

Ring-fencing: Disclosures to consumers by non-ring-fenced bodies

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We are asking for comments on this Consultation Paper by 13 November.

You can send them to us using the form on our website at:
www.fca.org.uk/your-fca/documents/consultation-papers/cp15-23-response-form.

Or in writing to:

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Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Abbreviations used in this paper

BCOBS	Banking: Conduct Of Business Sourcebook
CBA	Cost Benefit Analysis
COBS	Conduct Of Business Sourcebook
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
FSCS	Financial Services Compensation Scheme
NRFB	Non-ring-fenced body
PRA	Prudential Regulation Authority
RFB	Ring-fenced body
SYSC	Senior Management Arrangements, Systems and Controls Sourcebook

1. Overview

Introduction

- 1.1** The Financial Services (Banking Reform) Act 2013¹ (the Banking Reform Act) inserted provisions into the Financial Services and Markets Act 2000 (FSMA) to establish a ring-fencing regime from the Government's intended start date of 1 January 2019. This is likely to be applicable to a number of the largest UK banking groups. The legislation aims to isolate retail banking activities from investment banking activities. The core objective is to reduce the likelihood of disruption of key retail services by insulating ring-fenced bodies (RFBs) from risks arising elsewhere in their own groups or in the wider financial system.
- 1.2** As part of the ring-fencing regime we are required by law to make rules specifying the information that a non-ring-fenced body (NRFB) must provide to individuals with financial assets² of at least £250,000 that are account holders or that have applied to open an account, including joint accounts, with an NRFB.³
- 1.3** An NRFB is a deposit-taker that is not an RFB, or a deposit-taker that has been exempted from ring-fencing. For example, a deposit-taker that is not an RFB but is part of a corporate group that contains an RFB.
- 1.4** This Consultation Paper (CP) sets out the draft rules for consultation. It also seeks the views of the relevant stakeholders on these proposals.

Who does this consultation affect?

- 1.5** This CP is relevant to banking groups that will be required by FSMA (as amended by the Banking Reform Act) to ring-fence their core activities.⁴
- 1.6** Certain banking groups will be exempt from this requirement – for example, secondary legislation specifies that there is a 'core deposits level condition'. Broadly, a banking group is not caught if it does not hold core deposits⁵ of more than £25 billion.

1 www.legislation.gov.uk/ukpga/2013/33/contents/enacted

2 Money and transferable securities.

3 It should be noted that these customers can do their banking in whole or in part within the RFB.

4 Deposit taking and the provision of overdrafts.

5 See paragraph 2.5

Is this of interest to consumers?

- 1.7** This consultation paper may be of interest to consumers who will be eligible to hold accounts with an NRFB. More broadly, it also potentially concerns other account holders with the banks affected by our proposals and the wider account holding population in general.

Context

- 1.8** The Financial Services and Markets Act 2000 (Ring-Fenced Bodies and Core Activities) Order 2014⁶ requires the FCA to make the rules on information to be provided to certain individuals who hold or apply to open an account with an NRFB.
- 1.9** The proposals in this paper aim to advance our consumer protection objective by helping those affected to make informed financial decisions.

Summary of our proposals

- 1.10** NRFBs will be required to give the relevant consumers descriptions of the investment and commodities trading activities that they carry out, and details of any 'prohibited action'⁷ taken.
- 1.11** The rules that we are proposing do not go significantly beyond what is explicitly required by the ring-fencing legislation. The area in which the rules go furthest beyond what is required by the legislation is the timing of when the information is to be provided. We anticipate that in most cases firms will provide the information before they become NRFBs. It also must be provided when an individual applies to open an account with an NRFB, after the regime is in force. They will also need to supply some explanatory information to help consumers to understand the implications of banking with a non-ring-fenced entity in the group. This would inform any decision to place a deposit with an NRFB. Finally, NRFBs will need to display the information on their website and keep it up to date.
- 1.12** We do not propose to impose any corresponding disclosure requirements on banks that are not subject to the ring-fencing regime.

To whom, when and how the information must be provided

- 1.13** **To whom:** The information should be provided to eligible individuals (individuals with financial assets of at least £250,000) who elect to continue to hold or to open an account with the NRFB.
- 1.14** **When:** To enable individuals to make an informed decision at the most appropriate time, our rules will require the information to be provided to eligible individuals before the regime comes into force (in 2019). It also must be provided when a new individual applies to open an account with an NRFB, after the regime is in force.

⁶ www.legislation.gov.uk/ukdsi/2014/9780111117118

⁷ 'Prohibited' in this context refers to actions which are prohibited within an RFB but allowed within an NRFB. See article 14 of the Financial Services and Markets Act 2000 (Ring-fenced Body and Core Activities) Order 2014.

- 1.15** **How:** We propose to keep requirements on the form of the required disclosure to a minimum in order to afford a degree of flexibility for firms while maintaining an appropriate degree of consumer protection. Banks will also be required to make the information publicly available by publishing it on their websites.

