO [X]) INSTRUMENT 2016****Powers exercised**

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

**Commencement**

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

**Amendments to the Handbook**

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

(1)	(2)
Glossary of definitions	Annex A
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Supervision manual (SUP)	Annex D

**Notes**

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

**Citation**

- F. This instrument may be cited as the Mortgage Credit Directive (Amendment No [X]) Instrument 2016.

By order of the Board  
*[date]*

## Annex A

## Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

*Home State*

...

(15) (for a *MCD credit intermediary*):

- (a) where the *MCD credit intermediary* is a natural person, the *EEA State* in which his head office is situated; or
- (b) where the *MCD credit intermediary* is a legal person, the *EEA State* in which its registered office is situated or, if under its national law it has no registered office, the *EEA State* in which its head office is situated.

[Note: article 4(19) of the *MCD*]

*Host State*

...

(6) (for a *MCD credit intermediary*) the *EEA State*, other than the *Home State*, in which the *MCD credit intermediary* has a branch or provides services.

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

## Annex B

### Amendments to the Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

In this Annex, underlining indicates new text.

#### 1 Application and general provisions

...

#### 1.3 Remuneration and property valuation requirements for MCD creditors

Application

1.3.1 R *MIPRU 1.3 applies to an MCD creditor other than an incoming EEA firm.*

...

## Annex C

**Amendments to the Mortgages and Home Finance: conduct of Business sourcebook  
(MCOB)**

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

**1 Application and purpose**

...

**1.3 General application: where?**

Location of the customer

1.3.1 R Except as set out in this section, *MCOB* applies if the *customer* of a *firm* carrying on *home finance activities* is resident in:

- (1) the *United Kingdom*; or
- (2) another *EEA State*, ~~but in this case only if~~ where the activity is carried on from an establishment maintained by the *firm* (or *its appointed representative*) in the *United Kingdom*;

at the time that the *home finance activity* is carried on.

1.3.1A R (1) The provisions of *MCOB* listed in *MCOB* 1.3.1AR(2) apply to a *UK firm* where it carries on *MCD credit intermediation activity* for a *customer* who is resident in another *EEA State* through an establishment maintained by the *firm* in that State.

(2) The provisions mentioned are:

- (a) *MCOB* 2A.1.1R(2);
- (b) *MCOB* 2A.1.4R;
- (c) *MCOB* 2A.2.1R and 2A.2.2G; and
- (d) *MCOB* 7.6.28R.

**[Note: article 34(2) of the *MCD*]**

Incoming *EEA* credit intermediaries

1.3.1B R (1) The application of *MCOB* to an *incoming EEA firm* that is a *MCD credit intermediary* is modified to the extent necessary to be compatible with European law.



(2) MCOB 1.3.1BR(1) overrides every other rule in this sourcebook.

[**Note:** article 34 of the *MCD*]

1.3.1C     G     Guidance on *MCOB 1.3.1AR* and *MCOB 1.3.1BR* is in *MCOB 1 Annex 5*. For applicable rules in relation to knowledge and competence requirements for staff, *incoming EEA firms* should also refer to *TC 2.1.5AR* to *TC 2.1.5FG* and to the territorial application rules in *TC Appendices 1* and *2*.

...

After *MCOB 1.6* insert the following new annex. The text is new and is not underlined.

**1 Annex  
5**                    **Guidance on the application of MCOB for incoming EEA MCD credit intermediaries and for UK firms carrying out MCD credit intermediation activities in another EEA State**

1.1            G     Under art 34(1) of the *MCD*, the *Home State* is responsible for supervising the activities of *MCD credit intermediaries* providing *cross border services*. So if a *UK firm* provides services into another *EEA State*, the *rules* applying to *MCD credit intermediation activities* apply to it. In relation to an *incoming EEA firm* providing *cross border services*, *rules* do not apply to the *firm* where the *rule* covers a matter dealt with by the *MCD*. Instead the *Home State's* rules will apply.

1.2            G     Under article 34(2) of the *MCD*, ensuring compliance with the obligations in articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the *MCD* by *incoming EEA firms* doing business through branches is the responsibility of the *Host State*. These articles contain most of the conduct requirements imposed on *credit intermediaries* under the *MCD*, for example advisory standards and the obligation to provide an *ESIS*. Responsibility for ensuring compliance with all other obligations in the *MCD* is the responsibility of the *Home State*. This means that, in so far as a *rule* imposes obligations on *MCD credit intermediaries* that are contained in the articles listed above, that *rule* applies to *incoming EEA firms* doing business through branches. A *rule* that imposes obligations contained in any other article of the *MCD* does not apply in relation such an *incoming EEA firm*, and its equivalent *Home State* rule applies instead. Conversely, such a *rule* would apply in relation to an *EEA* branch of a *UK firm*.

1.3            G     For all *incoming EEA firms*, where *MCOB* imposes obligations that go beyond what is required by the *MCD* (as permitted under article 2 of the *MCD*), the *firm* is required to comply with those additional obligations.

1.4            G     The tables in *MCOB 1 Annex 5.1.6G* provide non-exhaustive guidance as to how the obligations imposed under the *MCD* relate to *MCOB* provisions. In general, *MCOB* applies as follows:

(1)     In relation to an *incoming EEA firm* acting as a *MCD credit*

*intermediary* on a branch basis, all provisions of *MCOB* that apply to *MCD credit intermediaries* may apply, except for the provisions in Table 2.

