FINANCIAL CONDUCT AUTHORITY

Temporary permissions regime for inbound firms and funds

Consultation Paper
CP18/29***

October 2018

How to respond

We are asking for comments on this Consultation Paper (CP) by 7 December 2018. You can send them to us using the form on our website at: www.fca.org.uk/cp18-29-response-form.

or email us at:
cp18-29@fca.org.uk

or in writing to:
Gavin Davies
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

How to navigate this document onscreen

returns you to the contents list

takes you to helpful abbreviations

Contents

Contents by sector

This table sets out which chapters are particularly relevant for each sector. This is where you will find the most relevant chapter(s) for your firm.

Sector	Chapter
EEA-based firms passporting into the UK and EEA Treaty firms	1, 2, 3[1],4, 7
EEA-based electronic money institutions, payment institutions and registered account information service providers	1, 2, 3, 5, 7
EEA-based fund managers marketing EEA-domiciled funds in the UK	1, 2, 4, 6, 7

1 Credit institutions which intend to continue accepting deposits in the UK after exit day and insurers should have regard to information published by the Prudential Regulation Authority for how the TPR will operate rather than Chapter 3 of this CP.

1 Introduction

The wider context of this consultation

1.1 Under the EU passporting regime[2], financial services firms specified in the relevant directives[3] in any European Economic Area (EEA) country have access to the single market for financial services.[4] This means that they can set up branches or provide financial services, within the scope of the passporting provisions of the directives, in other EEA countries without the need for further authorisation. Certain types of collective investment schemes (referred to in this document as investment funds) can also be marketed across the EEA under similar passporting provisions.

1.2 On 29 March 2019, the UK will leave the EU. In March 2018, the UK and the EU agreed the terms of an implementation period, which was included in the draft withdrawal agreement. During this period, set to start on 29 March 2019 and last until 31 December 2020, EU law and consumer rights and protections will continue to apply in the UK.[5]

1.3 During this time firms and investment funds will continue to have access to the same passporting arrangements as they do now. As such, firms should continue with plans to implement EU legislation that is still to come into effect before the end of December 2020.

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

1.5 Under these circumstances, once the UK has left the EU, reciprocal market access would no longer be available through the passporting arrangements between the EU and UK for firms and investment funds. The UK would become a 'third-country' and EEA-based firms might need to seek authorisation in the UK to continue to access the UK market and EEA-domiciled investment funds would need to seek recognition in the UK to continue to be marketed here.

1.6 In December 2017, the Government said it would bring forward legislation to set up a temporary permissions regime (TPR) for inbound passported firms and investment

2 www.fca.org.uk/firms/passporting

3 These are the Banking Consolidation Directive (BCD), the Capital Requirements Directive (CRD), the Solvency II Directive (S2), the Markets in Financial Instruments Directive (MiFID II), the Insurance Mediation Directive (IMD) and from October 2018 the Insurance Distribution Directive (IDD), the Mortgage Credit Directive (MCD), the Undertakings for Collective Investment in Transferable Securities Directive (UCITS), the Alternative Investment Fund Managers Directive (AIFMD), the Payments Services Directive (PSD2), the Electronic Money Directive (EMD) and the Emission Allowance Auctioning Regulation.

4 In addition, firms not covered by these directives can also have access to the UK financial services market by virtue of rights under the EU treaties if certain conditions are met, as specified in Schedule 4 to the Financial Services and Markets Act 2000. These firms are known as Treaty firms.

5 For more detail on the implementation period please refer to the Treasury's approach to financial services legislation under the European Union (Withdrawal) Act 2018, HMT, June 2018: www.gov.uk/government/publications/financial-services-legislation-under-the-eu-withdrawal-act

funds. This will enable them to continue their activities in the UK for a limited period after Brexit. The TPR will reduce the risk of harm associated with an abrupt loss of permission by enabling firms that passport into the UK to undertake new business that falls within the scope of their existing permissions, continue to perform their contractual rights and obligations and manage existing business. It will allow relevant EEA-domiciled investment funds to continue to be marketed in the UK to new and existing investors.