Equality and diversity considerations

- 1.16** We have considered the equality and diversity issues that may arise from the proposals in this paper. While the proposals might affect the older population more – as recent research shows that a higher proportion of this population (individuals with financial assets of at least £250,000) are older people – we do not consider that these proposals raise concerns with regards to equality and diversity issues.
- 1.17** More widely we do not consider that the proposals in this consultation adversely affect any of the groups with protected characteristics, i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.
- 1.18** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we welcome any input to this consultation on such matters.

Next steps

What do you need to do next?

- 1.19** We would be grateful for your feedback. Please send us your comments by 13 November 2015.

How?

- 1.20** Use the online response form on our website or write to us at the address on page 2.

What will we do?

- 1.21** We will consider your feedback and publish our rules alongside a Policy Statement in Q1 2016.

2. Background information

- 2.1** This chapter sets out the background to the ring-fencing regime, which is one of a number of domestic and international reforms to banking regulation currently being introduced or implemented.

The aim of ring-fencing

- 2.2** In 2010 the Government set up the Independent Commission on Banking (ICB), chaired by Sir John Vickers, to look at the structure of the banking system and how it could be reformed to increase competition and maintain financial stability. The final report of the ICB, published in 2011, recommended the 'ring-fencing' of vital banking activities from investment banking activities. This involves isolating within a banking group those banking services where continuous provision is vital to the customers of the RFB and the economy.
- 2.3** The aim of this is to reduce the likelihood of disruption of key services by protecting ring-fenced banks from risks in the wider financial system. The other rationale for introducing ring-fencing is that it should be made simpler and less costly to resolve banks that get into financial difficulties. To do this, it needs to be easier to determine which activities of a failing bank are to be continued and how they should be continued in an orderly manner.
- 2.4** The Banking Reform Act, which received Royal Assent in December 2013, inserted provisions into FSMA that established a ring-fencing regime for the UK's largest banks from 1 January 2019.

Banking activities within the ring-fence

- 2.5** Banking activities that take place within the ring-fence are called 'core activities' in the Banking Reform Act. It provides that the regulated activity of accepting deposits is a core activity that banking groups must place into RFBs. However, accepting deposits is only a core activity where the deposit concerned is a 'core deposit'. In the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014, the Treasury provides that all deposits held with UK deposit-takers are core deposits unless one or more of the account holders is:
- an individual with assets (money and transferable securities) of at least £250,000 who on this basis has declared to the firm that he or she is an eligible individual

- a medium- or large-sized organisation (including a company or partnership)⁸
 - a charitable organisation with gross income of more than a specified amount
 - an entity or organisation in the same group as a qualifying medium- or large-sized company/ partnership or charitable organisation as above
 - a financial institution
- 2.6** Both RFBs and NRFBs may accept deposits and engage in payment activities, but the two categories of institution exhibit different risk profiles. NRFBs within a banking group that includes an RFB are permitted to accept deposits from these categories of account holders provided that certain procedural requirements are met. For example, in the case of individuals, the person must confirm that he/she has held, on average, financial assets of at least £250,000 for at least 12 months. Unless waived by the NRFB, the individual must also provide a confirming statement from a suitably qualified accountant.
- 2.7** The rationale for the different treatment of these categories of account holders is that they are deemed to be less reliant on the continuity of the core services provided by the RFB. In the case of the approximately 2% of individuals with financial assets of at least £250,000, this is because such persons are likely to have alternative methods of accessing core services, for example current accounts with other banks.

Activities RFBs may not undertake

- 2.8** The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014⁹ made by the Treasury in July 2014 details which activities RFBs may not undertake. These 'excluded activities' consist of dealing in investments as principal and commodities trading. The Treasury Order also imposes specific prohibitions on RFBs. These prohibitions are on exposures to financial institutions and branches and subsidiaries outside the EEA. These types of activities would make RFBs vulnerable to problems arising in the financial system or more difficult to wind down in an orderly fashion. Both the excluded activities and prohibitions are subject to many exceptions.

Banks subject to ring-fencing

- 2.9** In the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014, the Treasury defines the deposit-taking entities to which ring-fencing does not apply. Together with the Banking Reform Act, the effect of these provisions is that only banks with average total core deposits of more than £25 billion for a three-year period fall within the scope of ring-fencing.

⁸ The ring-fencing secondary legislation provides that a medium- or large-sized company or partnership for this purpose is an organisation that meets one or more of the following criteria:

- has a turnover of not less than £6.5 million;
- has a balance sheet total of not less than £3.26 million;
- has not less than 50 employees.