- (2) In relation to an *incoming EEA firm* acting as a *MCD credit intermediary* on a *cross-border services* basis, all provisions of *MCOB* that apply to *MCD credit intermediaries* may apply, except for the provisions in Tables 1 and 2.
- (3) In relation to an *EEA branch* of a *UK firm* acting as a *MCD credit intermediary*, the provisions in Table 2 (and only those provisions) may apply in relation to the firm's *MCD credit intermediation activity* in that *EEA State*.

1.5 G *Incoming EEA firms* should also refer to the general application provisions in *MCOB* 1.3 and the application provisions in each chapter of *MCOB*, which set out how *MCOB* applies to *MCD credit intermediaries* in general.

1.6 G Tables 1 and 2 belong to *MCOB* 1 Annex 5.1.4G.

**Table 1:** *MCOB* provisions relating to *MCD* obligations that apply to *MCD credit intermediaries*, for which *Host State* rules apply in relation to an *incoming EEA firm* doing business through branches

<i>MCD</i> article	Description	<i>MCOB</i> provisions
7(1)	Obligation to act honestly, fairly, transparently and professionally in the interests of consumers.	<i>MCOB</i> 2.5A.1R
8	Obligation to provide information free of charge to consumers.	<i>MCOB</i> 2A.6
10	General provisions applicable to advertising and marketing (obligation to require communications are fair, clear and not misleading).	<i>MCOB</i> 3A.2
11	Standard information to be included in advertising.	<i>MCOB</i> 3A.5
13	General information (to be made available about credit agreements).	<i>MCOB</i> 3B
14	Pre-contractual information.	<i>MCOB</i> 5A
15	Information requirements	<i>MCOB</i> 4.4A.4R, 4.4A.8R,

	concerning credit intermediaries and appointed representatives.	4.4A.9R, 4.4A.12R and 4A.1
16	Adequate explanations.	<i>MCOB</i> 4A.2
17	Calculation of the <i>APRC</i> .	<i>MCOB</i> 10A
20	Disclosure and verification of consumer information.	<i>MCOB</i> 11A.1 and 11A.3
22	Standards for advisory services.	<i>MCOB</i> 4A.3, 4.4A.4R(1)(a) and (3), 4.4A.9R, 4.4A.12R and 4.7A

**Table 2:** *MCOB* provisions relating to *MCD* obligations that apply to *MCD credit intermediaries*, for which *Home State* rules apply in relation to all *incoming EEA firms*

<i>MCD</i> article	Description	<i>MCOB</i> provisions
7(2) – (4)	Remuneration not impeding obligation to act honestly, fairly, transparently and professionally in the interests of consumers, or in the consumer's best interests when giving advice.	<i>MCOB</i> 2A.1.1R(2) and <i>MCOB</i> 2A.1.4R
12	Tying and bundling practices.	<i>MCOB</i> 2A.2.1R & 2A.2.2G
27	Information on changes in the borrowing rate.	<i>MCOB</i> 7.6.28R

## Annex D

## Amendments to the Supervision manual (SUP)

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

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

- G 1. The table below summarises the application of the *Handbook* to an *incoming EEA firm* ...

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>MCOB</i>	Applies where the activity is carried on with or for a <i>customer</i> resident in the <i>United Kingdom</i> or another <i>EEA State</i> at the time that the activity is carried on, but see the territorial scope in <i>MCOB 3.3A 1.3.1AR</i> and <i>MCOB 1 Annex 5</i> .	Applies where the activity is carried on with or for a <i>customer</i> resident in the <i>United Kingdom</i> at the time that the activity is carried on but see <i>MCOB 1.3.4R</i> (Distance contracts entered into from an establishment in another EEA State), <del>and <i>MCOB 3.3A MCOB 1.3.1AR</i></del> and <i>MCOB 1 Annex 5</i> .
...		

**13A Matters reserved to a Home State regulator**  
**Annex 2**

- G

...
-----

Requirements under MCD	
...	
11M	Ensuring compliance with the obligations in <del>articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39</del> of the <i>MCD</i> by <i>EEA</i> firms providing <i>cross border services</i> is the responsibility of the <i>Home State</i> .
...	

## **Appendix 3**

# **Changes to the requirements in LR, DTR and PR**

**LISTING RULES, PROSPECTUS RULES AND DISCLOSURE AND TRANSPARENCY  
RULES (MISCELLANEOUS AMENDMENTS [NO 2]) INSTRUMENT 2016**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (a) section 73A (Part 6 Rules);
  - (b) section 84 (Matters which may be dealt with by prospectus rules);
  - (c) section 89A (Transparency rules);
  - (d) section 89C (Provision of information by issuers of transferable securities);
  - (e) section 96 (Obligations of issuers of listed securities);
  - (f) section 137A (The FCA’s general rules);
  - (g) section 137T (General supplementary powers); and
  - (h) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

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

**Amendments to the Handbook**

- D. The 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
Listing Rules sourcebook (LR)	Annex B
Prospectus Rules sourcebook (PR)	Annex C
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex D

**Citation**

- E. This instrument may be cited as the Listing Rules, Prospectus Rules and Disclosure and Transparency Rules (Miscellaneous Amendments [No 2]) Instrument 2016.

By order of the Board  
[*date*]

## Annex A

## Amendments to the Glossary of definitions

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

...