1.7 Other types of entity are outside the scope of this TPR, as they do not use the same means to access the UK market. These include credit-rating agencies, trade repositories and data reporting services providers. The Treasury intends to introduce specific regimes for these and further details are set out on our website.[6] [7] [8]

What we cover in this CP

1.8 In September 2018, the Treasury laid the EEA Passporting Rights (Amendment, etc. and Transitional Provisions) (EU Exit) Regulations 2018[9] (the TPR Regulations) before Parliament, which includes the provisions to make the required changes to the UK's legal and regulatory framework to create the TPR for EEA firms which passport into the UK under the Financial Services and Markets Act 2000 (FSMA).

1.9 The TPR as it applies to EEA electronic money institutions (EMIs), EEA payment institutions (PIs) and EEA registered account information service providers (RAISPs) will be, if approved by Parliament, created under the Payments and Electronic Money (Amendment) (EU Exit) Regulations (the TPR Payments Regulations), which were published in draft in September 2018.[10]

1.10 The Treasury has also published drafts of relevant SIs[11], which, if approved by Parliament, will create the TPR for fund marketing activities (the TPR Funds Regulations). In this CP, we refer to the TPR Regulations, the TPR Payments Regulations and the TPR Funds Regulations together as 'the Regulations'.

1.11 This CP should be read alongside the Regulations. Our CP sets out in more detail how we expect the TPR to operate, how firms and investment funds can enter the regime, how long it will operate for and the rules we propose should apply to firms and fund marketing activities during the regime.

1.12 We have structured this CP as follows:

- Chapter 2 covers the **nature and scope of the TPR**
- Chapter 3 explains **how the TPR will operate for firms and what we will expect from firms in the TPR**

6 www.fca.org.uk/news/statements/registering-credit-rating-agency
7 www.fca.org.uk/news/statements/registering-trade-repositories
8 www.fca.org.uk/news/statements/temporary-authorisation-regime-data-reporting-services-providers-drsps
9 The EEA Passporting Rights (Amendment, etc. and Transitional Provisions) (EU Exit) Regulations 2018, HMT, July 2018: www.legislation.gov.uk/ukdsi/2018/9780111172421/contents
10 The Electronic Money, Payment Services and Payment Systems (Amendment) (EU Exit) Regulations 2018, HMT, September 2018: www.gov.uk/government/publications/eu-exit-sis-for-payment-services-e-money-and-the-sepa-regulation
11 Draft EU Exit SIs for investment funds and their managers, HMT, October 2018: www.gov.uk/government/publications/draft-eu-exit-sis-for-investment-funds-and-their-managers

- Chapter 4 sets out how we will **apply our rules to firms and investment funds** in the TPR, including details of the **levies** that firms will need to pay
- Chapter 5 sets out information for **EMIs, PIs and RAISPs**
- Chapter 6 explains **how the TPR will operate for investment funds**
- Chapter 7 explains our proposals for **how the TPR will be funded**

What we are consulting on

1.13 The Regulations, if approved by Parliament, will repeal the relevant parts of UK legislation which give effect to the EU passporting regime. The TPR Regulations will allow EEA firms passporting into the UK under FSMA, and Treaty firms, who notify the relevant regulator of their wish (TP firms) to be treated as if they have permission under Part 4A of FSMA[12] to carry on the relevant regulated activities in the UK on a temporary basis while in the TPR. To reflect this, we must amend our Handbook to apply appropriate rules to TP firms (and in certain limited cases to EMIs, PIs and RAISPs in the TPR) in respect of their UK business.

1.14 Similarly, the managers of Undertakings for Collective Investment in Transferable Securities (UCITS) funds and managers of Alternative Investment Funds (AIFs) which market their funds in the UK and which notify us of their activities (TP marketing fund managers) will be able to continue to do so under the TPR Funds Regulations. We need to apply appropriate rules to this activity.