⁹ www.legislation.gov.uk/uksi/2014/2080/pdfs/ukxi_20142080_en.pdf

- 2.10** The Treasury has estimated that approximately 87% of deposits covered by the Financial Services Compensation Scheme (FSCS) would be held in RFBs within these groups. It is the NRFBs within these banking groups that our proposed rules will apply to.
- 2.11** The ring-fencing regime will not apply to any of the following:
- banks below the £25 billion threshold
 - independent private banks
 - foreign banks
 - building societies

The role of the regulators

- 2.12** The aims of the ring-fencing legislation are mostly prudential in nature, and the responsibility for supervising compliance with the ring-fencing regime will fall largely to the Prudential Regulation Authority (PRA). The PRA is required, moreover, to make rules covering a wide range of areas, including the governance of, and prudential requirements on, ring-fenced banks.
- 2.13** The FCA's interest in ring-fencing is twofold.
- 2.14** First, we are required under the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 to make rules specifying the information that NRFBs must provide to individuals that are account holders in the NRFB when the regime comes into force, or who apply to open an account, including joint accounts. Our proposed rules are described in Chapter 3.
- 2.15** Secondly, we will need to be satisfied that the implementation of ring-fencing does not pose risks to the advancement of our operational objectives. For example, restructuring banking groups to transition to ring-fencing will entail appreciable execution risks, and we will expect that banks' plans are drawn up and implemented with due regard to customers' interests and outcomes. In particular, we would expect the need to avoid material disruptions of service to customers to be fully and explicitly addressed in planning, whether it relates to the formation of new corporate entities, the migration of customers between entities, or changes to sort codes and account numbers. We would also expect banks to have thorough and comprehensive communications and customer engagement plans for explaining the changes they are making to affected customers.
- 2.16** Since a key purpose of ring-fencing is to protect the continuity of core services in ring-fenced entities, the PRA will also have a strong interest in banks' transitional arrangements. In pursuing our statutory objectives we will continue to work closely with the PRA to avoid duplication of effort between the two regulators, and duplication of demands (for example, for information) upon the banks.
- 2.17** The PRA will consult us in relation to proposed ring-fencing transfer schemes, which are *transfers of business* under Part VII of FSMA for the specific purpose of meeting ring-fencing requirements and *applications for authorisations* by firms, and we will need to be satisfied that the interests of customers have been fully and fairly addressed.

- 2.18** We intend to consult on our approach to ring-fencing transfer schemes later this year, no later than when the PRA will publish their second Consultation Paper on ring-fencing. Our consultation will also set out our wider approach to the implementation of ring-fencing. We will develop our approach and the publication in close coordination with the PRA.

Timing

- 2.19** The ring-fencing regime is to be implemented by 1 January 2019. We will aim to put our final rules in place in Q1 2016 so that the affected banking groups have enough time to complete the necessary restructuring and implement all the requirements. Because of the forward-looking nature of our proposed rules, we expect to bring them into force 6-12 months before full implementation.
- 2.20** The PRA issued its first Consultation Paper in October 2014 and its Policy Statement in May 2015. Its second Consultation Paper is planned for publication later in 2015. The PRA intends to publish final versions of the rules and supervisory statements included in the first and second consultations during the first half of 2016.
- 2.21** These timings will enable the regulators to oversee all Part VII transfers and to vary permissions and waivers before 1 January 2019.

3. Disclosures to consumers by non-ring-fenced banks

- 3.1** In this chapter we outline our proposals for making rules that will require NRFBs to provide certain information about their activities and ring-fencing in general to certain customers.

Overall approach

- 3.2** The Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 puts the FCA under a duty to make rules to provide for the disclosure of relevant information to individuals who are, or who seek to become, account holders with NRFBs. This is what we *must* do. However, our existing powers also enable us to make any further rules on ring-fencing that we consider necessary or expedient to advance our operational objectives.
- 3.3** While our proposals are largely confined to fulfilling our statutory duty, we are proposing to go beyond the bare minimum in three ways, by requiring the NRFB to:
- i.** in many cases, provide the information before it becomes an NRFB
 - ii.** provide some contextual information in addition to the information specified in the legislation
 - iii.** publish the information on their website
- 3.4** These proposals will further assist consumers to make an informed decision at an appropriate time. Our aim is that customers will receive the information before the ring-fencing regime comes into place. This will enable them to make an informed decision about where to place their deposit in good time.
- 3.5** However, we do not propose to impose any corresponding disclosure requirements on banks that are not subject to the ring-fencing regime, even though some of them may undertake the broader range of activities open to NRFBs. Any requirement on exempted banks with investment activities to provide similar information to their customers who are individuals with financial assets of at least £250,000 would not be in keeping with the scope of the ring-fencing legislation¹⁰ and would be disproportionate.

Q1: Do you agree that disclosure obligations should not be imposed on firms that carry out the same activities as NRFBs but fall outside of the ring-fencing regime?

