

# Quarterly consultation No.1

June 2013





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The Financial Conduct Authority invites comments on this Consultation Paper. Comments on Chapter 5 and Chapter 6 should reach us by 6 July 2013 and comments on all other chapters by 6 August 2013.

Comments may be sent by electronic submission using the form on the FCA's website at: [www.fca.org.uk/your-fca/documents/consultation-papers/cp13-03-response-form](http://www.fca.org.uk/your-fca/documents/consultation-papers/cp13-03-response-form).

**Alternatively, please send comments in writing to:**

Chapter 2:	Carol Mahoney, General Insurance Policy	Tel: 020 7066 9294
Chapter 3:	Victoria Barnard, Mortgage Policy	Tel: 020 7066 2184
Chapter 4:	Jenny Frost, Investments Distribution & Disclosure	Tel: 020 7066 3134
Chapter 5:	Amanda Ettridge, Professionalism and Standards Team	Tel: 020 7066 5122
Chapter 6:	Heather McLarnon, Enforcement – Legal	Tel: 020 7066 7690

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

All responses should be sent to:

Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

Telephone: 020 7066 0334  
Email: [fca-cp13-03@fca.org.uk](mailto:fca-cp13-03@fca.org.uk)

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

Copies of this Consultation Paper are available to download from our website – [www.fca.org.uk](http://www.fca.org.uk). Alternatively, paper copies can be obtained by calling the FCA order line: 0845 608 2372

## Abbreviations used in this paper

<b>AIF</b>	alternative investment fund
<b>AIFM</b>	alternative investment fund manager
<b>AIFMD</b>	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010
<b>AIFMUKR</b>	The Alternative Investment Fund Managers Regulations 2013
<b>CBA</b>	cost benefit analysis
<b>CP</b>	Consultation Paper
<b>DEPP</b>	Decision Procedure and Penalties manual
<b>EEA</b>	European Economic Area
<b>EG</b>	Enforcement Guide
<b>EuSEF</b>	European social entrepreneurship funds
<b>EuVECA</b>	European venture capital funds
<b>FCA</b>	Financial Conduct Authority
<b>FOS</b>	Financial Ombudsman Service
<b>FSA</b>	Financial Services Authority
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>ICOBS</b>	Insurance: Conduct of Business sourcebook
<b>MMR</b>	Mortgage Market Review
<b>PERG</b>	Perimeter Guidance manual
<b>PS</b>	Policy Statement
<b>RDC</b>	Regulatory Decisions Committee



# 1. Overview

Chapter No.	Purpose of proposed changes to Handbook	Consultation Closing Period
2	To align the claims handling rules with the Consumer Insurance (Disclosure and Representations) Act 2012.	6 August 2013
3	To amend the Perimeter Guidance Manual on mortgage advice, the professional standards requirements and a new provision for pipeline applications under the Mortgage Market Review.	6 August 2013
4	To correct the definition of 'platform service' and consult on an updated compatibility statement to reflect the FCA's objectives.	6 August 2013
5	To update the appropriate qualifications list in the Training and Competence sourcebook (TC).	6 July 2013
6	To make consequential amendments to the Decision Procedure and Penalties manual (DEPP) and the Enforcement Guide (EG) arising from the proposed AIFMUKR.	6 July 2013

## 2. The Consumer Insurance (Disclosure and Representations) Act 2012

### Introduction

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- 2.1** In this chapter, we propose to make some consequential amendments to the Insurance: Conduct of Business sourcebook (ICOBS) to align the rules with the Consumer Insurance (Disclosure and Representations) Act 2012 (the Act) which came into force on 6 April 2013.
- 2.2** This consultation will be of interest to consumers, insurers and intermediaries, and their trade bodies.
- 2.3** The text of the proposed amendments, and the statutory powers these amendments will be made under, are set out in Appendix 2 of this paper.

### Summary of proposals

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- 2.4** The Act replaces the duty on the consumer to volunteer information material to the insurer's decision<sup>1</sup>, with a duty to take reasonable care not to make a misrepresentation during pre-contractual negotiations. If the consumer fails to take reasonable care, the Act states that an insurer is entitled to a remedy against the consumer, such as cancelling their policy and not paying any claims, or only paying a proportion of a claim. The remedies are specified in Schedule 1 to the Act.
- 2.5** Whether or not a consumer has taken reasonable care not to make a misrepresentation is to be determined in the light of all the relevant circumstances. For example, the type of consumer insurance contract in question and its target market, any relevant explanatory material or publicity produced or authorised by the insurer and how clear and specific the insurer's questions were.
- 2.6** These changes are relatively uncontroversial. They reflect the approach taken by the Financial Ombudsman Service (FOS) and what is already accepted as industry good practice. However, the industry has told us that there is potential for ambiguity and confusion between the Act and the existing ICOBS rules. By aligning ICOBS with the Act, firms and consumers will benefit from having clarity about the standards we expect. It will also enable us to take appropriate action if we see evidence that firms fail to comply with the requirements of the Act and consumers are not getting a fair deal.

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<sup>1</sup> Marine Insurance Act 1906



### **Insurance: Conduct of Business sourcebook (ICOBS)**

**2.7** We propose consequential amendments to ICOBS 2, ICOBS 5 and ICOBS 8. The amendments will apply in relation to a policy entered into or varied, by a consumer, on or after 6 April 2013.

#### **ICOBS 2: Client categorisation**

**2.8** We propose to reflect the Act's slightly wider definition of consumer for these amendments to ICOBS 5 and ICOBS 8, which includes a customer who enters into the contract **mainly** for purposes unrelated to the individual's trade, business or profession. We reflect this in an amendment to ICOBS 2.1.3G.

**2.9** As insurers are subject to this wider definition under the Act, we think that aligning the definition will avoid any unnecessary ambiguity and our requirements will be clearer for firms and consumers.

#### **ICOBS 5: Identifying client needs and advising**

**2.10** We propose an amendment to reflect that the consumer's duty to disclose facts material to the risk has been abolished and replaced by a duty to take reasonable care not to make a misrepresentation. We will also align the guidance in relation to asking clear and specific questions.

#### **ICOBS 8: Claims handling**

**2.11** This amendment is also to reflect the change in the consumer's duty, ie to take reasonable care not to make a misrepresentation, and that an insurer has a remedy under the Act in the event that a consumer fails to take reasonable care and makes a qualifying misrepresentation.

### **Q2.1: Do you agree with the changes to ICOBS 2, ICOBS 5 and ICOBS 8 to align with Act?**

#### **Cost benefit analysis**

**2.12** We have used the impact assessment carried out by the Law Commission and Scottish Law Commission in their 2009 report as our baseline when assessing the costs and benefits of our proposals.

**2.13** Given the impact of the Act, existing industry practice and the approach taken by the FOS, we do not envisage that our proposed changes will impose any additional costs on firms or consumers.

**2.14** Any changes required by firms will be minimal. For example, amending sales scripts to explain to the customer their duty to take reasonable care not to misrepresent rather than their duty to disclose facts material to the risk. We think that firms should have already made, or be making, these changes and amended questions they ask to comply with the Act.

**2.15** We do not think there will be any additional regulatory costs for us. We already incur costs in supervising the existing requirements under ICOBS 5 and ICOBS 8. Also, the changes required by the Act and our proposed amendments to ICOBS are consistent with existing industry good practice. If we find, contrary to this, that firms are not complying, we will consider using existing regulatory tools to ensure compliance.

**Q2.2: Do you have any comments in relation to our cost benefit analysis?**

**Compatibility statement**

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- 2.16** Our proposals will set a regulatory standard for the industry and also enable us to supervise and take regulatory action if we see evidence of non-compliance and consumers not getting a fair deal. This is consistent with our statutory objective to protect consumers.
- 2.17** We have had regard to the FCA's duty to help maintain competitive markets and promote effective competition in the interests of consumers. Our changes have a neutral impact on competition and merely align our rules and guidance with established practice and the Act.
- 2.18** The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

**Equality and diversity**

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- 2.19** We do not envisage any equality and diversity impacts as a result of the proposed changes.

# 3.

## Mortgage Market Review: Perimeter Guidance, Professional Standards and Pipeline

### Introduction

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- 3.1** This chapter proposes amendments to the Handbook to provide clarity, further to the Mortgage Market Review (MMR), about what constitutes advice and who is qualified to give advice. It also proposes a new provision for pipeline applications.
- 3.2** The changes will be of interest to mortgage and home finance firms.
- 3.3** The text of the proposed amendments and the statutory powers they will be made under can be found in Appendices 3A, 3B and 3C.

### Summary of proposals

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#### Proposed amendments to PERG

- 3.4** When we published the final MMR rules in October 2012<sup>2</sup>, we committed to reviewing PERG on mortgage advice, with the aim of providing further clarity about where the boundary lies between giving information and providing regulated advice.
- 3.5** The proposed changes are aimed primarily at mortgage firms but, as PERG applies across other markets, there are consequential changes to advice on general insurance products as well.
- 3.6** The current guidance for firms states that recommending a customer takes out a mortgage with a particular firm, without identifying specific products, would not be advice. The exception to this would be where the firm only provides one product.
- 3.7** We are proposing to amend this guidance so that, regardless of how many products a firm offers (even if only one product), it is considered advice.
- 3.8** As a consequence of these changes, the equivalent guidance for general insurance will also be amended to apply in the same way.