1.15 We are consulting on the rules which will apply to TP firms and investment funds in the TPR, including how the TPR will be funded. The approach to these rules is set out in Chapters 4 and 7 and the rules themselves are set out in Appendix 1.

1.16 Chapters 2, 3, 5 and 6 give information in relation to the TPR and we are not specifically seeking any feedback on the information included in these chapters.

1.17 The Treasury announced on 27 June and confirmed on 8 October that it will bring forward legislation to allow regulators to grant some flexibility in applying new requirements under the European Union (Withdrawal) Act 2018.[13] Further information on this is included in Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation[14], and TP firms and TP marketing fund managers should read the relevant section of that CP for further information. In the context of TP firms and TP marketing funds managers we expect to use this power where appropriate for certain obligations in EU Regulations / Binding Technical Standards and in other legislation that are applied in the UK for the first time on exit day. As explained in Chapter 4[15], our proposed rules have been designed to include the necessary flexibility for TP firms and TP marketing fund managers in relation to changes we are making to our Handbook to take account of Brexit.

12 PIs, EMIs and RAISPs will be given temporary permission under the Payments and Electronic Money (Amendment) (EU Exit) Regulations.

13 Proposal for a temporary transitional power to be exercised by UK regulators, HMT, October 2018: www.gov.uk/government/publications/proposal-for-a-temporary-transitional-power-to-be-exercised-by-uk-regulators

14 Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation, FCA, October 2018: www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation

15 See paragraphs 4.18 to 4.19

Who this applies to

1.18 Who needs to read this paper:

- EEA firms that are passporting into the UK under FSMA and Treaty firms
- EEA electronic money and payment institutions and registered account information service providers passporting into the UK
- managers of EEA-domiciled UCITS (including money market funds authorised under the Money Market Funds Regulation (MMFs)) that market those funds in the UK
- managers of EEA-domiciled AIFs, including European Venture Capital Funds (EuVECAs), European Social Entrepreneurship Funds (EuSEFs), European Long-Term Investment Funds (ELTIFs) and AIFs that are authorised as MMFs, that market those funds in the UK

1.19 EEA credit institutions which intend to continue accepting deposits in the UK after exit day and insurers should have regard to information published by the PRA for how the TPR will operate (rather than Chapter 3 of this CP). However, our proposals for how we will apply our rules to TP firms in Chapters 4 and 7 will still be relevant to these firms.

1.20 Who else might be interested in this document:

- current and future customers of firms that currently passport into the UK
- investors in funds that are marketed in the UK but are domiciled in the EEA
- advisors of firms that passport into the UK and fund managers marketing EEA-domiciled funds that passport into the UK

The outcome we seek

1.21 In our proposals, we have tried to balance several factors:

- to secure an appropriate level of consumer protection
- to design a regime that TP firms and operators, depositaries and trustees of EEA-domiciled investment funds can reasonably comply with from exit day, which minimises disruption for consumers and other market participants and promotes competition
- to design a regime which offers a bridge to our domestic regime which will apply to TP firms on obtaining UK authorisation

1.22 When considering the application of rules to the UK business of TP firms, our intention is to preserve the status quo as far as possible in terms of the requirements which TP firms and operators, depositaries and trustees of EEA-domiciled investment funds will need to meet in respect of their UK business.

1.23 Generally, TP firms will need to continue to comply with the rules which currently apply to them based on the activities they carry on, either in the UK or in their country of authorisation (home state)[16] or, if different and where relevant[17], the country from which they provide services into the UK (country of origin).[18] As a result of this approach, we would become responsible for the supervision of these home state rules after Brexit in relation to the firm's UK business. We will seek to continue to work closely with regulators across Europe to ensure that firms operating across jurisdictions, including TP firms, are subject to appropriate oversight.