¹⁰ Section 142H94) FSMA as inserted by the Banking Reform Act www.legislation.gov.uk/ukpga/2013/33/part/1/enacted

What information must be provided

- 3.6** The content of the disclosure should be comprised of two parts. Firstly, we expect NRFBs to provide consumers with a scene-setting narrative that helps them understand the implications of banking with an NRFB in a banking group with an RFB. NRFBs should include in this short explanation, information that briefly explains the purpose of ring-fencing and the significance of not being ring-fenced. We expect the NRFB to explain, in plain and intelligible language:
- that the purpose of ring-fencing is to insulate ring-fenced banks from certain financial risks
 - the significance of not being ring-fenced is to be allowed to run risks to which a ring-fenced bank is not allowed to expose itself
- 3.7** To avoid providing too much and too complex information, we are only imposing information requirements that help consumers to understand and are likely to be particularly relevant to a decision to place a deposit with an NRFB.
- 3.8** Secondly, the NRFB should provide descriptions of:
- any excluded activity the NRFB is carrying on
 - any prohibited action the NRFB has taken
- 3.9** ‘Prohibited’ in this context refers to actions that are prohibited within an RFB but allowed within an NRFB. The fact that these actions are permitted within the NRFB should form part of the explanation described.
- 3.10** We envisage that this list will not be a granular one of every excluded activity that the NRFB undertakes. Rather they should provide high-level depictions of the types of activities they are engaged in. The list of ‘prohibited’ actions should also be generic in nature. All of these details should be communicated in plain and intelligible language. Where the information is to be provided before a firm becomes an NRFB, it must provide descriptions of any activity or action carried out that would be excluded or prohibited if carried out after the ring-fencing regime comes into force.
- 3.11** Deposits, whether held separately with an RFB or an NRFB, will remain eligible for the existing level of FSCS coverage. The FSCS compensation limit applies to the total deposits a person holds in a single bank, i.e. in a single legal entity. Legislation on ring-fencing does not make any changes in this regard. Rules set by the PRA¹¹, which came into effect on 3 July 2015, require deposit takers to disclose information about the level of FSCS protection.

Q2: Do you agree that the information provided on excluded activities and prohibited actions should be high level in nature, and do you have any comments on our proposal to require NRFBs to provide a scene-setting narrative on ring-fencing?

¹¹ www.bankofengland.co.uk/pr/Pages/publications/ps/2015/ps615.aspx

To whom the information must be provided

- 3.12** Only those individuals with, on average, financial assets of at least £250,000, will be permitted to hold accounts in NRFBs. To do so they must declare themselves to be eligible to the NRFB they want to hold an account with. NRFBs must provide the information to these individuals. We note that this minimum assets requirement will encompass significantly more than just individuals who are conventionally regarded as being of 'high net worth', for example as a result of the liberalisation of the pensions regime.
- 3.13** In the period leading up to the introduction of the ring-fencing regime in 2019 we anticipate that banks will be in contact with those individuals whose existing accounts are with entities that are likely to become NRFBs, and may be in touch with other eligible individuals. Where an NRFB contemplates it will receive a declaration from an individual (that he or she meets the criteria to hold an account with the NRFB) or the NRFB proposes to accept such a declaration, the NRFB must send the information to these individuals.
- 3.14** Once the regime is established the NRFB should provide the information to any potential customer who applies to open an account or to an individual who was an account holder at that time but has not received the information previously.
- 3.15** We do not believe that imposing a requirement on NRFBs to also provide information to other categories of depositors (medium- or large-sized companies and financial institutions) would contribute significantly to the advancement of our objectives. These categories of depositors are likely to have access to professional financial and legal advice. The content of a disclosure document provided by the NRFB would therefore be of little additional benefit and provide no additional protection to these customers.
- 3.16** Any requirement on exempted banks to provide similar information to their customers would not be in keeping with the aims of the ring-fencing legislation. We consider that it would be disproportionate to extend the disclosure requirement to exempted banks as it would potentially encompass all their account holders and not merely those with assets over £250,000.

Q3: Do you agree that there should be no requirement to provide information to other categories of depositors that are entitled to hold an account with an NRFB?

When the information must be provided

- 3.17** The information must be provided to individuals that an NRFB anticipates will become eligible to hold an account with the NRFB. For these individuals the information must be sent in good time before they become eligible in relation to the NRFB. We expect that in many cases this will be before the firm becomes an NRFB.
- 3.18** The draft rules also reflect the legislation provisions, which outline two types of situations in which information must be provided to individuals by NRFBs:
- when an individual has applied to open an account with an NRFB, including a joint account
 - when an individual is an account holder with an NRFB, including as a joint account holder

- 3.19** Our proposed rules set out that the circumstances in which an individual applies to open an account include:
- requesting to switch an account from any provider, including an RFB within the same group, to an NRFB
 - both situations in which the individual retains an account with another bank and situations where he/she does not

3.20 Where an individual applies to open an account with the firm after it has become an NRFB, he/she must be sent the information in good time before the account is opened. Where an individual is an account holder at the time the firm becomes an NRFB and has not previously been provided the information, the NRFB must provide the information as soon as is practicable. These requirements are so the consumer can have the opportunity to take the information into account when making a decision about whether to place a deposit with the NRFB. As such it is necessary that he/she receives the information sufficiently early in the process.

Q4: Do you have any comments on these requirements regarding when the information must be provided to individuals, in particular on the proposal that in many cases the information is to be provided before the firm becomes an NRFB?