*ESMA Prospectus Question and Answers* the Questions and Answers for prospectuses published by *ESMA* (~~ESMA/2014/1279~~) (ESMA/2015/1874).

...

*ESMA Prospectus Opinion* ~~*Opinions*~~

- (1) the opinion published by *ESMA* on the 'Format of the base prospectus and consistent application of ~~Article~~ article 26(4) of the Prospectus Regulation' (ESMA/2013/1944);
- (2) the opinion published by *ESMA* on the 'Framework for the assessment of third country prospectuses under article 20 of the Prospectus Directive' (ESMA/2013/317);
- (3) the opinion published by *ESMA* on the assessment of Israeli laws and regulations on prospectuses (ESMA/2015/1015); and
- (4) the opinion published by *ESMA* on the assessment of Turkish laws and regulations on prospectuses (ESMA/2016/268).



## Annex B

## Amendments to the Listing Rules sourcebook

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

**5 Suspending, cancelling and restoring listing and reverse takeovers: All securities**

...

**5.6 Reverse takeovers**

...

Definition

5.6.4 R *A reverse takeover* is a transaction, whether effected by way of a direct acquisition by the *issuer* or a subsidiary, an acquisition by a new *holding company* of the *issuer* or otherwise, of a business, a *company* or assets:

- (1) where any *percentage ratio* is 100% or more; or
- (2) which in substance results in a fundamental change in the business or in a change in board or voting control of the *issuer*.

When calculating the *percentage ratio*, the *issuer* ~~should~~ must apply the *class tests* and LR 10.2.10R (Aggregating transactions).

## Annex C

## Amendments to the Prospectus Rules sourcebook (PR)

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

## 1.1 Preliminary

...

Provisions implementing the prospectus directive

1.1.6 G The *FCA* considers that the following documents together determine the effect of the *prospectus directive*:

...

(6) the *ESMA Prospectus ~~Opinion~~ Opinions*; and

...

...

ESMA materials

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

...

## App 1.1 Relevant definitions

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

...		
<i>ESMA Prospectus <del>Opinion</del> Opinions</i>	(1)	the opinion published by <i>ESMA</i> on the 'Format of the base prospectus and consistent application of <del>Article</del> article 26(4) of the Prospectus Regulation' (ESMA/2013/1944);

	(2)	<u>the opinion published by ESMA on the 'Framework for the assessment of third country prospectuses under article 20 of the Prospectus Directive' (ESMA/2013/317);</u>
	(3)	<u>the opinion published by ESMA on the assessment of Israeli laws and regulations on prospectuses (ESMA/2015/1015); and</u>
	(4)	<u>the opinion published by ESMA on the assessment of Turkish laws and regulations on prospectuses (ESMA/2016/268).</u>
<i>ESMA Prospectus Question and Answers</i>		the Questions and Answers for prospectuses published by ESMA ( <del>ESMA/2014/1279</del> ) (ESMA/2015/1874).
...		

## Annex D

## Amendments to the Disclosure and Transparency Rules sourcebook

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

## 4 Periodic Financial Reporting

## 4.3A Reports on payments to governments

...

Filing of reports on payments to governments

- 4.3A.10 R (1) The issuer must file the report on payments to governments with the FCA.
- (2) The report in (1) must be filed by uploading it to the system identified by the FCA on its website as the national storage mechanism for regulatory announcements and certain documents published by issuers.
- (3) A report filed under (2) must be in XML (extensible markup language) format and must use the XML data schema developed for the purposes of facilitating software filing to be used for the purpose of delivering a report on payments to governments dated [ ] 2016 and comprising:
- (a) the Extractive Report Schema Definition;
- (b) the ISO Country Code Schema; and
- (c) the ISO Currency Codes.

The technical requirements in respect of the XML data schema are specified on the FCA's website at [<http://fca.org.uk>].

## TP 1 Disclosure and transparency rules

## Transitional Provisions

(1)	(2) Material to which the Transitional provision applies	(3)	(4) Transitional provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					
23	<u>DTR 4.3A (except DTR</u>	R	<u>DTR 4.3A (except DTR 4.3A.10R) applies in</u>	From 22	22 December

	<u>4.3A.10R)</u>		relation to a financial year of an <i>issuer</i> beginning on or after 1 January 2015.	December 2014	2014
...					
<u>27</u>	<u>DTR 4.3A.10R</u>	<u>R</u>	<u>DTR 4.3A.10R applies in relation to a financial year of an <i>issuer</i> beginning on or after [1 August] 2016.</u>	<u>From [ ] 2016</u>	<u>[ ] 2016</u>

# Appendix 4

## EG amendments

**ENFORCEMENT GUIDE (WARNING NOTICES PUBLICITY) INSTRUMENT 2016**

**Powers exercised**

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000:

- (1) section 139A (Power of the FCA to give guidance); and
- (2) section 395 (The FCA's and PRA's procedures).

**Commencement**

B. This instrument comes into force on *[date]* 2016.

**Amendments to the material outside the Handbook**

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

**Citation**

D. This instrument may be cited as the Enforcement Guide (Warning Notices Publicity) Instrument 2016

By order of the Board  
*[date]* 2016

## Annex

### Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text.

#### 6. Publicity

...