#### **Q3.1: Do you have any comments on the proposed amendments?**

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<sup>2</sup> PS12/16, *Mortgage Market Review – feedback on CP11/31 and final rules* (October 2012).

**Q3.2: Will the proposed amendments affect how you currently provide advice or information to mortgage or general insurance consumers?**

- 3.9** To provide further clarity on the boundary between advice and information, we are proposing to include some additional examples in PERG. The purpose of these examples is to assist firms in understanding what their non-qualified 'information providers' can say or do, without this being advice.
- 3.10** The guidance does not change our view on what is information and advice, as PERG has always made the distinction, but we feel this additional guidance makes it clearer for firms.

**Q3.3: Do you have any comments on the proposed guidance?**

**Professional standards**

- 3.11** As part of the MMR, we introduced a requirement that all mortgage sellers should be appropriately qualified. This means that intermediaries and lender staff who are advising or arranging an execution-only sale would need to have a level 3 qualification.
- 3.12** Following the publication of the final rules, an issue was identified with the drafting of the rules in the Training and Competence sourcebook (TC), which resulted in the rules applying more widely than we intended. In order to correct this, we propose to amend the rules to reflect our original intention, that only staff involved in advising or arranging a mortgage sale on an execution-only basis are required to hold a qualification.

**Q3.4: Do you have any comments on the proposed changes to correct the TC rules?**

- 3.13** Under the MMR, we permit some contract variations to be made on an execution-only basis. Lenders have queried the qualification requirements for individuals arranging a contract variation on this basis. They had considered these staff to be exempt from the TC rules, which they are not.
- 3.14** Having reviewed the nature of these transactions and carefully considered the potential for consumer detriment, we are comfortable that straightforward contract variations, which are already permitted on an execution-only basis, could be made by an unqualified individual. Therefore, we propose to amend the rules to remove the qualification requirement from these individuals.
- 3.15** We view retention sales differently to other contract variations and believe these should continue to be made by a qualified individual, even on an execution-only basis.
- 3.16** We refer to retention sales as rate switches in the rules to ensure we capture the various terms used throughout the industry to describe a lender providing a new product to an existing customer. However, describing these sales as 'rate switches' tends to disguise their materiality for the customer. It is clear this is a sale of a new product, which is why a rate switch is different to other contract variations.
- 3.17** Throughout the consultation process for the MMR, the industry accepted the principle of increasing professional standards for all mortgage sellers and agreed with our fundamental principle that only appropriately qualified staff should sell mortgages. Removing the qualification requirement for execution-only rate switches would undermine that fundamental principle, so we do not intend to amend our approach.

**3.18** The table below sets out when the qualification requirements will apply to contract variations and rate switches.

<b>Contract variations</b>	<b>Advice required or Execution-only permitted</b>	<b>Qualification requirement</b>
<b>Rate switches</b>		
No increase in the current balance outstanding and the consumer selects their product via a non-interactive channel	Execution-only	None (but the scripted questions TC rules may apply)
No increase in the current balance outstanding and the firm presents all the products for which the consumer is eligible via a non- interactive channel, but accepts the consumer's choice of product via an interactive channel	Execution-only	Yes
The firm contacts the customer via an interactive channel to discuss the available products	Advice	Yes
The consumer wants to borrow more and is offered a new product	Advice	Yes
<b>Other contract variations</b>		
<b>Further advances</b>		
This involves additional borrowing	Advice	Yes
<b>Additional or removal of a party to the contract</b>		
Involving <b>no</b> additional borrowing	Execution-only	None
Involving additional borrowing	Advice	Yes
<b>Change in monthly payment - (including extending term or changing the payment method)</b>		
Involving <b>no</b> additional borrowing	Execution-only	None
Involving additional borrowing	Advice	Yes
<b>Porting This involves taking the existing mortgage to a new property</b>		
Involving <b>no</b> additional borrowing	Execution-only	None
Involving additional borrowing	Advice	Yes
<b>Consent to let Allowing the consumer to let their property, which was previously owner – occupied</b>		
Involving <b>no</b> additional borrowing	Execution-only	None
Involving additional borrowing	Advice	Yes

**Q3.5: Do you agree that we should remove the qualification requirements for execution-only contract variations?**

**Pipeline applications**

- 3.19** Following publication of the final MMR rules, firms raised a question around the treatment of applications already being processed when the MMR comes into force. These are known as pipeline applications. They are concerned that if a change was made to the application, they would have to apply the MMR rules, which could mean a non-advised application now becomes advised. Firms questioned whether this was in the customer's interests as it could add delays to the process and increase costs.
- 3.20** We have concerns about allowing a further three-month transitional period as it could enable applications prevented under the new rules to proceed, which would undermine the protections the MMR provides consumers. However, we also see the case for allowing a transitional provision to ensure the consumer does not suffer from unnecessary delays or costs. Therefore, we propose to allow non-advised applications, received by the lender prior to 26 April 2014, to continue to be processed on a non-advised basis if a change is made, for a further three months. All other aspects of the MMR, including responsible lending, will apply to these applications.
- 3.21** Applications which remain in the pipeline after 26 July 2014 must be assessed on the MMR rules in full, if a change is made. Applications which remain in the pipeline but have no changes made to them are not affected by the transitional provision. The transitional provision will also apply to non-advised sales arranged by an intermediary.
- 3.22** Firms should also note that they are able to implement many of the MMR rules ahead of 26 April 2014, including the new advised sale standards. This means firms could manage their pipeline by removing the non-advised sale process early, rather than applying the transitional provision.

**Q3.6: Do you agree that we should introduce a three-month transitional provision for non-advised applications already in the pipeline when the final MMR rules come into force?**

**Cost benefit analysis**

- 3.23** We do not expect the proposed change to PERG to result in firms or consumers changing their behaviour significantly. Our discussions with firms indicate that they already behave in line with the proposed changes (for instance, they consider that advice has been given when recommending a particular firm to a customer).
- 3.24** The proposed rule change for professional standards will not result in firms or consumers changing their behaviour from the assessment made in the original MMR cost benefit analysis (CBA).<sup>3</sup> As such, the costs and benefits associated with them and PERG will be of minimal significance.
- 3.25** We also expect the changes to professional standards to have minimal implications for competition. If anything, allowing unqualified staff to perform straightforward execution-

<sup>3</sup> PS12/16, *Mortgage Market Review – feedback on CP11/31 and final rules* (October 2012).

only contract changes could facilitate competition in the market by allowing lenders to deploy qualified staff on more complex transactions.

- 3.26** The proposed arrangements for pipeline applications may marginally reduce the compliance costs for some lenders that we reported in the MMR CBA. However, overall, there are unlikely to be significant impacts. Given the transitional duration of the proposed arrangements, there are no implications for competition in the market.

### **Compatibility statement**

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- 3.27** The proposals draw on the evidence base used for the MMR and follow from recent engagement with firms. We believe these proposals are an appropriate and proportionate approach to ensuring we deliver positive consumer outcomes, without imposing an undue burden on firms. The proposals will benefit both firms and consumers by ensuring that the customer's needs and circumstances remain at the heart of the mortgage sale.
- 3.28** As we explain in the CBA, we do not expect these changes to have significant market impacts. In particular, in relation to competition, we do not expect that the proposed changes will affect the number of firms providing mortgages, or their incentives to compete with each other for customers.
- 3.29** The proposed changes are not expected to have a significantly different impact on mutual societies, compared to other firms.

### **Equality and diversity**

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- 3.30** The proposed changes to PERG provide firms with a clearer definition of what is and what is not advice. There are no expected positive or negative impacts on a particular group or protected characteristic as a result of these changes. However, any comments from respondents would be welcome.
- 3.31** There are no expected positive or negative impacts on a particular group or protected characteristic as a result of the changes to professional standards and pipeline applications. A full impact assessment was conducted as part of the MMR Policy Statement and the proposed changes do not impact this assessment.

## 4. Platforms

### Introduction

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- 4.1** In PS13/1<sup>4</sup>, we explained the final rules made following consultation in CP12/12<sup>5</sup>. We also explained that:
- we were making a correction to the definition of ‘platform service’, to include execution-only firms that also arrange for the safeguarding and administration of their customers’ investments, to match our policy intention as set out in PS11/9<sup>6</sup>, but we would consult on the change to ensure there are no unintended consequences; and
  - we would consult on an updated compatibility statement reflecting the new FCA objectives (in particular, our duty to consider the impact of our rules on authorised mutual societies).
- 4.2** This chapter consults on both of these areas.
- 4.3** The correction to the platform definition will be of interest to consumers, as it clarifies the policy intention that execution-only firms which also arrange for the safeguarding and administration of customers’ investments also fall within the definition. So these firms will need to comply with the relevant rules, such as being remunerated only through platform charges disclosed to, and agreed with, the customer.
- 4.4** The updated compatibility statement will be of interest mainly to firms and can be found in Appendix 4.