How the information must be provided

- 3.21** The ring-fencing legislation does not stipulate the form in which the information must be provided to the consumer. We intend to keep form requirements to the minimum necessary to ensure that the consumer receives the information in a manner that permits him/her to take notice of its content.
- 3.22** The information must be communicated by NRFBs:
- in written form
 - in a manner and via a channel that ensures the document and its content are likely to come to the attention of the individual to whom it is addressed
 - in language that is clear, fair, not misleading and intelligible having regard to the category of consumers to which it is addressed
- 3.23** Additionally, we propose to require NRFBs to publish the information given to individuals on their websites and to keep this information up-to-date. We believe this will be beneficial to consumers as this information will allow any depositor to access the key information about an NRFB that should be known before deciding where to place a deposit. The public availability of this information may help customers to make an informed decision when considering which banking group to choose.

- 3.24** The requirement would be neither onerous nor costly for NRFBs to implement. We believe our incremental costs for checking firm's compliance with this rule will be minimal.
- 3.25** More broadly, we do not expect firms to charge for the information to be provided.

Q5: Do you have any comments on how information should be provided to consumers, including the stipulation that the information must be provided online?

4.

Implications of ring-fencing for other FCA rules

- 4.1** Apart from the disclosure obligation, we are not proposing other material changes to our Handbook in the light of ring-fencing. Existing FCA rules already cover the potential customer and conduct implications of ring-fencing.
- 4.2** It will be the responsibility of each banking group to explain to its customers the changes it is making to implement ring-fencing, insofar as those changes impinge upon the position of its customers – for example, by transferring their accounts to a new or different legal entity, or by changing sort codes or account numbers.
- 4.3** Each banking group will need to develop a comprehensive communications strategy, reflecting its own distinctive way of implementing ring-fencing, and communications with customers will need to be tailored accordingly. We do not intend to make available a generic communication on ring-fencing for banks to distribute to their customers. Banks' own communications with account holders will, of course, be subject to existing rules governing communication – for example, those in BCOBS.
- 4.4** The ring-fencing regime is designed to curtail the ability of ring-fenced entities to take position risk, by limiting their ability to deal *as principal* in investments and commodities. Ring-fenced entities will be able to act *as agent* on behalf of non-ring-fenced entities, and cross-selling between different group entities will still be possible provided that the agency arrangements do not otherwise undermine the ring-fence and subject to any requirements made by the PRA.¹² We see no need to impose special restrictions on ring-fenced entities in this respect. Existing rules will apply – for example, the rules in COBS in the case of customers acquiring investments.
- 4.5** Some banking groups currently operate with a uniform brand throughout the group; others have different brands for different purposes or different group entities. We see no reason why groups with ring-fenced entities should have less ability to do so in the future. Uniformity of brand must not, however, be used or allowed to convey to customers a misleading impression of whether a group entity is ring-fenced or not ring-fenced.
- 4.6** Personal data sharing among group entities is, and will continue to be, subject to data protection law. Under the ring-fencing regime, the PRA's operational continuity requirements may also have some bearing upon the manner and extent of personal data sharing in the wider banking group. We do not consider there to be a need to add to the requirements of the PRA and of data protection law.
- 4.7** As explained in the PRA's Policy Statement 10/15, the PRA intends to underpin its substantive ring-fencing requirements with a rule requiring firms to be able to demonstrate compliance with those requirements. We do not propose to create a similar requirement in the FCA

¹² For example the PRA is required by the Act to make rules 'restricting the power of a ring-fenced body to enter into contracts with other members of the group otherwise than on arm's length terms'. See section 142H(95)(9a) of the Act. The PRA will consult on arms' length requirements in its second ring-fencing CP.

context. This is because compliance with disclosure requirements such as those proposed here is inherently visible. We expect to rely upon Principle 11 on relations with the regulator and the general record-keeping requirements in SYSC 9.1 when asking firms for evidence on how they are complying with our ring-fencing rules.

Q6: Do you agree that we should not introduce any further material changes to the FCA Handbook other than those required for the disclosure? If you disagree please specify the change or changes that you think are necessary.

Annex 1

List of questions

- Q1:** Do you agree that disclosure obligations should not be imposed on firms that carry out the same activities as NRFBs but fall outside of the ring-fencing regime?
- Q2:** Do you agree that the information provided on excluded activities and prohibited actions should be high level in nature, and do you have any comments on our proposal to require NRFBs to provide a scene-setting narrative on ring-fencing?
- Q3:** Do you agree that there should be no requirement to provide information to other categories of depositors that are entitled to hold an account with an NRFB?
- Q4:** Do you have any comments on these requirements regarding when the information must be provided to individuals, in particular on the proposal that in many cases the information is to be provided before the firm becomes an NRFB?
- Q5:** Do you have any comments on how information should be provided to consumers, including the stipulation that the information must be provided online?
- Q6:** Do you agree that we should not introduce any further material changes to the FCA Handbook other than those required for the disclosure? If you disagree please specify the change or changes that you think are necessary.