6.10C In cases where the FCA publishes a warning notice statement and the FCA subsequently decides not to take any further action, or where it publishes a decision notice and the subject of enforcement action successfully refers the matter to the Tribunal, the FCA will make it clear on its website that the warning notice or the decision notice no longer applies. The FCA will normally do this by publishing a notice of discontinuance with the consent of the person to whom the notice of discontinuance has been copied.

In other cases where a case is resolved following the publication of a warning notice statement, the FCA will consider on a case by case basis whether to update its website to explain what the outcome was of the case described in the warning notice statement. Where the warning notice statement was issued on an anonymised basis, the FCA will at the same time consider the extent to which it is appropriate to identify the subject of the statement.

...



# Appendix 5

## SUP reporting changes

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

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 64C (Requirements for relevant authorised persons to notify regulator of disciplinary action);
    - (b) section 137A (The FCA’s general rules);
    - (c) section 137T (General supplementary powers); and
    - (d) section 139A (Power of the FCA to give guidance); and
  - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force as follows:
- (1) Part 1 of the Annex on 30 June 2016;
  - (2) Part 2 of the Annex on 30 September 2016; and
  - (3) Part 3 of the Annex on 31 October 2016.

**Amendments to the Handbook**

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

**Citation**

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

By order of the Board  
[date] 2016

## Annex

## Amendments to the Supervision manual (SUP)

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

**Part 1: Comes into force on 30 June 2016**

**16 Reporting requirements**

...

**16.3 General provisions on reporting**

...

Failure to submit reports

16.3.14 R ...

- (2) ~~The administrative fee in (1) does not apply in respect of quarterly reports required to be submitted by credit unions whose liability to pay a periodic fee under FEES 4.2.1R in respect of the A.1 activity group in FEES 4 Annex 1A and FEES 4 Annex 1BR, for the financial year prior to the due date for submission of the report, was limited to the payment of the minimum fee. [deleted]~~

...

**16.7A Annual report and accounts**

...

Requirement to submit annual report and accounts

16.7A.3 R A *firm* in the RAG in column (1) and which is a type of *firm* in column (2) must submit its *annual report and accounts* to the FCA annually on a single entity basis.

(1)	(2)
RAG	Firm type
...	
6	<u>All firms other than firms subject to IPRU (INV) Chapter 13 that are not exempt CAD firms</u>
...	

8	All <i>firms</i> <u>other than firms</u> subject to <i>IPRU (INV)</i> Chapter 13 that are not <i>exempt CAD firms</i>
---	-----------------------------------------------------------------------------------------------------------------------

...

## 16.12 Integrated Regulatory Reporting

...

### Reporting requirement

16.12.3 R ...

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

(a) ~~credit unions solely in relation to the reporting requirement for RAG 1 activities where the following submission methods apply:~~

(i) ~~Post to the Bank of England for postal submission:~~

~~Regulatory Data Group~~

~~Statistics and Regulatory Data Division (HO5 A-B)~~

~~Bank of England~~

~~Threadneedle Street~~

~~London~~

~~EC2R 8AH~~

(ii) ~~Leaving the report marked for the attention of "Regulatory Data Group, Statistics and Regulatory Data Division (HO 5 A-B) at the Bank of England, Threadneedle Street, London, EC2R 8AH, and obtaining a dated receipt~~

(iii) ~~Electronic mail~~

~~(CreditUnionReporting@BankofEngland.co.uk) or fax (020 7601 3334) to the Regulatory Data Group of the Bank of England~~

(iv) ~~Online submission via the appropriate systems accessible from the *appropriate regulator's* website; [deleted]~~

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

- (b) *firms* in RAG 2 in relation to the reporting requirements for RAG 2 activities; and
- (c) those *data items* specified as "No standard format", where SUP 16.3.6R to SUP 16.3.10G will apply.
- (4) A *firm* that is a member of a *financial conglomerate* must also submit financial reports as required by SUP 16.12.32R.

...

## Regulated Activity Group 1

- 16.12.5 R The applicable *data items* and forms or reports referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

Description of <i>data item</i>	Prudential category of <i>firm</i> , applicable <i>data items</i> and reporting format						
	(Note 1)						
	<i>UK bank</i>	<i>Building society</i>	<i>Non-EEA bank</i>	[deleted ]	[deleted]	<del><i>Credit union</i></del> [deleted]	<i>Dormant account fund operator</i> (note 15)
...							
Balance sheet	FSA 001 (note 2)	FSA001 (note 2)				EQ; EY	
Income Statement	FSA 002 (note 2)	FSA002 (note 2)	FSA 002			EQ; EY	
Capital adequacy						EQ; EY	
...							
Large exposures						EQ; EY	
...							
Liquidity (other than		FSA011				EQ; EY	

stock)							
...							
Note 1	When submitting the completed <i>data item</i> required, a <i>firm</i> must use the format of the <i>data item</i> set out in SUP 16 Annex 24R, <del>except for credit union reports that are in SUP 16 Annex 14.</del> Guidance notes for completion of the data items are contained in SUP 16 Annex 25G (or <del>Ann 15G for credit unions</del> ).						
...							