### Summary of proposals

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#### Definition of ‘platform service’

- 4.5** CP12/12 was preceded by CP10/29<sup>7</sup> and PS11/9. CP10/29 sets out a number of rules which came into effect at the end of 2012, and included a new definition of ‘platform service’. We gave feedback in PS11/9 on the comments received on the definition, including:

‘Several respondents highlighted that the definition applied to those execution-only dealing services which also included a custody service for the assets purchased. While we recognise that these firms may not commonly be referred to as fund supermarkets and wrap platforms, the services provided by such execution-only brokers are similar to the services provided by

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

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

6 PS11/9, *Platforms* (August 2011).

7 CP10/29, *Platforms: Delivering the RDR and other issues for platforms and nominee-related services* (November 2010).



execution-only wraps and fund supermarkets. Each deals in investments as an agent for the client and may undertake or arrange custody of investments and consolidated reporting for their clients. Given this similarity, we believe the definition should include these execution-only services.'

- 4.6** The cost benefit analysis (CBA) for PS11/9 also reflected our policy intention as consulted on in CP10/29. However, as a result of a typographical error, the definition introduced with the PS11/9 rules did not reflect that policy intention. We included in the definition the activity of 'safeguarding and administering assets'. This should have read 'safeguarding and administering investments'. So the definition incorrectly excluded execution-only firms that also arrange for the safeguarding and administration of their customers' investments. This typically takes the form of an execution-only firm white-labelling what would traditionally be considered a platform. When the consumer logs on to their account, they see the logo of the execution-only firm, although the established platform would be providing the custody service.
- 4.7** We corrected the mistake to the definition in April 2013, with effect from 1 May 2013, when we made final rules on payments to platform service providers and cash rebates from providers to consumers. These were published with PS13/1. The mistake was corrected without further consultation, in line with the fact that we reserve the right to correct or make further clarificatory amendments to instruments made by the FCA Board and, as we explained in the Policy Statement, we were correcting the mistake at that time because we believed that any further delay would be prejudicial to the interests of consumers. However, we said we would consult subsequently on the change to ensure there were no unintended consequences from it.
- 4.8** The amended definition was contained in Appendix 1 of PS13/1 and reads:

*'platform service*

a service which:

- (a) involves *arranging* and *safeguarding and administering assets investments*; and
- (b) distributes *retail investment products* which are offered to *retail clients* by more than one product provider;

but is neither:

- (c) solely paid for by *adviser charges*; nor
- (d) ancillary to the activity of *managing investments* for the *retail client*.'

**Q4.1:** Do you have any comments on the change to the definition of 'platform service' to reflect the original policy intention as consulted on in CP10/29?

### Updated compatibility statement

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- 4.9** In PS13/1, we said we were not making any significant changes to the rules we consulted on in CP12/12 and that the changes made as a result of the responses to CP12/12 did not materially change the conclusions of our CBA. However, the compatibility statement in CP12/12, while adequate, did not explicitly take into account the new FCA objectives and duties, and certain aspects were not consulted on. In particular, our duty to consider the impact of our rules on authorised mutual societies. We did not expect the impact of the rules to be significantly different for authorised mutual societies from the impact on other authorised firms and went ahead with making the rules we had consulted on. However, we said we would consult on an updated compatibility statement, to give an opportunity for comments on it, and that we would make changes if this was shown to be necessary as a result of the consultation.
- 4.10** We have now updated the compatibility statement in CP12/12 in the light of our new objectives and duties, and a copy is enclosed in Appendix 4.

**Q4.2: Do you have any comments on the updated compatibility statement on the platforms rules published with PS13/1?**

### Cost benefit analysis

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- 4.11** The scope of the platform service definition was clearly reflected in the CBA in PS11/9, which is still valid, and the updated compatibility statement does not affect the CBA published with PS13/1, which was updated in the light of the comments received on the CBA in CP12/12.

### Equality and diversity

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- 4.12** The amended definition and updated compatibility statement do not affect our previous assessment, as set out in PS11/9 and PS13/1, that the rules we have made do not give rise to any issues for equality and diversity.

## 5. Changes to the Training and Competence sourcebook (TC)

### Introduction

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- 5.1** The Training and Competence sourcebook (TC) sets out the qualification requirements for individuals carrying out certain retail activities. The Financial Services Authority (FSA) previously consulted, for one month, each time a new qualification was added, removed or other changes were made to the list of appropriate qualifications and we will continue this practice.
- 5.2** This chapter will be of interest to firms and individuals who are subject to our TC requirements. The text of the proposed amendments, and the statutory powers they will be made under, can be found in Appendix 5.

### Summary of proposals

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- 5.3** We propose to add five new qualifications to the appropriate qualifications list in TC and amend the details of five existing qualifications.

#### New qualifications

- 5.4** We propose to add the following new qualifications to the appropriate qualifications list for various TC activities. These qualifications have been assessed as meeting our exam standards for these TC activities:
- Deutsche Boerse AG and SIX Swiss Exchange's Certified Derivatives Trader (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation) – to be added to TC activities 2, 12, 3 and 13;
  - Deutsche Boerse AG's Certified Securities Trader (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation) – to be added to TC activities 2 and 12;
  - Chartered Insurance Institute's Certificate in Investment Operations – Collective Investment Scheme Administration module (FA4) – TC activities 15, 16 and 17;
  - Chartered Insurance Institute's Certificate in Investment Operations – Individual Savings Account Administration module (FA5) – TC activities 16 and 17;
  - Chartered Insurance Institute's Certificate in Investment Operations – Investment Client Servicing module (FA6) – TC activities 15, 16 and 17; and

- Chartered Institute of Securities and Investments' (CISI) Certificate in Investment Management (level 4) following a syllabus change – TC activities 14 and 10.

**5.5** We propose to amend/update the details of the following existing qualifications on the appropriate qualifications lists:

- list the Chartered Insurance Institute's CF1 – UK Financial Services, regulation and ethics for TC activities 15, 16 and 17;
- list the Chartered Insurance Institute's RO1 – Regulation and Ethics for TC activities 15, 16, 17, 18 and 19;
- amend the activities listed for the Chartered Insurance Institute's Diploma in Financial Planning plus J12: Securities and Dealing. This was incorrectly listed in CP13/5<sup>8</sup> as being appropriate for TC activities 14 and 10, instead of TC activities 2 and 12; and
- amend the Chartered Institute of Securities and Investments level 3 Certificate in Investment Management, which currently appears on TC activities 8, 14 and 10, 15, 16, 17 and 19, to show this has been discontinued from 31 December 2013 following a syllabus change.

**Q5.1: Do you know of any reason why these qualifications should not be added and/or amended on our appropriate qualifications?**

### Cost benefit analysis

**5.6** Section 138I of Financial Services and Markets Act (FSMA) requires us to perform a cost benefit analysis of our proposed requirements and to publish the results, unless we consider the proposal will not give rise to any cost or to an increase in costs of minimal significance. This proposal does not incur any costs as it simply updates the list of 'appropriate qualifications'.

### Compatibility statement

**5.7** Section 1B of FSMA requires us, when discharging our general functions, so far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. We also need to, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out our general functions in a way that promotes effective competition in the interests of consumers.

**5.8** These proposals are intended to help ensure that the relevant markets function well and to help secure an appropriate level of protection for consumers. In particular, they build on the consumer protection by having competent adviser by keeping our TC rules up to date through the addition of relevant new qualifications and changes to current qualifications. Therefore, we are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in s 1C(2) FSMA and the regulatory principles in s 3B.

<sup>8</sup> CP13/25, *Quarterly consultation* (No 35) (February 2013).

- 5.9** In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers. It is our opinion that making changes to the appropriate qualifications lists has no impact on competition, as this simply increases the number of qualifications available.
- 5.10** The proposed changes are not expected to have a significantly different impact on mutual societies.