1.24 Where we go beyond this we consider these proposals necessary, for example, to replace consumer protections that could fall away.

1.25 We propose that operators, depositaries and trustees of EEA-domiciled investment funds should generally continue to comply with the same rules that apply to them now in the UK. However, we do not propose to take on responsibility for supervising rules that apply to an investment fund or its manager in their home state.

How this links to our objectives

1.26 Our strategic objective is to ensure that regulated markets function well. We also have 3 operational objectives which are to secure an appropriate degree of consumer protection, protect and enhance the integrity of the UK financial system and promote effective competition in the interests of consumers.

1.27 The potential abrupt loss of passporting rights creates risks to consumer protection and market integrity. TPR is key to reduce these risks. It will enable TP firms and TP marketing fund managers to continue their UK activities for a limited period after Brexit working towards authorisation, registration or recognition in the UK.

1.28 As explained above, our proposals balance several factors so that the TPR meets our objectives.

Measuring success

1.29 We will be successful if there is a smooth transition for EEA firms and investment funds and their UK customers. EEA firms and fund managers should be clear on how the TPR will operate, what they will need to do and when to make use of the TPR and how our rules will apply to them in the TPR.

Next steps

1.30 We want to know what you think of the proposals in Chapter 4 and Chapter 7 of this CP.

16 www.handbook.fca.org.uk/handbook/glossary/G503.html?filter-title=@home state

17 This will be relevant where e-commerce rules and/or distance marketing rules apply to the firm's activities.

18 In the remainder of this CP, references to the rules of a firm's home state should be read as including a reference to the rules of a firm's country of origin, where this is different to the firm's home state, to the extent that the country of origin's rules would apply to the firm.

1.31 Please send us your response to the questions by 7 December 2018.

You can send them to us using the form on our website at:
www.fca.org.uk/cp18-29-response-form

or email us at:
cp18-29@fca.org.uk

or by writing to us at:

Gavin Davies
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

1.32 The consultation period for this CP is eight weeks. This is to ensure we have sufficient time to incorporate comments from stakeholders ahead of 29 March 2019. We intend to give feedback on this CP in early 2019 and publish final versions of these materials shortly before exit day.

2 The temporary permissions regime

2.1 In this chapter, we set out details of the TPR for both firms and fund marketing activities, including which firms and investment funds can or cannot use the regime, when it will start and how long a temporary permission will last.

Firms which can use the regime

2.2 These firms can use the regime:

- An EEA firm[19] which qualifies for authorisation before exit day[20] to carry on a regulated activity in the United Kingdom in line with FSMA Schedule 3. This could be on a freedom of establishment basis (an EEA branch firm) or the freedom to provide services basis (an EEA services firm).
- A Treaty firm[21] which qualifies for authorisation before exit day[22] to carry on a regulated activity in the United Kingdom in line with FSMA Schedule 4, whether an EEA branch firm or an EEA services firm.
- EEA firms or Treaty firms as above but with a top-up permission.[23]
- EEA authorised payment institutions (PIs) and EEA registered account information service providers (RAISPs) which before exit day are entitled to offer payment services in the United Kingdom in the exercise of a passport right, whether an EEA branch firm or an EEA services firm.
- EEA authorised electronic money institutions (EMIs) which before exit day are entitled to offer electronic money issuance, redemption, distribution or payment services in the United Kingdom in the exercise of a passport right, whether an EEA branch firm or an EEA services firm.

EEA credit institutions and insurers

2.3 In the UK, the FCA and the Prudential Regulation Authority[24] (PRA) at the Bank of England has responsibility for the regulation of banks (deposit-takers), insurers and PRA-designated investment firms; the PRA for prudential matters and the FCA for conduct matters. The PRA is also responsible for authorising those firms with the FCA's consent. We refer to these firms as dual-regulated firms.