- 16.12.6 R The applicable reporting frequencies for submission of *data items* and periods referred to in SUP 16.12.5R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	Unconsolidated <i>UK banks</i> and <i>building societies</i>	Solo consolidated <i>UK banks</i> and <i>building societies</i>	Report on a <i>UK consolidation group</i> or, as applicable, <i>defined liquidity group</i> basis by <i>UK banks</i> and <i>building societies</i>	Other members of RAG 1
...				
EQ				Quarterly
EY				Annually (note 2)
...				
Note 2	The annual report required from a <i>credit union</i> by SUP 16.12.5 R <del>must be made up for the same period as the audited accounts published by the <i>credit union</i> in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968 or provided in accordance with article 49 of the Credit Unions (Northern Ireland) Order 1985 (as appropriate). CREDS 8.2.6 R (2)(a) states that the audited accounts referred to in SUP 16.12.5 R are to be made up for the period beginning with the date of the <i>credit union's</i> registration or with the date to which the <i>credit union's</i> last annual accounts were made up, and ending on the <i>credit union's</i> most recent financial year end. [deleted]</del>			
...				

...

Amend SUP 16 Annex 21R (Reporting Fields) as shown.

## 16 Annex Reporting Fields 21R

R This is the annex referred to in *SUP 16.11.7R*.

...

### 2 SPECIFIC REPORTING FIELDS

...

#### (c) Mortgages

...

Data reporting field	Code (where applicable)	Notes
...		
Affordability data		
...		
Basic essential expenditure and basic quality of living costs per household	Numeric £ <u>(monthly)</u>	Report the <u>monthly</u> figure used in the affordability assessment for household expenditure, i.e. the basic essential expenditure and basic quality of living costs of the household, whether actual (i.e. customer specific information) or estimated (e.g. statistical or modelled data). ...
Performance Data (report for all <i>regulated mortgage contracts</i> )		
...		
Date of balance <u>(must be within reporting period)</u>	DD/MM/YY YY	Report date of current balance outstanding. <u>This date should be within the reporting period of the return, even if the data is extracted and submitted after the final day of the reporting period.</u>

...		
-----	--	--

(d) ...

**Part 2: Comes into force on 30 September 2016****15 Notifications to the FCA or PRA**

...

**15.6 Inaccurate, false or misleading information**

...

15.6.6 G ...

15.6.6A G SUP 15.11.13R(4) adjusts the time when, and the way, a relevant authorised person should make updates under SUP 15.6.4R about notifications under section 64C of the Act (notification of disciplinary action against certain employees).

...

**15.11 Notification of COCON breaches and disciplinary action**

Reasons for making a notification to the FCA

...

15.11.8 G If, after a *firm* has made a notification for a *person* (A) pursuant to section 64C of the *Act*, it becomes aware of facts or matters which cause it to change its view that A has breached *COCON*, or cause it to determine that A has breached a provision of *COCON* other than the provision to which the notification related, the *firm* should inform the *FCA* of those facts and matters and its revised conclusion in line with a *firm's* obligation to comply with *Principle 11*, *SUP 15.6.4R* and, if applicable, *SUP 10C* or *SUP 15.11.13R(4)*.

...

Timing and form of notifications: certification employees and other conduct rules staff

15.11.13 R (1) A *firm* must make any notifications required pursuant to section 64C of the *Act* relating to a *certification employee* or *other conduct rules staff* ~~annually~~ in accordance with *SUP 15.11.13R* to *SUP 15.11.15R*.

(2) That notification ~~should~~ must be made ~~in October each year and~~



annually.

- (3) Each notification must:
- (a) cover the year up to the first day of that month 12 month period ending on the last day of September; and
- (b) be submitted to the FCA no later than the 1<sup>st</sup> December that immediately follows the September in which the reporting period ends.
- (4) SUP 15.6.4R and SUP 15.6.5R (updates to a notification that is or has become incorrect) apply to a notification under this rule but the firm must include the update or correction in the next notification it is due to make under this rule rather than in the time and manner otherwise required for notifications under those rules.
- (5) If a firm (other than a credit union) has nothing to report under section 64C of the Act and nothing to report under SUP 15.11.13R(4) for a particular reporting period, it must notify the FCA of that fact in accordance with SUP 15.11.13R to SUP 15.11.15R.

15.11.13A G SUP 15.11.8G gives examples of when a notification should be updated under SUP 15.11.13R(4).

- 15.11.14 R (1) A firm other than a credit union must make ~~any~~ each notifications required pursuant to SUP 15.11.13R (notifications about section 64C of the Act relating to a certification employee or other conduct rules staff) by submitting it online through the FCA's website using the electronic system made available by the FCA for this purpose.
- (2) A firm must use the version of ~~an~~ Form H made available on the electronic system referred to in (1), which is based on the version found in (SUP 15 Annex 7R).
- (3) If the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, SUP 15.11.15R applies until such time as facilities for online submission are restored.

- 15.11.14A G (1) If the information technology systems used by the FCA fail and online submission is unavailable for 24 hours or more, the FCA will endeavour to publish a notice on its website confirming that:
- (a) online submission is unavailable; and
- (b) the alternative methods of submission in SUP 15.11.15R apply.
- (2) Where SUP 15.11.14R(3) applies to a firm, GEN 1.3.2R (Emergency) does not apply.

15.11.15 R A ~~firm~~ credit union must make each notifications pursuant to SUP 15.11.13R (notifications about section 64C of the Act relating to a certification employee or

*other conduct rules staff*) in accordance with the *rules and guidance* in SUP 15.7, using Form H as set out in SUP 15 Annex 7R.