### **Equality and diversity**

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

## 6. Enforcement: Alternative Investment Fund Managers Regulations 2013

### Introduction

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- 6.1** The Alternative Investment Fund Managers Regulations 2013 (AIFMUKR) will come into force on 22 July 2013.
- 6.2** AIFMUKR implement, in part, the Alternative Investment Fund Managers Directive (AIFMD), the European Venture Capital Funds (EuVECA) Regulation (EU) No 345/2013 and the European Social Entrepreneurship Funds (EuSEF) Regulation (EU) NO 346/2013 in the UK. The Financial Conduct Authority (FCA) is the responsible UK competent authority for the function under AIFMD, EuSEF and EuVECA. The AIFMUKR provide new and updated processes and powers which require changes to two Handbook modules.
- The new and updated powers apply to both existing and new alternative investment fund managers (AIFMs), whether authorised or registered, and apply in an authorisation, registration, supervisory and enforcement context.
  - Among the existing powers which have been extended are powers of discipline, injunction and restitution which will apply to breaches of directly applicable EU regulations, including regulations made under AIFMD, EuSEF and EuVECA regulations.
  - New powers include powers of direction over small registered UK AIFMs, UK managers of EuSEF and EuVECA; and, in limited instances, EEA managers of EuSEF and EuVECA, as well as powers of suspension and revocation of UK managers.
  - Powers under AIFMUKR also include powers to disqualify external valuers appointed by AIFMs and powers in connection with the delegation of functions of portfolio or risk management.
  - The new powers require new processes including new types of warning and decision notice.
- 6.3** The amendments required as a result of AIFMUKR to the Decision Procedure and Penalties manual (DEPP) and the Enforcement Guide (EG) are consequential and non-controversial. The proposed amendments in this consultation, if approved, will be made under specified powers and provisions in the Act and AIFMUKR, as stated in the draft instrument set out in Appendix 6.

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## Proposed amendments

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### Decision making procedures

- 6.4** AIFMUKR require a number of statutory notices to be issued in various circumstances. We propose that the decisions required under these regulations should follow the existing FCA split between Regulatory Decisions Committee (RDC) and FCA executive decision-making for similar statutory notices under the Financial Services and Markets Act 2000 (FSMA).
- 6.5** The following decisions provided for under the AIFMUKR will be taken by the RDC.
- Decision to refuse an application for entry on the register of small registered UK AIFMs where representations are made.
  - A proposal or decision to revoke the registration of a small registered UK AIFM (including where applicable its registration as a EuSEF or EuVECA manager).
  - A proposal or decision to disqualify an external valuer.
  - A proposal or decision to revoke a full-scope UK AIFM's approval to market an alternative investment fund (AIF).
  - A proposal or decision to revoke an AIFM's entitlement to market an AIF following notification of a material change.
  - A proposal or decision to publish a statement that an unauthorised AIFM has contravened the AIFMUKR or directly applicable EuSEF or EuVECA regulations.
  - A proposal or decision to impose a financial penalty on an unauthorised AIFM which has contravened the AIFMUKR or directly applicable EuSEF or EuVECA regulations.
- 6.6** Proposals or decisions to revoke approvals to delegate portfolio or risk management will be taken by executive procedures. As it is likely that we will only be providing original approval for these purposes where the delegate is not authorised or registered for asset management, we consider it appropriate for revocations to be decided by executive procedures.
- 6.7** The following decisions will be made by executive procedures:
- a proposal to refuse an application for entry on the register of small registered UK AIFMs;
  - a decision to refuse an application for entry on the register of small registered UK AIFMs where no representations are made; or
  - a decision to exercise its own initiative power to give or vary a direction under the AIFMUKR.
- 6.8** We propose to apply the existing policies in DEPP 6 (penalties) in respect of penalties imposed under the regulations. This policy was introduced in March 2010 and is intended to be flexible to cover all enforcement cases.

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## Enforcement Guide

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- 6.9** EG will require minor amendment to reflect the application of AIFMUKR on enforcement cases.

- 6.10** We have amended EG 19 to include a section on the impact of AIFMUKR on enforcement practices. These substantive amendments cover among others, our information gathering and investigation powers, decision making, imposition of penalties and publicity.

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

### Cost benefit analysis

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- 6.11** The changes we are proposing to DEPP are as a direct result of the changes imposed by AIFMUKR. In FSA publications, CP12/32<sup>9</sup> and CP13/9<sup>10</sup>, the costs and benefits of implementing AIFMD were set out. The costs and benefits analysis in these CPs assumed that there was an enforcement regime underpinning the proposed rules to ensure compliance. These proposed amendments to DEPP merely allocate any associated enforcement action to either the RDC or the FCA executive. We do not believe the costs or benefits of allocating enforcement actions to one or other of these are significantly different from each other.

### Compatibility statement

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#### Compatibility with the FCA's statutory objectives

- 6.12** We believe that the proposed amendments to DEPP and EG are compatible with our strategic objective and advance our operational objectives under s 1B of FSMA. Our effective and appropriate use of enforcement powers plays an important part in pursuing our statutory objectives, as it increases compliance with rules by making market participants more aware of conduct that may breach these rules and the potential for sanctions for such conduct.
- 6.13** The proposed changes in this chapter do not impact on mutual societies.

#### Competition duty

- 6.14** So far as is compatible with our consumer protection or integrity objective, we must discharge our general functions (including rule-making guidance and general policies) in a way that promotes effective competition in the interests of consumers (s 1B(4) of FSMA). Our proposed changes to DEPP in this CP will not affect competition in the sectors affected by AIFMUKR. The proposals merely support the changes set out in CP12/32 and CP13/9 where we considered the impact of AIFMUKR on competition.

#### Compatibility with the regulatory principles

- 6.15** We have had regard to the principles set out in s 3B of FSMA. We believe the proposed changes are compatible with all these principles as our general approach to enforcing AIFMUKR will mirror our general approach to enforcement under the Act.

<sup>9</sup> CP12/32, *Implementation of the Alternative Investment Fund Managers Directive, Part 1* (November 2012).

<sup>10</sup> CP13/9, *Implementation of the Alternative Investment Fund Managers Directive, Part 2* (March 2013).



### Equality and diversity

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

# Appendix 1

## List of questions

### Chapter 2:

- Q2.1** Do you agree with the changes to ICOBS 2, ICOBS 5 and ICOBS 8 to align with Act?
- Q2.2** Do you have any comments in relation to our cost benefit analysis?

### Chapter 3:

- Q3.1** Do you have any comments on the proposed amendments?
- Q3.2** Will the proposed amendments affect how you currently provide advice or information to mortgage or general insurance consumers?
- Q3.3** Do you have any comments on the proposed guidance?
- Q3.4** Do you have any comments on the proposed changes to correct the TC rules?
- Q3.5** Do you agree that we should remove the qualification requirements for execution-only contract variations?
- Q3.6** Do you agree that we should introduce a three-month transitional provision for non-advised applications already in the pipeline when the final MMR rules come into force?

### Chapter 4:

- Q4.1** Do you have any comments on the change to the definition of 'platform service' to reflect the original policy intention as consulted on in CP10/29?
- Q4.2** Do you have any comments on the updated compatibility statement on the platforms rules published with PS13/1?

**Chapter 5:**

**Q5.1** Do you know of any reason why these qualifications should not be added and/or amended on our appropriate qualifications?

**Chapter 6:**

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



# Appendix 2

## Changes to ICOBS

**CONSUMER INSURANCE (DISCLOSURE AND REPRESENTATIONS) ACT 2012  
INSTRUMENT 2013**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137T (General supplementary powers); and
  - (3) section 139A (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* 2013].

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Insurance: Conduct of Business sourcebook (ICOBS) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Consumer Insurance (Disclosure and Representations) Act 2012 Instrument 2013.

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

**Annex A**

**Amendments to the Glossary of definitions**

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

*qualifying* has the meaning in section 4 of the Consumer Insurance  
*misrepresentation* (Disclosure and Representations) Act 2012.

## Annex B

### Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

#### 2.1 Client categorisation

...

Customer covered in both a private and business capacity

- 2.1.3 G (1) Except where paragraph (2) applies, if ~~if~~ a *customer* is acting in the capacity of both a *consumer* and a *commercial customer* in relation to a particular *contract of insurance*, the *customer* is a *commercial customer*.
- (2) For the purposes of ICOBS 5.1.4G and ICOBS 8.1.2R, if, in relation to a particular contract of insurance, the customer entered into it mainly for purposes unrelated to his trade or profession, the customer is a consumer.

...

#### 5.1 General

...

~~Disclosure of material facts~~

- 5.1.4 G A *firm* should bear in mind the restriction on rejecting claims ~~for non-disclosure~~ (ICOBS 8.1.1R(3)). Ways of ensuring a *customer* knows what he must disclose include:
- (1) explaining to a *commercial customer* the duty to disclose all circumstances material to a *policy*, what needs to be disclosed, and the consequences of any failure to make such a disclosure; ~~or~~
  - (2) ensuring that the *commercial customer* is asked clear questions about any matter material to the *insurance undertaking*;
  - (3) explaining to the *customer* the responsibility of *consumers* to take reasonable care not to make a misrepresentation and the possible consequences if a *consumer* is careless in answering the *insurer's* questions, or if a *consumer* recklessly or deliberately makes a misrepresentation; and
  - (4) asking the *customer* clear and specific questions about the information relevant to the *policy* being arranged or varied.



...

## 8.1 Insurers: general

...