19 Para. 5 Sch. 3 EEA Passport Rights, Financial Services and Markets Act 2000: www.legislation.gov.uk/ukpga/2000/8/schedule/3. TPR is available for use whether the firm is an FCA or a PRA authorised person.

20 Firms wishing to use the TPR should ensure they qualify for authorisation under the passporting regime in time before exit day so that they can notify us as required under the Regulations.

21 Para. 1(1) Sch. 4 Treaty Rights, Financial Services and Markets Act 2000: www.legislation.gov.uk/ukpga/2000/8/schedule/4

22 Firms wishing to use the TP regime should ensure they qualify for authorisation under the passporting regime (or if they are a FSMA Treaty firm, they qualify for authorisation under Schedule 4 to FSMA, noting the Schedule 4 process takes a significant time) in sufficient time before exit day so that they can notify us as required under the Regulations.

23 If a firm established in the EEA which passports in to the UK does not have an EEA right or a Treaty right to carry on a particular regulated activity in the UK beyond its passported or Treaty activities, it must seek a permission under Part 4A of FSMA from the appropriate UK regulator to do so. This is known as a top-up permission.

24 www.bankofengland.co.uk/prudential-regulation

2.4 In the UK, the FCA is responsible for conduct supervision of all firms and the authorisation and prudential supervision of those firms not prudentially regulated by the PRA. We refer to these firms as solo-regulated firms.

2.5 Both dual-regulated and solo-regulated firms can use the TPR.

2.6 As such, incoming EEA credit institutions (that are intending to continue to accept deposits in the UK[25] after exit day) and insurers will need to be authorised by the PRA. Incoming EEA credit institutions and incoming EEA insurers that have not contacted the PRA should do so.[26]

2.7 However, this CP is relevant to any incoming EEA credit institutions and insurers which need to be authorised by the PRA because they will be subject to our rules as set out in Chapters 4 and 7 to the extent they relate to matters within our responsibility (for example, the section on prudential rules is not relevant to those firms). In addition, they will be interested in our approach to supervision in Chapter 3. Therefore, they should read these parts of this CP.

2.8 Incoming credit institutions that will **not** require UK authorisation for deposit-taking, but are carrying out other passported activities in the UK which will need to be authorised by us, should read the information included in this CP about how to enter the TPR and our approach to the rules that will apply to them.

Firms which will not be able to use the regime

2.9 There are other EEA entities that do not use the EU passporting regime to access the UK market. These include:

- Credit Rating Agencies
- Trade Repositories
- Data Reporting Services Providers under MiFID

Details of how we propose to deal with these entities are set out separately on our website.[27] [28] [29]

2.10 We have also published our approach to EEA market operators seeking to apply to become recognised overseas investment exchanges.[30]

25 www.prarulebook.co.uk/rulebook/Glossary/FullDefinition/52141/09-07-2018
26 www.bankofengland.co.uk/contact
27 www.fca.org.uk/news/statements/registering-credit-rating-agency
28 www.fca.org.uk/news/statements/registering-trade-repositories
29 www.fca.org.uk/news/statements/temporary-authorisation-regime-data-reporting-services-providers-drsps
30 Our approach to overseas market operators seeking to apply to become a recognised overseas investment exchange: www.fca.org.uk/news/statements/our-approach-overseas-market-operators-seeking-apply-become-recognised-overseas-investment-exchange

Gibraltar-based firms

2.11 Gibraltar-based firms that passport into the UK will be able to continue to operate as they do now without needing to enter the TPR. The Government has committed to work closely with the Government of Gibraltar to design a replacement framework for after 2020.[31] We expect to publish our proposals in due course for how this impacts our post-Brexit Handbook.