General guidance on notifications of rule breaches and disciplinary action

- 15.11.16 G A *firm* is ~~not~~ required to submit nil return notifications pursuant to ~~about~~ section 64C of the *Act* in the case of *certification employees and other conduct rules staff* (see SUP 15.11.13R(5)). However, a *credit union* is not required to make a nil return.
- 15.11.17 G The obligation to notify pursuant to section 64C of the *Act* or to update or correct a notification under SUP 15.11.13R(4) does not replace or limit a *firm*'s obligation to comply with *Principle 11*.

...

The form in the following annex is deleted and is replaced with the text shown on the following pages. The deleted text is not shown and the new text is not shown underlined.

**15 Annex 7R Form H: The notification of disciplinary action relating to certification employees and other conduct rules staff form**



Application number  
(for FCA/PRA use only)

# Form H

## Notification of Disciplinary Action relating to certification employees and other conduct rules staff

*FCA Handbook* Reference: SUP 15 Annex 7R  
[ ] September 2016

Name of *firm*  
(as entered in 2.01)

Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS  
United Kingdom  
Telephone +44 (0) 845 606 9966  
Facsimile +44 (0) 207 066 0017  
E-mail [iva@fca.org.uk](mailto:iva@fca.org.uk)  
Website <http://www.fca.org.uk>

**Contact Details****Section 1**

Contact for this notification

<b>1.01</b>	Title	
<b>1.02</b>	First Name	
<b>1.03</b>	Surname	
<b>1.04</b>	Job Title	
<b>1.05</b>	Business address	
<b>1.06</b>	Post code	
<b>1.07</b>	Phone number (including STD code)	
<b>1.08</b>	Email address	
<b>1.09</b>	Mobile No	
<b>1.10</b>	Fax No.	

**Firm Identification Details**

**Section 2**

2.01 Name of *firm*

--

2.02 Firm Reference Number (FRN)

--

**Fitness and Propriety - Notifications under section 64C of the Financial Services and Markets Act 2000** **Section 3**

This section should be completed by a firm to:

- (a) make an annual notification of disciplinary action (as defined in section 64C (Requirement for relevant authorised persons to notify regulator of disciplinary action) of the Financial Services and Markets Act 2000) if the reason for taking the disciplinary action is any action, failure to act or circumstance that amounts to a breach of the individual conduct rules set out in the *FCA's* Code of Conduct (COCON); or
- (b) make a follow up notification to update a notification that has been previously made by the firm in relation to (a); or
- (c) confirm that there is nothing to be reported under (a) or (b).

Is the firm making a nil return (see paragraph (c) of the introduction to this section)?

YES  NO

If the firm has answered "Yes", please go straight to section 5. If the firm has answered "No", please go to section 4.

A *credit union* is not required to make a nil return (see SUP 15.11.13R(5)). If a *credit union* has nothing to notify for a particular reporting period, it should not send a Form H to the *FCA* for that period.

**Disciplinary Action Details**

**Section 4**

For each individual that is the subject of a notification under this Form, please provide the details requested below, in so far as applicable.

A	B	C	D	E	F	G	H	I	J	K	L	M
<b>Title</b>	<b>Surname</b>	<b>Forenames</b>	<b>IRN</b> <i>(See note 1)</i>	<b>Date of Birth</b> <i>(See note 1)</i>	<b>National Insurance Number</b> <i>(See note 1)</i>	<b>Passport Number</b> <i>(See note 1)</i>	<b>Nationality</b> <i>(See note 1)</i>	<b>Job Title / Position And Department / Division</b>	<b>Has the person, at any time during the reporting period, been certified for FCA-specified significant-harm function (7) (material risk takers)?</b>	<b>Please identify the relevant conduct rule(s) that have been breached which form the basis of the disciplinary action taken</b> <i>Refer to Conduct Rules</i>	<b>Please provide more information in relation to the conduct rule breached. Please also state here whether the firm is updating a previous notification or is making a new notification.</b> <i>Free text description (2000 characters only. Anything greater than this please provide an attachment.) (See note 2)</i>	<b>Please provide information as to the disciplinary action taken:</b> <ul style="list-style-type: none"> <li>• issuing of a formal written warning</li> <li>• suspension or dismissal of the person</li> <li>• reduction or recovery of any of the person's remuneration</li> </ul> <i>Free text description (2000 characters only. Anything greater than this please provide an attachment.) (See note 3)</i>

Note 1:

(a) If an IRN is available for a person about whom a notification is being made, please complete column D but do not complete columns E, F, G or H.

(b) If an IRN is not available for a person about whom a notification is being made, but that person has a national insurance number, please complete columns E and F but do not complete columns G or H.

(c) If neither an IRN nor a national insurance number is available for a person about whom a notification is being made, please complete columns E, G and H.

Note 2: If the firm is updating a previous notification, please confirm this in this column but include the details in column M (see note 3)).

Note 3:

(a) If the person about whom the notification is being made is appealing against the firm's decision, please include details here.

(b) If the firm is updating a previous notification, please include the details in this column. This includes (1) any appeal made by the subject of the notification subsequent to a previous notification or (2) the outcome of any appeal previously notified.



**Declaration**

It is a criminal offence, knowingly or recklessly, to give us information that is materially false, misleading or deceptive. Even if you believe information has been provided to us before (whether as part of another notification or otherwise) or is in the public domain, you must nonetheless disclose it clearly and fully in this form and as part of this notification. If there is any doubt about the relevance of information, it should be included.