Annex 2

Cost benefit analysis

1. The Financial Services and Markets Act 2000 (FSMA), as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish 'an analysis of the cost together with an analysis of the benefits' that will arise if the proposed rules are made. It also requires us to quantify these costs and benefits, unless they cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.
2. As set out in Chapter 3, the Financial Services and Markets Act 2000 (Ring-Fenced Bodies and Core Activities) Order 2014¹ requires us to make rules specifying the information that NRFBs (which sit in banking groups with an RFB) must provide to individuals with financial assets of at least £250,000 that are account holders or that have applied to open an account, including joint accounts, with an NRFB.

Costs incurred by firms

3. **What:** the main cost incurred by banks will arise from writing to the relevant customers before the regime comes into force. The extra information that we require, in addition to what is provided for in the legislation, will incur only minimal incremental costs, as it can be included in the same information note required by the legislation.
4. We have asked that the information be provided in language that is comprehensible, having regard to the category of consumers to which it is addressed. Although we are aware that some firms use plain language consultants, we believe that firms should be able to produce easily understandable disclosure material without needing outside help. In any case, where outside help is used the costs are expected to be incrementally minimal.
5. **When:** the information must be provided to individuals that an NRFB anticipates will become eligible to hold an account with the NRFB. For these individuals the information must be sent in good time before they become eligible in relation to the NRFB. We expect that in many cases this will be before the firm becomes an NRFB.
6. The draft rules also reflect the legislation provisions which outline two types of situation in which information must be provided to individuals by NRFBs:
 - when an individual has applied to open an account with an NRFB, including a joint account
 - when an individual is an account holder of an NRFB, including as a joint account holder

¹ p10

7. The proposed rules set out in this consultation paper are intended also to clarify that the circumstances in which an individual applies to open an account include:
 - requesting to switch an account from any provider, including an RFB within the same group, to an NRFB
 - both situations in which the individual retains an account with another bank and situations where he/she does not
8. Where an individual applies to open an account with the firm after it has become an NRFB, it must be sent the information in good time before the account is opened. Where an individual is an account holder at the time the firm becomes an NRFB and has not previously been provided the information, the NRFB must provide the information as soon as is practicable. These requirements are so the consumer can have the opportunity to take the information into account when making a decision about whether to place a deposit with the NRFB – he/she should receive the information sufficiently early in the process.
9. The written disclosure will be on a one-off basis.
10. The disclosure required when a customer opens a new account with an NRFB, as opposed to the initial round of communications required when the new rules come in to force, can be integrated with the other information that the bank will provide to new or prospective customers. This will incur minimal incremental cost.
11. **How:** we have kept requirements on form to a minimum. For the purposes of this CBA we make the assumption that firms will deliver the information by post and that this will be at a cost of 4.67p per sheet of A4 print and postage.²
12. We would like to go beyond the requirements laid down in the legislation by imposing an additional requirement on NRFBs to also publish the information given to individuals on their websites and to keep this information up-to-date. This requirement will simply necessitate the uploading of the information document to the banks' websites. This will incur minimal incremental cost to banks.
13. **Whom:** The information should be provided by NRFBs to relevant individuals with financial assets of at least £250,000, as required by the legislation. We note that this minimum assets requirement will encompass significantly more persons than just high net worth individuals, who are generally considered to be persons with financial assets of at least US \$1m (or approx. £650,000). Our data shows that approximately 2% of individuals have financial assets of at least £250,000.³

2 According to our figures in 2003 (www.fsa.gov.uk/pubs/cp/187/nera.pdf (2003)) postage and printing cost 3.5p per A4 sheet. The figure of 4.67p is calculated using table 64 of www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcn%3A77-323629
CPI all items Jan 2003/CPI all items Mar 2015 x 3.5p
 $127.64/95.66 \times 3.5 = 4.67$

3 2% of consumers Mintel surveyed for Consumers, Saving and Investing - UK - January 2015.

14. Here is the formula on which the calculation is based:

Total relevant population size x cost of printing and postage per client = TOTAL COST

15. Here is the calculation:

1. Total UK population over the age of 18 = 50m⁴
2. Population that would meet the assets requirement = 2% of 50m = 1m
3. We postulate that the proportion of population at (2) who might be/become NRFB account holders will be within a range of 25-100% [the relevant population]
 - a. 25% of (2) = 250,000
 - 250,000 x 4.67p = £1.7m
 - b. 100% of (2) = 1m
 - 1 million x 4.67p = £4.67m

TOTAL COST (across an estimate of 6 banks) will be between £1.17m to £4.67m

The higher cost presented is the cost if the entire population of clients with assets over £250,000 received a letter i.e. this is the *maximum* one-off cost.

16. Firms will have existing databases to enable them to communicate with these individuals. They will also be able to easily identify who holds an account with the NRFB, or who applies to open an account with the NRFB after the regime comes into force. As such we expect minimal incremental costs of gathering data on these individuals.

Costs incurred by the FCA

17. We do not propose underpinning these ring-fencing requirements with a rule requiring firms to put themselves in a position to demonstrate compliance with our requirements. This is because compliance with disclosure requirements is inherently visible. We are therefore content to rely upon the general record-keeping requirements in SYSC 9.1. As such, we will incur minimal incremental costs.