Funds that can use the regime

2.12 These investment funds can use the regime (relevant investment funds), subject to having been eligible to market in the UK under a passport before exit day as described below and then making notification to the FCA for temporary permission:

- EEA-domiciled UCITS funds that have been recognised under FSMA s.264 to market to all investors in the UK
- EEA-domiciled AIFs which are entitled to be marketed to professional investors in the UK under regulations 49 or 50 of the Alternative Investment Fund Managers Regulations 2013[32], following receipt by the FCA of a regulator's notice or following approval by the FCA, where required
- EuVECA and EuSEF which immediately before exit day have been notified to the FCA for marketing in the UK in line with article 16(1) of the EuVECA Regulation or article 17(1) of the EuSEF Regulation
- ELTIF which are entitled to be marketed to all investors, or to professional investors only, in line with the notification procedures for AIFs described above

Funds that do not need to use the regime

2.13 These funds can continue to market in the UK and do not need to use the regime:

- UK authorised funds – UCITS schemes, non-UCITS retail schemes (NURS) and qualified investor schemes (QIS)
- funds marketing in the UK using certain exemptions in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001[33] or the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001[34]
- non-EEA AIFs marketed in the UK through private placement, including certain feeder funds dedicated to a non-EEA master AIF

31 Government Statement following the JMC(GEN), HMT, March 2018: www.gov.uk/government/news/uk-government-statement-following-the-jmcgen-wednesday-8-march-2018

32 Alternative Investment Fund Managers Regulations 2013: www.legislation.gov.uk/uksi/2013/1773/contents/made

33 Financial Services and Markets Act 2000 (Financial Promotion) Order 2001: www.legislation.gov.uk/uksi/2001/1335/contents/made

34 Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001: www.legislation.gov.uk/uksi/2001/1060/contents/made

- AIFs which have received individual recognition from the FCA under FSMA s.272, giving them the right to market to all investors in the UK
- closed-ended investment companies whose securities are officially listed or admitted to trading on a regulated UK market

What is a temporary permission?

Firms

2.14 Firms within the regulatory perimeter in the UK need authorisation unless they are exempt.[35] Where needed, firms will need to be authorised by us or the PRA depending on the regulated activities they carry on (see above).[36]

2.15 For the most part, the UK regulatory perimeter is set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO).[37] The RAO sets out the perimeter for different sorts of business in separate regulated activities. To the extent that a firm's passport covers regulated activities, a temporary permission will allow the firm to continue to undertake **all** those activities.

2.16 In terms of a firm's status, the Regulations will have the effect of temporarily authorising the firm to undertake the regulated activities covered by its passport in the UK as if it were a firm which sought and obtained authorisation under Part 4A of FSMA[38] (a Part 4A firm).

2.17 The firm will continue to be an authorised person for the purposes of UK law. This means that our powers under FSMA and other relevant legislation will continue to apply to the firm, but will also cover matters which were previously handled by the firm's home state.

2.18 For example, with respect to the business carried out in the UK, we will have responsibility for supervising the firm. Our power to impose requirements will apply to the firm and provisions in the Handbook will apply to the firm.[39] The firm will be able to issue financial promotions in (or having an effect) in the UK without having them approved by another authorised person. Temporary permission for entities under the Payment Services Regulations 2017 (PSRs) or the Electronic Money Regulations 2011 (EMRs) will have similar effects but within the separate regulatory regime for those carrying on payment services, account information services and issuing electronic money, the details of which are set out in TPR Payments Regulations.

2.19 Firms may wish to seek advice on the implications of being subject to FSMA/PSRs/EMRs and our supervision.

35 www.fca.org.uk/firms/authorisation/when-required/exemptions-exclusions
36 The Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013: www.legislation.gov.uk/uksi/2013/556/article/2/made
37 The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001: www.legislation.gov.uk/uksi/2001/544/contents/made
38 Part 4A Permission to carry on regulated activities, Financial Services and Markets Act 2000: www.handbook.fca.org.uk/handbook/glossary/?filter-title=accepting+deposits
39 www.handbook.fca.org.uk/handbook

Funds

2.20 Only FCA authorised or recognised funds may be promoted to retail investors in the UK.

2.21 In terms of an EEA UCITS, the TPR Funds Regulations will have the effect of temporarily recognising each individual fund or sub-fund to allow it to continue to be marketed to retail investors in the UK.