The firm confirms that the information provided is accurate and complete to the best of the firm's knowledge. The firm will notify the *FCA* if there is a material change to the information provided.

The firm authorises the *FCA* and *PRA*, as applicable, to make such enquiries and seek such further information as it thinks appropriate to verify information that it considers relevant to this notification.

The firm understands that the *FCA* and/or *PRA* may require it to provide further information or documents at any time.

For the purpose of complying with the Data Protection Act 1998, personal data about an individual that is the subject of a notification under this Form will be used by the *FCA* and/or *PRA* to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation, and will not be disclosed for other purposes without the permission of the firm.

In addition to other regulatory responsibilities, *firms* have a responsibility to disclose to the *FCA* and/or *PRA* matters of which it or they would reasonably expect to be notified. Failure to notify the *FCA* and/or *PRA* of such information may lead to the *FCA* and/or *PRA* taking disciplinary or other action against the firm.

By signing below, the person submitting this form on behalf of the firm confirms that this form is accurate and complete to the best of his or her knowledge and he or she has read and understood the notes to this form.

Name of the *firm*

Name of *person* signing on behalf of the *firm*

Position

Signature

Date

## 16.12 Integrated Regulatory Reporting

...

### Regulated Activity Group 5

- 16.12.18B R The applicable *data items*, reporting frequencies and submission deadlines referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of <i>data item</i>	<i>Data item</i> (note 1)	Description of <i>data item</i>	<i>Data item</i> (note 1)
...		...	
Capital Adequacy (notes 4 and 5)	Section C MLAR		
...			
<u>Note 5</u>	<u>Only applicable to a firm that is subject to MIPRU 4.2 (Capital resources requirements).</u>		

...

### Part 3: Comes into force on 31 October 2016

In SUP 16 Annex 24R (Data items for SUP 16.12), form FSA028 (Non-EEA sub-group) is amended as shown.

**FSA028**

**Non-EEA sub-group**

27 Do you have a non-EEA sub-group which you are reporting on behalf of?

If the answer to 27 above is 'no', then you do not have to complete any more of this data item, but it still needs to be submitted.

1 ~~Is your non-EEA sub-group reporting requirement satisfied by your solo-consolidated FSA003?~~

~~If the answer to 1 is 'Yes', you do not have to complete the rest of this data item.~~

2 ~~Is your non-EEA sub-group reporting requirement satisfied by a UK-consolidation group FSA003 submission?~~

~~If the answer to 2A was 'Yes', you do not need to complete the rest of this data item.~~

4 What is the currency of this report?

**Capital adequacy**

5 Total tier one capital after deductions

6 Total tier two capital after deductions

7 Deductions from the totals of tier one and two

8 Total tier one capital plus tier two capital after deductions

9 Total tier three capital

10 Deductions from total capital

11 Total capital after deductions

12 Credit risk requirement under existing rules

13 Market risk requirement under existing rules

14 Other capital requirements under existing rules

15 Total credit risk capital component

16 Total operational risk capital requirement

17 Reduction in operational risk capital requirement under BIPRU TP 12.8R

18 Counterparty risk capital component

19 Total market risk capital requirement

20 Concentration risk capital component

21 Fixed overheads requirement

22 Capital requirement

23 Capital resources requirement arising from the operation of capital floors

24 Surplus/Deficit of own funds

**Large exposures**

25 Capital resources

Exposure no	Counterparty name (or group name)	Exposures after risk mitigation techniques				CNCOM
		Exempt exposures	Non-exempt exposures			
			of which non-trading book, non-exempt	of which trading book, non-exempt	non exempt % of capital resources	
A	B	C	D	E	F	G
26						

Amend SUP 16 Annex 25G as shown.

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

...

Data elements

These are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

...

FSA028 – Non-EEA sub-groups

...

Firms should use ~~the diagrams in BIPRU 8 Annex 3G, in conjunction with~~ BIPRU 8.3, to help them understand in the first instance whether a *non-EEA sub-group* exists. ...

...

### **27A Do you have a non-EEA group you are reporting on behalf of?**

*Firms should refer to BIPRU 8.3 which describes how to identify a non-EEA sub-group. view the examples of non-EEA sub-groups in BIPRU 8 Annex 3R. If the firm is at the top of a non-EEA sub-group (eg the UK bank in non-EEA sub-group 1 in Example 5, and also UK bank 2 in the case of non-EEA sub-group 2 in Example 4), then you should answer ‘yes’. If however the firm is not at the top of a non-EEA sub-group, for example the UK investment firms in the non-EEA sub-group 1 Example 5), the answer will be ‘no’.*

Thus for any non-EEA sub group, there should only be a single firm that answers ‘yes’ to this data element.

Firms that answer ‘no’ need not complete the data item further, but are still required to submit the data item.

### **1A ~~Is your non-EEA sub-group reporting requirement satisfied by your solo-consolidated FSA003?~~ [deleted]**

~~The diagrams in BIPRU 8 Annex 3G, in conjunction with BIPRU 8.3, should assist firms in identifying those circumstances when a non-EEA sub-group exists and when a solo-consolidated FSA003 will satisfy the reporting requirement. Firms should answer Yes or No. Firms answering Yes do not need to complete the rest of the data elements. [deleted]~~

### **2A ~~Is your non-EEA sub-group reporting requirement satisfied by your UK consolidation group FSA003?~~ [deleted]**

~~The diagrams in BIPRU 8 Annex 3G, in conjunction with BIPRU 8.3, should assist firms in~~

~~identifying those circumstances when a *UK consolidation group* exists and when a *UK consolidation group* FSA003 will satisfy the reporting requirement. Firms should answer Yes or No. Firms answering Yes should complete 3A, and then do not need to complete the rest of the data elements. [deleted]~~

...