Costs to the consumer

18. We do not foresee this disclosure having any costs for the consumer.

⁴ 2011 census. Table 5B of the Office for National Statistics Data repository

Indirect costs

19. We do not foresee any indirect costs arising from these policy proposals.

Benefits

20. By making rules that define the information NRFBs must provide to individuals that are account holders or who have applied to open an account, we would be supporting our consumer protection objective. We believe that the information provided by the banks might enable consumers to make better informed decisions about where to deposit their money.

Annex 3

Compatibility statement

Compatibility with the FCA's general duties

1. We are required by section 138I (2)(d) of FSMA to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives and have regard to the regulatory principles in section 3B of FSMA. We are also required by section 138K(2) of FSMA to state whether the proposed rules will have a significantly different impact on mutual societies, as opposed to other authorised persons.
2. This annex also 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 that promotes effective competition in the interests of consumers (section 1B(4) of FSMA). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.

Compatibility with the FCA's objectives and regulatory principles

3. The proposals in this consultation paper are compatible with our strategic objective of ensuring that the relevant markets function well, since they contribute to the successful functioning of the ring-fencing regime.
4. The proposals in this paper also aim to advance our consumer protection objective by helping those affected to make informed financial decisions
5. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in section 3B of FSMA.

The need to use our resources in the most efficient and economical way.

6. We expect the costs to the FCA of these proposals to be minimal as any compliance monitoring will take place within the existing record-keeping requirements.

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

7. Our proposed approach is driven by and follows the proposed legislation. We believe that the additional costs of our proposals going beyond the legislation are minimal and are proportionate to the benefits.

The desirability of sustainable growth in the UK economy in the medium or long term

8. As a whole, the ring-fencing regime is designed to support sustainable growth in the UK economy. The disclosure proposals are a part of that.

The general principle that consumers should take responsibility for their decisions

9. We expect these proposals to enable customers to make informed, independent decisions.

The responsibilities of senior management

10. Our proposals do not place any new obligations on the senior management or governing bodies of firms.

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

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

The desirability of publishing information relating to persons

12. We do not believe that our proposals affect or undermine this principle.

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

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

Compatibility with the duty to promote effective competition in the interest of consumers

14. In preparing the proposals in this Consultation Paper, we have had regard to our duty to promote effective competition in the interests of consumers under section 1B(4) of FSMA. This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
15. The disclosure required will augment a consumer's ability to make a more informed decision about where they place their deposits. In turn this could potentially promote competition by helping individuals to be more in control of their choices. This is a small element of the wider regime which is designed to improve competition by helping to reduce the implicit subsidy provided to systemically important banks.

Expected effect on mutual societies

- 16.** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons.
- 17.** We do not believe that the proposals set out in this Consultation paper are relevant to mutual societies as they will only impact a specific group of banks.

Appendix 1

Draft Handbook text

BANKING: CONDUCT OF BUSINESS (DISCLOSURE BY NON RING-FENCED BODIES) (AMENDMENT) INSTRUMENT 2015

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 137A (General rule-making power);
 - (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*].

Amendments to the FCA Handbook

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

Citation

- I. This instrument may be cited as the Banking: Conduct of Business (Disclosure by Non Ring-Fenced Bodies) (Amendment) Instrument 2015.

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

Annex A**Amendments to the Glossary of definitions**

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

<i>confirming statement</i>	has the same meaning as in article 9(1)(b)(i) of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014.
<i>eligible individual</i>	has the same meaning as in article 9 of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014.
<i>excluded activity</i>	an activity defined as an excluded activity in section 142D of the <i>Act</i> or by an order made under that section.
<i>non ring-fenced body</i>	has the same meaning as in article 14(3) of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014.
<i>prohibited action</i>	an action which a <i>ring-fenced body</i> is prohibited from taking by an order made under section 142E of the <i>Act</i> .
<i>ring-fenced body</i>	has the same meaning as in section 142A of the <i>Act</i> .

Annex B

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, except where indicated otherwise, underlining indicates new text.

1.1 General application

...

Limitations on the general application rule

- 1.1.4 R (1) Chapters 2, 5 and 6 of *BCOBS* (except for *BCOBS* 5.1.11R to *BCOBS* 5.1.19R) and *BCOBS* 4.3 apply to *payment services* where Parts 5 and 6 of the *Payment Services Regulations* apply.

...

Insert the following new section after BCOBS 4.2. The text is all new and is not underlined.

4.3 Information to be provided by a non ring-fenced body to individual account holders

Application and purpose

- 4.3.1 G Article 14 of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (the Ring-fenced Bodies and Core Activities Order 2014) places a duty on the *FCA* to make *rules* specifying the information that a *non ring-fenced body* must provide to certain classes of individuals. The purpose of this section is to set out those *rules*.
- 4.3.2 R This section applies to a *firm* that is a *non ring-fenced body* or is to become a *non ring-fenced body*.
- 4.3.3 G A *non ring-fenced body* is a *firm* which has a *Part 4A Permission* to carry on the *regulated activity* of *accepting deposits* and which is neither a *ring-fenced body* nor an institution which is exempt from the definition of a ring fenced body. Section 142A(1) of the *Act* defines a ring-fenced body as a UK institution which carries out one or more core activities under section 142B of the *Act* in relation to which it has a *Part 4A* permission. Section 142A(2) of the *Act* and the Ring-fenced Bodies and Core Activities Order 2014 provide that a *building society* and certain other classes of UK institution are exempt from this definition.