- 8.1.2 R A rejection of a *consumer policyholder's* claim is unreasonable, except where there is evidence of fraud, if it is for:
- (1) ~~non-disclosure of a fact material to the risk which the *policyholder* could not reasonably be expected to have disclosed in relation to contracts entered into or variations agreed on or before 5 April 2013,~~ for:
    - (a) non-disclosure of a fact material to the risk which the *policyholder* could not reasonably be expected to have disclosed; or
    - (b) non-negligent misrepresentation of a fact material to the risk;  
or
  - (2) ~~non-negligent misrepresentation of a fact material to the risk in relation to contracts entered into or variations agreed on or after 6 April 2013, for misrepresentation by a *customer* and the misrepresentation is not a *qualifying misrepresentation*;~~ or
  - (3) for breach of warranty or condition unless the circumstances of the claim are connected to the breach and unless (for a *pure-protection contract*):

...



# Appendix 3A

## MMR changes to PERG

**PERIMETER GUIDANCE (REGULATED ADVICE) INSTRUMENT 2013**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers in section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

**Commencement**

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

**Amendments to material outside the Handbook**

- C. The Perimeter Guidance manual (PERG) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Perimeter Guidance (Regulated Advice) Instrument 2013.

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

## Annex

## Amendments to the Perimeter Guidance manual (PERG)

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

## 1.5 What other guidance about the perimeter is available from the FCA?

1.5.1 G ... These documents, and the URL on which they may be accessed, include:

...

- (9) *guidance* for employers about how to provide advice and information to their employees on pension matters without contravening the *Act* – <http://www.fca.org.uk/your-fca/documents/fsa-promoting-pensions-employees>;
- (10) FSA “Factsheet for Broker-arranged premium finance plans: General insurance brokers acting for commercial customers” which includes discussion about whether arranging premium finance is a *regulated activity* (www.fca.org.uk/your-fca/documents/broker-arranged-premium-finance-plans);
- (11) joint guidance by the FSA and the Office of Fair Trading titled “Payment protection products” (January 2013) which includes discussion whether debt freezes and debt waivers are *contracts of insurance* (www.fca.org.uk/your-fca/documents/finalised-guidance/fsa-fg132); and
- (12) the FSA’s views on whether members of the NHBC who provide insurance to buyers of properties in accordance with the Buildmark scheme carry out *insurance mediation*, contained in a letter to NHBC’s solicitors and put onto the FSA’s Freedom of Information Act register in December 2012 (www.fca.org.uk/your-fca/documents/fsa-foi2707-request-information).

...

## 4.6 Advising on regulated mortgage contracts

...

4.6.6 G ~~Advice would not relate to a particular contract if it consisted of a recommendation that a *person* should take out a mortgage with ABC building society without (expressly or by implication) specifying what kind of mortgage~~ Advice relates to a particular contract if it recommends that a *person* should take out a mortgage with ABC Building Society without (expressly or by implication) specifying any particular ABC Building Society mortgage because it steers the customer towards specific identifiable mortgages and away from all others. The advice is essentially saying that there is a feature of each individual ABC Building Society mortgage that makes it better than a mortgage from any other lender. Advice may be regulated even though it relates to more than one possible mortgage. Advice also relates to a particular contract if it recommends that a *person* should not take out a mortgage with ABC Building Society.

4.6.7 G Typical recommendations and whether they will be regulated as advice under article 53A of the *Regulated Activities Order*  
 This table belongs to *PERG* 4.6.5G and *PERG* 4.6.6G.

Recommendation	Regulated or not?
...	
I recommend you take out (or do not take out) an ABC Building Society fixed rate mortgage.	<del>This will depend on the circumstances. If, for example, the society only offers one such mortgage, this would be a recommendation intended implicitly to steer the borrower in the direction of that particular mortgage which the borrower could enter into and therefore would be advice. Yes. See <i>PERG</i> 4.6.6G.</del>
I suggest you take out (or do not take out) a mortgage with ABC Building Society.	No. This is not advice which steers the borrower in the direction of a particular mortgage which the borrower could enter into. However, if the society only offers one mortgage, this would be a recommendation intended implicitly to steer the borrower in the direction of that particular mortgage which the borrower could enter into and therefore would be advice. Yes. See <i>PERG</i> 4.6.6G.
...	

...

Further examples of what is and is not regulated advice

- 4.6.33 G The table in PERG 4.6.34G sets out some further examples of typical situations and whether they involve regulated advice under article 53A of the Regulated Activities Order.
- 4.6.34 G Further examples of what is and is not regulated advice  
This table belongs to PERG 4.6.33G.

<u>Example of what lender says and does</u>	<u>Regulated or not?</u>
<u>(1) The lender says “We have a wide range of mortgages, including fixed and variable rates. Here are some leaflets which set out the main features.”</u>	<u>No. Leaflets that just explain the terms and conditions of a lender’s products are not advice (see PERG 4.6.15G(1)).</u> <u>Even if the leaflet contains promotional material, merely handing over the leaflet does not mean that the firm is giving advice.</u>
<u>(2) The lender says “We have a wide range of mortgages, our best rates are two-year fixed rates, you might want to look at those.”</u>	<u>Yes. The firm has identified specific products that it offers and is steering the customer to those products.</u> <u>Identifying which products have the highest rates is not advice on its own, only facts. However, “best” involves a value judgment, particularly when a comparison is made with other products that have different periods for which interest is fixed or that have variable interest rates.</u>
<u>(3) The lender says “In order to provide you with an illustration, I need to know how much you want to borrow, the term and the property value. Which product or products would you like an illustration for?”</u>	<u>No. The firm is collecting factual information to provide the customer with an illustration of costs.</u>
<u>(4) The lender says “Based on what you’ve told me I think you would be best to look at two-year fixed rates. Here is some information about our products.”</u>	<u>Yes. The firm has made a judgment on what type of product is best for the customer and has identified specific products of that type that it offers.</u>

<p><u>(5) The lender says “Our fixed rates start at 4.99% for two years with a £900 fee. Our variable rates start at 4.50% with a £800 fee. Depending on how much you want to borrow and your circumstances, this may affect the rate available to you.”</u></p>	<p><u>No. The <i>firm</i> is comparing two products without making any judgment on whether these products are suitable, nor is the <i>firm</i> steering the customer to one over the other.</u></p>
<p><u>(6) A lender with just one product advises a customer to get that product. The lender makes it clear that it does not give advice about products other than its own.</u></p>	<p><u>Yes. The lender may argue that this is not regulated advice because it is not recommending one product over another as it only has one product itself and does not give advice about the products of other lenders. However, in the FCA’s view this is still regulated advice. For advice to be regulated it must be advice on the merits of entering into a particular regulated mortgage contract (or varying one). It is possible to give advice about the merits of a product without comparing that product with another.</u></p>

...

## 5.8 The regulated activities: advising on contracts of insurance

...

- 5.8.4 G Advice about *contracts of insurance* will come within the *regulated activity* in article 53 of the *Regulated Activities Order* only if it relates to a particular *contract of insurance*. So, generic or general advice will not fall under article 53. In particular:

...

- (2) advice would not relate to a particular contract if it consists of a recommendation only that a *person* should take out insurance of a particular class without identifying any particular *insurance undertaking*, ~~or with ABC Insurers provided that the kind of insurance is not specified (either expressly or by implication): a recommendation only that a *person* should *buy* insurance from ABC Insurers could amount to advice if a specific insurance *policy* would be implied from the context;~~

...



- 5.8.5 G Typical recommendations and whether they will be regulated as advice on contracts of insurance under article 53 of the *Regulated Activities Order*. This table belongs to *PERG 5.8.4G*

Recommendation	Regulated under article 53 or not?
I recommend you take the ABC Insurers motor insurance <i>policy</i>	Yes. <u>This is even the case if ABC Insurers has many different motor insurance policies, as explained in PERG 4.6.6G. Although PERG 4.6.6G is about mortgages the same reason applies to insurance.</u>
...	
I recommend that you do not take out the ABC Insurers motor insurance <i>policy</i>	Yes. <u>See the entry in this table for the recommendation to take out the ABC Insurers motor insurance <i>policy</i>.</u>
...	
<del>I recommend that you take out (or do not take out) insurance with ABC Insurers</del>	<del>Possibly (depending on whether or not the circumstances relating to the recommendation, including the range of possible products, is such that this amounts to an implied recommendation of a particular <i>policy</i>)</del>
...	



# Appendix 3B

## MMR changes to TC

**MORTGAGE MARKET REVIEW (TRAINING AND COMPETENCE)  
INSTRUMENT 2013**

**Powers exercised**

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

**Commencement**

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

**Amendments to the Handbook**

- D. The Training and Competence sourcebook (TC) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Mortgage Market Review (Training and Competence) Instrument 2013.