In SUP 16 Annex 38AR (Data Items relating to Consumer Credit activities), forms CCR002 (Consumer Credit data: Volumes) and CCR003 (Consumer Credit data: Lenders) are amended as shown on the following pages.

**CCR002 - Consumer Credit data: Volumes**

**Activities**

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Fee Mechanism	Revenue	Total Customers	Total Transactions

**Lending**

<b>1</b>	Debt purchasing			
<b>2</b>	Hire purchase / conditional sale agreements			
<b>3</b>	Home credit loan agreements			
<b>4</b>	Bill of sale loan agreements			
<b>5</b>	Pawnbroking			
<b>6</b>	High cost short-term credit			
<b>13</b>	<u>Overdrafts</u>			
<b>7</b>	<del>Running</del> Other running-account credit			
<b>8</b>	Other lending			
<b>9</b>	<b>Credit Broking</b>			
<b>10</b>	<b>Debt Management Activity</b>			
<b>11</b>	<b>All other credit-related regulated activity</b>			
<b>12</b>	<b>Total annual income as defined in FEES 4 Annex 11BR for the purpose of FCA fees reporting</b>			



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

## **16 Annex 38BG NOTES FOR COMPLETION OF THE DATA ITEMS RELATING TO CONSUMER CREDIT ACTIVITIES**

...

### **CCR002 – Consumer Credit data: volumes**

This data item provides the FCA with an overall picture of the size of the consumer credit market and how revenue is generated. On an individual firm level, it allows us to look at the relationship between customer numbers, transaction numbers and revenue.

In this data item, firms should complete each row relating to an activity they have permission to undertake.

...

#### **Rows 1 to 8 and 13: Lending**

The rows under the heading “Lending” relate to the different types of lending that are covered by *consumer credit lending*. For each type of lending that a firm undertakes, the row relating to that activity should be completed in full.

Firms undertaking logbook lending should report data relating to this activity in the row labelled “Bill of sale loan agreements.”

...

### **CCR003 – Consumer Credit data: Lenders**

The purpose of this data item is to give the FCA an understanding of the number and value of credit-related loans that exist, and the extent of arrears attached to those loans. This data item will also provide information on interest rates being charged on those loans.

In this data item, firms should complete each row relating to lending sub-category that they have permission to undertake.

...

#### **Row 7: ~~Running~~ Other running-account credit**

The information recorded in this row should be on the utilisation of the running-account credit, not the facility.

#### **Row 13: Overdraft**

The information recorded in this row should be on the utilisation of the running-account credit, not the facility.



# Appendix 6

## UK ELTIFs and decision making procedure

**THE ENFORCEMENT (THE EUROPEAN LONG-TERM INVESTMENT FUNDS  
REGULATIONS 2015) INSTRUMENT 2016**

**Powers exercised by the Financial Conduct Authority**

- A. The Financial Conduct Authority makes this instrument in the exercise of:  
the following powers and related provisions of the Financial Services and Markets Act 2000  
("the Act"):
- (1) section 139A (Power of the FCA to give guidance); and
  - (2) section 395 (The Authority's procedures).

**Commencement**

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

**Amendments to the Handbook**

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

**Material outside the Handbook**

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

**Citation**

- E. This instrument may be cited as The Enforcement (The European Long-Term Investment  
Funds Regulations 2015) Instrument 2016.

By order of the Board  
[*date*]

## Annex A

## Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

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

...

Alternative Investment Fund Managers Regulations 2013	Description	Handbook reference	Decision maker
...			
Regulation 18(2)(a)	...		
<u>Regulation 23B(1)</u>	<u>Where the FCA proposes to refuse an application made by a UK AIF for authorisation as a UK ELTIF</u>		<u>Executive procedures</u>
<u>Regulation 23B(2)(a)</u>	<u>Where the FCA decides to refuse an application made by a UK AIF for authorisation as a UK ELTIF</u>		<u>Executive procedures where no representations are made in response to a warning notice otherwise by the RDC</u>
<u>Regulation 23C(1)</u>	<u>Where the FCA proposes to revoke the authorisation of a UK ELTIF</u>		<u>RDC</u>
<u>Regulation 23C(2)(a)</u>	<u>Where the FCA decides to revoke the authorisation of a UK ELTIF</u>		<u>RDC</u>

...			
-----	--	--	--

**Annex B****Amendments to the Enforcement Guide (EG)**

In this Annex, underlining indicates new text and striking thorough indicates detected text.

**19 Non-FSMA powers**

...

**Alternative Investment Fund Managers Regulations 2013**

- 19.131 The *AIFMD UK regulation* transposes *AIFMD*, and makes the necessary changes to UK legislation in relation to the *EuSEF* ~~and~~ *regulation*, the *EuVECA regulations* ~~regulation~~ and the *ELTIF regulation* and. It provides new and updated powers in relation to both existing and new managers of *AIFs*, whether authorised or registered.

**Financial Conduct Authority**



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