To whom must information be provided?

- 4.3.4 R (1) A *firm* that is to become a *non ring-fenced body* must provide the information specified in *BCOBS* 4.3.6R to any individual from whom the *firm* proposes to accept, or contemplates it may receive, a

declaration of eligibility under article 9(1)(a) of the Ring-fenced Bodies and Core Activities Order 2014 (whether accompanied by a *confirming statement* or not).

- (2) A *firm* that is a *non ring-fenced body* must provide the information specified in *BCOBS* 4.3.6R to:
- (a) any individual who has applied to open an account (including a joint account) with that *firm*; and
 - (b) any individual who holds an account (including a joint account) with that *firm*,

except where the *firm* has already provided that information to the individual on a previous occasion.

- 4.3.5 G A request made by an individual to switch to an account with a *firm* is to be regarded as an application to open an account with that *firm* (it is immaterial if the switch is from an account held with a *ring-fenced body* in the same group as the *firm* or whether the existing account will be closed when the switch is complete).

What information must be provided?

- 4.3.6 R The information required to be provided by *BCOBS* 4.3.4R is:
- (1) a summary of the purpose of the provisions of Part 9B of the *Act* (Ring-fencing) and of the key risks to which a *non ring-fenced body* may be exposed which distinguish it from a *ring-fenced body*;
 - (2) a description of any *excluded activity* which the *firm* is carrying on or (for information provided before the date on which Part 9B of the *Act* comes fully into force) a description of any activity the *firm* is carrying on which would, if carried on after that date, be an *excluded activity*; and
 - (3) a description of any *prohibited action* which the *firm* has taken or (for information provided before the date on which Part 9B of the *Act* comes fully into force) a description of any action the *firm* has taken which would, if taken after that date, be a *prohibited action*.
- 4.3.7 G (1) The summary in *BCOBS* 4.3.6R(1) should include a brief explanation that the purpose of ring-fencing is to separate the retail banking activities, on which households and small businesses depend, from wholesale or investment banking activities which may involve a greater degree of risk and expose an entity undertaking those activities to financial problems arising elsewhere in the global financial system.

It should also indicate that certain “ring-fenced” bodies carrying on retail banking activities will have to comply with restrictions on the other activities they can undertake, and with rules made by the

appropriate regulator intended to ensure that they are capable of carrying on the business of providing the core services related to the acceptance of deposits independently of other members in their group. They will, for example, not be able to carry on activities called “excluded activities” which make them vulnerable to problems arising in the financial system or which may make it more difficult for the banks to be wound down in an orderly fashion. The summary should explain that, as a *non ring-fenced body*, the *firm* is not subject to these restrictions.

- (2) It is not necessary for the information provided under *BCOBS* 4.3.6R(2) and (3) to contain an exhaustive list of each specific activity or action that constitutes an *excluded activity* or *prohibited action*, so long as the information about the nature of the activities and actions is sufficient to enable the individual to make an informed decision as to whether to open or continue to hold an account with the *firm* in the light of its status as a *non ring-fenced body*.

When must the information be provided?

- 4.3.8 R (1) The information required to be provided under *BCOBS* 4.3.4R(1) must be provided in good time before the individual becomes an *eligible individual* in relation to the *firm*.
- (2) The information required to be provided under *BCOBS* 4.3.4R(2)(a) must be provided in good time before the individual opens an account with the *firm*.
- (3) The information required to be provided under *BCOBS* 4.3.4R(2)(b) must be provided as soon as practicable after the *firm* has become a *non ring-fenced body*.
- 4.3.9 G In determining what is “in good time” under *BCOBS* 4.3.8R, the *firm* should consider the time at which the information may be most useful to the individual in making a decision as to whether to continue to hold or to open an account with the *firm*.

How must the information be provided?

- 4.3.10 R The information required under *BCOBS* 4.3.4R must be provided:
- (1) in writing;
- (2) in a prominent manner and in a medium that is calculated to bring the information to the attention of the individual to whom it is addressed;
- (3) in easily understandable language and in a clear and comprehensible form,

so that the individual can make a decision as to whether to continue to hold

or to open an account with the *firm* on an informed basis.

- 4.3.11 R A *firm* must not charge for providing the information required to be provided by *BCOBS* 4.3.4R.

Requirement to publish the information on a website

- 4.3.12 R A *firm* must, on or before the first date it is required to provide information under *BCOBS* 4.3.4R, make the information in *BCOBS* 4.3.6R accessible continuously on its website and must keep the information up to date.

Financial Conduct Authority



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