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

## Annex

## Amendments to the Training and Competence sourcebook (TC)

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

Appendix 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3					
App 1.1.1	R	Activity		Products/Sectors	Is there an appropriate qualification requirement?
		...	...	...	...
		<del>Regulated mortgage activity</del> <u>Mortgage activity</u> and <del>reversion activity</del> carried on for a customer			
		Advising; <del>arranging (bringing about) or (for a mortgage lender or home reversion provider) an activity which would be arranging (bringing about) but for the exclusion in article 28A</del> <u>Regulated Activities Order (Arranging contracts to which the arranger is a party) <i>arranging execution-only sales (excluding variations to existing home finance transactions entered into by a firm with, or arranged by a firm for, a customer); or arranging an execution-only sale which is a rate switch for an existing</i></u>	20	<i>Regulated mortgage contracts for a non-business purpose</i>	Yes
			20A	<i>Regulated mortgage contracts for a business purpose</i>	No
			21	<i>Equity release transactions</i>	Yes

		<i>customer</i>			
		...			
		Overseeing <del>non-</del> <del>advised sales</del> <u>execution-only sales</u> on a day-to-day basis	26	<i>Regulated sale and rent back agreements</i>	No

#### Appendix 4.1 Appropriate Qualification tables

App 4.1.1	E	<b>Part 1: Activities</b>			
		Note: The activity numbers in this table relate to the <del>Regulated Activities</del> <u>activities</u> in TC App 1.1.1R. These tables do not cover activities 1, 5, 13A, 13B, 13C, <u>20A, 21B</u> , 24, 25 or 26 as these activities do not have a qualification requirement.			
		<b>Activity number</b>	<b>Activity</b>	<b>Key - extent to which qualification meets qualification requirement</b>	
		...	...		
		20	Advising on a <i>regulated mortgage contract</i> for a non-business purpose; or <u>arranging execution- only sales</u> (excluding variations to existing <u>home finance transactions, entered into by a firm with, or arranged by a firm for, a customer</u> ) of a <u>regulated mortgage contract</u> for a non- business purpose; or <u>arranging an execution- only sale</u> which is a rate switch for an existing <u>customer of a regulated mortgage contract</u> for a non-business purpose	1 or (2 + 3) or (4 + 5 + 6)	Meets full qualification requirement
		21	Advising on <i>equity</i>		

			<p><i>release transactions; or</i>  <i>arranging execution-only sales (excluding variations to existing home finance transactions, entered into by a firm with, or arranged by a firm for, a customer) of equity release transactions; or</i>  <i>arranging an execution-only sale which is a rate switch for an existing customer of equity release transactions</i></p>		
		21A	<p><u>Designing scripted questions for execution-only sales of regulated mortgage contracts for a non-business purpose</u></p>		
		22	<p>Designing scripted questions for <del>non-advised sales</del> <u>execution-only sales</u> of equity release transactions</p>		
		...			





# Appendix 3C

## MMR pipeline changes

**MORTGAGE MARKET REVIEW (PIPELINE BUSINESS) INSTRUMENT 2013**

**Powers exercised**

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

**Commencement**

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

**Amendments to the Handbook**

- D. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Mortgage Market Review (Pipeline Business) Instrument 2013.

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

## Annex

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

In this Annex, underlining indicates new text.

**TP1 Transitional Provisions**

## TP 1.1 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
...					
19	<u>MCOB 4.8A</u>	R	<p><u>A firm may continue to process an application for a regulated mortgage contract if:</u></p> <p><u>(1) the application was received by a lender or provider on or before 25 April 2014; and</u></p> <p><u>(2) the application was prepared in accordance with the non-advised sales rules in MCOB 4.8 as they were in force on 25 April 2014.</u></p>	From <u>26 April 2014</u> to <u>26 July 2014</u>	<u>26 April 2014</u>



# Appendix 4

## Platforms Compatibility Statement

# Compatibility with the general duties of the Financial Conduct Authority

## Introduction

1. CP12/12<sup>1</sup> contained a compatibility statement for the draft rules we consulted on as the FSA. These rules were made in April 2013<sup>2</sup>. PS13/1<sup>3</sup> explained that we were not making any significant changes to the rules we had consulted on and that the changes did not materially alter the conclusions of the cost benefit analysis (CBA). However, the compatibility statement in CP12/12, while adequate, did not explicitly take into account the new FCA objectives and duties. In particular, our duty to consider the impact of our rules on authorised mutual societies. This annex sets out an updated compatibility statement reflecting those new objectives and duties.
2. The rules published with PS13/1 included a change to the definition of 'platform service' to meet the original policy intention, as consulted on in CP10/29<sup>4</sup> and confirmed in PS11/9<sup>5</sup>. The intention was to include execution-only firms that also arrange for the safeguarding and administration of their customers' investments, as these firms provide a similar service to execution-only wraps and fund supermarkets. As the change was made by the FCA, this updated compatibility statement also explains how the new FCA objectives and duties are met in respect of the change to the definition.

## Content of this updated Compatibility Statement

3. We are required by section 138I(2)(d) of the Financial Services and Markets Act 2000 (FSMA) to include an explanation of why we believe making proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in s 3B of FSMA. We are also required by s 138K(2) of FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
4. This Annex sets out our view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s 1B(4) of FSMA). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
5. This Annex also sets out the position regarding the equality and diversity implications of the PS13/1 rules and the change to the definition.

## The FCA's objectives and regulatory principles

6. The proposals and final rules set out in CP12/12 and PS13/1, respectively, are primarily intended to advance our operational objectives of consumer protection and effective competition. This will be achieved through transparency of platform charges, which will need to be agreed between a platform and its clients: (i) by helping to ensure that adviser remuneration is not obscured through cash rebates

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<sup>1</sup> CP12/12, *Payments to platform service providers and cash rebates from providers to consumers* (June 2012).

<sup>2</sup> FCA 2013/43 *Conduct of Business Sourcebook (Platforms) (Amendment) Instrument 2013*.

<sup>3</sup> PS13/1, *Payments to platform service providers and cash rebates from providers to consumers* (April 2013).

<sup>4</sup> CP10/29, *Platforms: Delivering the RDR and other issues for platforms and nominee-related services* (November 2010).

<sup>5</sup> PS11/9, *Platforms: Delivering the RDR and other issues for platforms and nominee-related services*, (August 2011).

from providers to consumers; and (ii) by reducing the scope for product provider bias over selection of products offered on a platform. The change to the definition of 'platform service' also helps to advance our objectives by ensuring that the platform rules apply to the relevant firms.

7. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well, because consumers and advisers will more easily be able to understand and compare platform charges, in both the advised and non-advised markets. We carried out research before publishing CP12/12 which showed that consumers are generally not aware of the costs or charges in relation to platform use and that most did not understand the relationship between fund managers, platforms and advisers

When finalising the proposals in CP12/12, as set out in the final rules published with PS13/1, and also the amended definition of 'platform service', we had regard to the relevant regulatory principles set out in s 3B of FSMA, as explained below.

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

8. We have added further rules and guidance to help firms to comply with the Retail Distribution Review (RDR) and platform requirements. This will help to reduce future uncertainty in the application of rules and the need for individual guidance.

*A burden or restriction should be proportionate to the benefits*

9. We have updated the CBA in CP12/12 following comments from respondents, as explained in Chapter 3 of PS13/1. We consider that the costs associated with the final rules published with PS13/1 are proportionate to the potential benefits identified.

10. The CBA in PS11/9 adequately covered the amended definition of 'platform service' and so does not need to be updated.

*Consumers should take responsibility for their decisions*

11. The research we carried out for CP12/12 showed that it was difficult for consumers to understand the costs of the services offered by platforms and, in some cases, to compare costs between different products on the same platform. They also did not understand the relationship between fund managers, advisers and platforms, so it was difficult for them to take informed decisions. The final rules in PS13/1 provide greater transparency of costs and help consumers to make informed decisions about which platform and products to select. The amendment to the definition of 'platform service' means that the new rules will apply to all the relevant firms.

*The responsibilities of senior management*

12. The final rules in PS13/1 will require firms' senior management to ensure they implement the new requirements in a way that will achieve the intended transparency of charges for customers of platforms.

13. We sought to ensure that our approach is flexible enough to enable firms to meet the new requirements in a way that is suitable for their business. For example, platforms are free to negotiate terms with product providers to provide a discount on charges in the form of additional fund units added to the retail client's investments.

*We should exercise our functions as transparently as possible*

14. We have engaged with the industry throughout the consultation process, thus fulfilling this objective.

*Desirability of sustainable growth in the economy of the United Kingdom in the medium or long term*

15. The rules published with PS11/9 are intended to make the operation of the platforms market more transparent and open, which should encourage more effective competition and help to promote sustainable growth in the UK.

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

16. In finalising the rules published with PS13/1, we have taken into account the variety of firms operating in, or in conjunction with, the platforms market.
17. In formulating these proposals, we had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on: (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s 1B(5)(b) of FSMA). The final rules in PS13/1 will increase the transparency of the way in which platforms and fund managers operate and, therefore, reduce the opportunities for financial crime.

*Expected effect on mutual societies*

18. We do not expect the final rules in PS13/1 or the amended definition of 'platform service' to have a significant impact on mutual societies. However, to ensure the correction to the definition does not have any unintended consequences, we are consulting in this CP to enable firms to raise any concerns they may have.

*Compatibility with the duty to promote effective competition in the interests of consumers*

19. There is a growing trend for investors and advisers to use platforms. The rules in PS13/1 will allow platforms to compete in a more transparent way on cost and service and so benefit from greater effectiveness. In addition, the removal of payments from providers to platforms will also benefit products which do not make payments to platforms or advisers, such as investment trusts, as there will no longer be an incentive for platforms to host only those products which make payments to them. This will make it easier for consumers to access products which may be cheaper and/or more suitable for them.

**Equality and diversity**

20. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. We conducted equality impact assessments of the implications of the policy proposals in CP10/29 and CP12/12. We concluded that they did not give rise to any equality or diversity issues and did not receive any comments on this during the consultation process.

**Legislative and Regulatory Reform Act 2006 (LRRRA)**

21. We are required, under the LRRRA, to have regard to the principles in the LRRRA and to the Regulators' Compliance Code when determining general policies and principles and giving general guidance (but not when exercising other legislative functions). We have engaged with firms throughout this process and consider that the proposals are proportionate to the potential market failures identified.





# Appendix 5

## Changes to TC

**TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS  
AMENDMENTS NO 9) INSTRUMENT 2013**

**Powers exercised by the Financial Conduct Authority**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137R (General supplementary powers); and
  - (3) section 138C (Evidential provisions).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

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

**Amendments to the Handbook**

- D. The Training and Competence sourcebook (TC) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Training and Competence Sourcebook (Qualifications Amendments No 9) Instrument 2013.

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

## Annex

## Amendments to the Training and Competence sourcebook (TC)

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

## Appendix 4.1.1E Appropriate Qualification tables

...

## Part 2: Appropriate Qualifications Tables

Qualification provider	Qualification	Activity Number(s)	Key
...	...	...	...
Chartered Institute for Securities and Investment (CISI) - (Formerly the Securities and Investment Institute (SII); formerly The Securities Association)	...	...	...
	Certificate in Investment Management ( <u>Level 3, pre 31 December 2013</u> )	8	1
		15, 16, 17, 19	4
		15, 16, 17	5
		14 and 10	1
	Certificate in Investment Management (Level 4)	<u>14 and 10</u>	<u>1</u>
...	...	...	
Chartered Insurance Institute	...	...	...
	Diploma in Financial Planning plus a pass in J12: Securities advice and dealing	<del>44 and 40</del> <u>2, 12</u>	4 <u>a</u>
	...	...	...
	CF1 - UK financial services, regulation and ethics	<del>15, 16, 17,</del> 18, 19	4
		<u>15, 16, 17,</u> 18, 19	5
	<u>RO1 Paper: Regulation and Ethics</u>	<u>15, 16, 17,</u> <u>18, 19</u>	<u>4</u> <u>5</u>
	...	...	...
	Pensions law, taxation and administration paper (740) from the Associateship	...	...
<u>Certificate in Investment Operations: Collective Investment Scheme Administration paper (FA4)</u>	<u>15, 16, 17</u>	<u>6</u>	

	<u>Certificate in Investment Operations: Individual Savings Account Administration paper (FA5)</u>	<u>16, 17</u>	<u>6</u>
	<u>Certificate in Investment Operations: Investment Client Servicing paper (FA6)</u>	<u>15, 16, 17</u>	<u>6</u>
	...	...	...
<u>Deutsche Boerse AG</u>	<u>Certified Securities Trader (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)</u>	<u>2, 12</u>	<u>b</u>
<u>Deutsche Boerse AG and SIX Swiss Exchange</u>	<u>Certified Derivatives Trader (provided it is accompanied by appropriate qualifications in Regulation and Ethics, Investment Principles and Risk and Personal Taxation)</u>	<u>2, 12</u>	<u>b</u>
		<u>3, 13</u>	<u>a</u>
...			



# Appendix 6

## AIFMD Regulation Changes

**ALTERNATIVE INVESTMENT FUND MANAGERS REGULATIONS (HANDBOOK AMENDMENTS) INSTRUMENT 2013**

**Powers exercised by the Financial Conduct Authority**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 137A (The FCA’s general rules);
    - (b) section 139A (Power of the FCA to give guidance);
    - (c) section 210 (Statements of policy) as applied by regulation 71(3) of the Alternative Investment Fund Managers Regulations 2013; and
    - (d) section 169(9) (Investigations etc in support of overseas regulator) as applied by regulation 71(2) of the Alternative Investment Fund Managers Regulations 2013; and
  - (2) the following powers in the Alternative Investment Fund Managers Regulations 2013:
    - (a) regulation 70(2) (Application of procedural provisions of the Act); and
    - (b) regulation 71 (Application of provisions of the Act to unauthorised AIFMs).
- 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 Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.

**Material outside the Handbook**

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

**Citation**

- G. This instrument may be cited as the Alternative Investment Fund Managers Regulations (Handbook Amendments) Instrument 2013.



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

## Annex A

## Amendments to the Glossary of definitions

[*Editor's note:* Some of the Glossary terms in this annex are based on proposed definitions in CP12/32 (Implementation of the Alternative Investment Fund Managers Directive Part 1) and CP13/9 (Implementation of the Alternative Investment Fund Managers Directive Part 2). These Glossary definitions will come into effect upon the making of the instruments contained within CP12/32 and CP13/9.]

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

<i>EuSEF Manager</i>	the manager of a qualifying social entrepreneurship fund (as defined in the <i>EuSEF Regulation</i> ) that is registered in accordance with article 15 of the <i>EuSEF Regulation</i> .
<i>EuSEF Regulation</i>	Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds.
<i>EuVECA Manager</i>	the manager of a qualifying venture capital fund (as defined in the <i>EuVECA Regulation</i> ) that is registered in accordance with article 14 of the <i>EuVECA Regulation</i> .
<i>EuVECA Regulation</i>	Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds.
<i>external valuer</i>	a person who performs the valuation function described in article 19 of the <i>AIFMD</i> in respect of an <i>AIF</i> managed by a <i>full scope UK AIFM</i> , and is not the <i>AIFM</i> of that <i>AIF</i> .
<i>qualifying social entrepreneurship fund</i>	has the meaning given in article 3(b) of the <i>EuSEF Regulation</i> .
<i>qualifying venture capital fund</i>	has the meaning given in article 3(b) of the <i>EuVECA Regulation</i> .
<i>unauthorised AIFM</i>	a person who is not an authorised person but who is: <ul style="list-style-type: none"> <li>(a) a <i>small registered UK AIFM</i>;</li> <li>(b) a small registered EEA <i>AIFM</i>;</li> <li>(c) a <i>full scope EEA AIFM</i> that is entitled to market an <i>AIF</i> following a notification under regulation 57;</li> <li>(d) an <i>AIFM</i> that is entitled to market an <i>AIF</i> following a notification</li> </ul>

under regulation 58;

- (e) an *AIFM* to which the requirement at regulation 59(3) applies; or
- (f) a *full scope EEA AIFM* that is exercising a right to market an *AIF* arising out of the *EuSEF Regulation* or the *EuVECA Regulation*.

## Annex B

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

[*Editor's note:* Some of the Glossary terms in this annex are based on proposed definitions in CP12/32 (Implementation of the Alternative Investment Fund Managers Directive Part 1) and CP13/9 (Implementation of the Alternative Investment Fund Managers Directive Part 2). These Glossary definitions will come into effect upon the making of the instruments contained within CP12/32 and CP13/9.]

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

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

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

Section of the Act	Description	Handbook reference	Decision maker
...			
271(1)/(3)	when the <i>FCA</i> is <del>proposing or deciding to refuse approval of a collective investment scheme as a recognised scheme</del> under section 270	<del>COLL 9</del>	<i>Executive procedures</i>
...			
280(1)/(2)	when the <i>FCA</i> is proposing or deciding to <del>direct that a section 270 recognised scheme is to cease to be recognised or to revoke a section 272 order in respect of a recognised scheme</del> *		<i>RDC</i>
...			

...

Recognised Auction Platform Platforms Regulations 2011	Description	Handbook reference	Decision maker

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

<u>Alternative Investment Fund Managers Regulations 2013</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 13(1)</u>	where the <i>FCA</i> proposes to refuse an application for entry on the register of <i>small registered UK AIFMs</i>		<i>Executive procedures</i>
<u>Regulation 13(2)(a)</u>	where the <i>FCA</i> decides to refuse an application for entry on the register of <i>small registered UK AIFMs</i>		<i>Executive procedures</i> where no representations are made in response to a <i>warning notice</i> otherwise by the <i>RDC</i>
<u>Regulation 18(1)</u>	where the <i>FCA</i> proposes to revoke the registration of a <i>small registered UK AIFM</i> including, where applicable, its registration as a <i>EuSEF Manager</i> or <i>EuVECA Manager</i>		<i>RDC</i>
<u>Regulation 18(2)(a)</u>	where the <i>FCA</i> decides to revoke the registration of a <i>small registered UK AIFM</i> including where applicable its registration as a <i>EuSEF Manager</i> or <i>EuVECA Manager</i>		<i>RDC</i>
<u>Regulation 25(2)</u>	where the <i>FCA</i> proposes to disqualify an <i>external valuer</i>		<i>RDC</i>
<u>Regulation 25(3)(a)</u>	where the <i>FCA</i> decides to disqualify an <i>external valuer</i>		<i>RDC</i>
<u>Regulation 27(2)</u>	where the <i>FCA</i> proposes to revoke approval given to a <i>full scope UK AIFM</i> for the delegation of functions of		<i>Executive procedures</i>

	<u>portfolio or risk management</u>		
<u>Regulation 27(3)(a)</u>	<u>where the FCA decides to revoke approval given to a full scope UK AIFM for the delegation of functions of portfolio management or risk management</u>		<u>Executive procedures</u>
<u>Regulation 56</u>	<u>where the FCA is proposing to revoke a full scope UK AIFM's approval to market an AIF under regulation 54</u>		<u>RDC</u>
<u>Regulation 56</u>	<u>where the FCA is deciding to revoke a full scope EEA AIFM's approval to market an AIF under regulation 54</u>		<u>RDC</u>
<u>Regulation 62(2)</u>	<u>where the FCA proposes to revoke an AIFM's entitlement to market an AIF following a notification of a material change under regulations 57, 58 or 59</u>		<u>RDC</u>
<u>Regulation 62(3)</u>	<u>where the FCA decides to revoke the entitlement of an AIFM to market an AIF following a notification of a material change under regulations 57, 58 or 59</u>		<u>RDC</u>
<u>Regulation 71(1)(e)</u>	<u>where the FCA is proposing or deciding to publish a statement that an unauthorised AIFM has contravened the regulations or directly applicable EuSEF or EuVECA Regulations. (Note 1)</u>		<u>RDC</u>
<u>Regulation 71(1)(f)</u>	<u>where the FCA is proposing or deciding to impose a financial penalty on an unauthorised AIFM that has contravened the regulations or directly applicable EuSEF or EuVECA Regulations. (Note 1)</u>		<u>RDC</u>
<b>Note:</b>			
(1) Regulation (EU) No 346/2013 and Regulation (EU) No 345/2013			

2 Annex Supervisory notices  
2G

...

<b>Payment Services Regulations</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			

...

<b><u>Alternative Investment Fund Managers Regulations 2013</u></b>	<b><u>Description</u></b>	<b><u>Handbook reference</u></b>	<b><u>Decision maker</u></b>
<u>Regulation 22(4)</u>	<u>Where the FCA is exercising its power on its own initiative, to give or vary a direction under Regulation 22(1) to a small registered UK AIFM, a EuSEF Manager or EuVECA Manager</u>		<u>RDC or executive procedures</u> <u>See DEPP 2.5.7G to 2.5.8G</u>
<u>Regulation 22(4)</u>	<u>Where the FCA is exercising its power on its own initiative to give or vary a direction under regulation 22(2) to a small registered UK AIFM with its registered office in an EEA state other than the UK in accordance with article 19.3 of the EuSEF Regulation or article 18.3 of the EuVECA Regulation</u>		<u>RDC or executive procedures</u> <u>See DEPP 2.5.7G to 2.5.8G</u>

...

Sch 3 Fees and other required payments

...

Sch  
3.2G

The FCA's power to impose financial penalties is contained in:

	...
	the <i>OTC derivatives, CCPs and trade repositories regulation</i>
	<u>the AIFMD UK regulation</u>

...

**Sch 4 Powers Exercised**

...

Sch 4.2G

The following additional powers and related provisions have been exercised by the FCA to make the statements of policy in <i>DEPP</i> :	
	...
	Regulation 14 (Guidance) of the <i>Cross-Border Payments in Euro Regulations</i>
	<u>Regulation 70 (Warning Notices, Decision Notices and Supervisory Notices) of the AIFMD UK regulation</u>



## Annex C

## Amendments to the Enforcement Guide (EG)

[*Editor's note:* Some of the Glossary terms in this annex are based on proposed definitions in CP12/32 (Implementation of the Alternative Investment Fund Managers Directive Part 1) and CP13/9 (Implementation of the Alternative Investment Fund Managers Directive Part 2). These Glossary definitions will come into effect upon the making of the instruments contained within CP12/32 and CP13/9.]

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

## 14. Collective Investment Schemes

...

14.8 ...

**Exercise of the powers in respect of recognised schemes: sections 279 and 281 of the Act – powers to revoke recognition of schemes recognised under ~~270~~ or section 272: the FCA's policy**

...

## 19. Non-FSMA powers

...

19.130 ...

**Alternative Investment Fund Managers Regulations 2013**

19.131 The AIFMD UK regulation transposes AIFMD, EuSEF and EuVECA Regulations and provide for new and updated powers to both existing and new managers of AIFs, whether authorised or registered.

19.132 The AIFMD UK regulation includes information gathering and sanctioning powers that enable the FCA to investigate and take action for breaches of the regulations and directly applicable EU regulations. Specific standalone powers are provided in the AIFMD UK regulation in respect of unauthorised AIFMs by applying relevant sections of the Act. Amendments to FSMA, including those made pursuant to Financial Services and Markets Act (Qualifying EU Provisions) Order 2013, extend certain FCA powers (e.g. disciplinary powers, injunctions and restitution) such that they apply in respect of contraventions of requirements of the AIFMD UK regulation and to contraventions of directly applicable EU regulations.

**Information gathering and investigation powers**

- 19.133 The FCA has decided that its approach to enforcing the AIFMD UK regulation requirements will mirror its general approach to enforcing the Act as set out in EG 2. Therefore, the FCA will apply the same procedures and policies under the Act for appointing investigators and requiring information for breaches of the AIFMD UK regulation.
- 19.134 The new powers under the AIFMD UK regulation include powers of direction and the power to revoke the registration of small registered UK AIFMs, including a EuSEF Manager or a EuVECA Manager and in some circumstances EEA managers of a qualifying social entrepreneurship fund or a qualifying venture capital fund respectively.
- 19.135 The FCA will respect the principle of proportionality when taking action against EuSEF or EuVECA Managers in respect of breaches identified in articles 22 and 21 of the directly applicable EuSEF Regulation and EuVECA Regulation respectively. The FCA may take action to ensure compliance with the regulations or prohibit the use of the designation of EuSEF Manager or EuVECA Manager and revoke registration of such managers. The prohibition route is more likely to be applicable in cases of serious breaches of the EU regulations such as in situations where:
- registration has been obtained through false statements or any other irregular means;
  - there are grounds for concern over the behaviour of a EuSEF Manager or a EuVECA Manager in respect of the management of a qualifying social entrepreneurship fund or a qualifying venture capital fund respectively.

**Decision making under the AIFMD UK Regulation**

- 19.136 The RDC is the FCA's decision maker for some decisions under the AIFMD UK regulation, as set out in DEPP 2 Annex 1G. The RDC will make its decisions following the procedure set out in DEPP 3.2 or, where appropriate, DEPP 3.3 and 3.4. For decisions made by executive procedures, the procedures to be followed will be those in DEPP 4.
- 19.137 The AIFMD UK regulation does not require the FCA to publish procedures to commence criminal prosecutions. However, the FCA will normally follow its equivalent decision-making procedures for similar decisions under the Act.
- 19.138 The AIFMD UK regulation applies the procedural provisions of Part 9 and Part 26 of the Act in respect of matters that can be referred to the Tribunal and to warning and decision notices under the regulations as it applies to referrals and notices under the Act. The AIFMD UK regulation also applies sections 205 and 206 of the Act to unauthorised AIFMs and, accordingly, the FCA will give third party rights (section 393 of the Act) and access to material (section 394 of the Act).

**Imposition of penalties under the AIFMD UK Regulation**

- 19.139 When determining whether to take action to impose a penalty under the AIFMD UK regulation, the FCA's policy includes having regard to the relevant factors in DEPP 6.2 and DEPP 6.4. When determining the level of financial penalty, the FCA's policy includes having regard to relevant principles and factors in DEPP 6.5 to 6.5A, DEPP 6.5B, DEPP 6.5D and DEPP 6.7.
- 19.140 As with cases under the Act, the FCA may settle or mediate appropriate cases involving civil breaches of the AIFMD UK regulation to assist it to exercise its functions. DEPP 5, DEPP 6.7 and EG 5 set out information on the FCA's settlement process and the settlement discount scheme.
- 19.141 The FCA will apply the approach to publicity that is outlined in EG 6.

**Statement of Policy in section 169(7) interviews (as applied by the AIFMD UK Regulation)**

- 19.142 Regulation 71(2) of the AIFMD UK regulation applies section 169 of the Act in respect of unauthorised AIFMs, which requires the FCA to have a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. The FCA will follow the procedures described in DEPP 7.



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© Financial Conduct Authority 2013  
25 The North Colonnade Canary Wharf  
London E14 5HS  
Telephone: +44 (0)20 7066 1000  
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