2.22 The TPR Funds Regulations will also provide for AIFs (including EuSEF, EuVECA, ELTIFs, and MMFs) to be marketed in the UK for a temporary period on the same basis as they were before exit day.

2.23 Please note that if a sub-fund was not eligible to be marketed in the UK under the passporting regime before exit day, or a notification for TPR has not been received by us in respect of the specific sub-fund, this sub-fund will not be able to use the TPR.

When will a temporary permission come into effect?

2.24 If there is no implementation period and a firm has notified us that it needs a temporary permission, it will come into effect on exit day.

2.25 Similarly, providing each fund or sub-fund, or where relevant its manager, has notified us that it wishes to continue to market in the UK, the temporary permission will come into effect for that fund or sub-fund on exit day.

2.26 See Chapters 3, 5 and 6 for more detail on the notification process for firms and investment funds.

How long will a temporary permission last?

2.27 A temporary permission will last for a maximum of 3 years, but the period will vary from firm to firm depending on when they are asked to submit their application for full authorisation in the UK and subsequently leave the TPR.[40]

2.28 Once in the TPR, firms will be given an application period or 'landing slot' to submit their application for full UK authorisation. See Chapter 3 for more detail on the process for TP firms leaving the TPR. There are different arrangements for PIs, EMIs and RAISPs to leave the TPR, as explained in Chapter 5.

2.29 Once in the TPR, investment funds will be able to continue to market to investors in the UK for up to 3 years. Investment funds will be given a 'landing slot' to submit an application/notification for recognition and so the period spent in the TPR will vary from fund to fund depending on the landing slot.

40 The TPR Regulations do contain a power that allows the Treasury to extend the duration of the TPR, if required.

Is a temporary permission needed to continue to access the UK market?

Firms

2.30 Depending on the activities a firm is undertaking it may not come within the UK regulatory perimeter. For example, depending on the facts that apply to a firm and the activities it is undertaking, firms without an establishment or permanent place of business in the UK may not be carrying on a regulated activity in the UK. In addition, firms may be able to take advantage of the overseas person exclusion in article 72 of the RAO[41], though this only applies to a subset of regulated activities and only in certain circumstances.

2.31 If firms are unsure whether they need a temporary permission they should seek expert legal advice (since an unauthorised firm which strays outside the exclusion or strays within the regulatory perimeter may commit a criminal offence).

Funds

2.32 Marketing of relevant investment funds in the UK is not a regulated activity, though it is subject to the restrictions on financial promotions. Except for the types of fund listed in paragraph 2.13, it is our view that a non-UK-domiciled fund will always need to be either recognised under FSMA s.272 or registered under the national private placement regime to be marketed in the UK after exit day. So, each relevant investment fund will need temporary permission to continue marketing in the UK after Brexit before registration/recognition.

41 The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001: www.legislation.gov.uk/uksi/2001/544/contents/made

3 How the temporary permission regime will work for firms

3.1 This chapter sets out how we expect the TPR to operate for firms, including what we expect from firms and how we will supervise them while they are in the regime. Certain information in this chapter is not relevant to EMIs, PIs and RAISPs but further information for these firms is included in Chapter 5.

Notifying us that a firm needs a temporary permission

3.2 Firms will need to notify us that they want a temporary permission. We expect notification will be an online process using our Connect system[42] and we will confirm by email that a firm's notification has been received. We will publish information on how to complete the notification process.

3.3 We expect to open the notification window in early 2019 and it will close before exit day. We will confirm the exact dates and times in due course.

3.4 Firms that passport into the UK and have a top-up permission[43] will also need to notify us that they wish to use the TPR to ensure that the part of their permission which relies on passporting continues.

3.5 Once the notification window has closed, firms that have not submitted a notification will **not** be able to use the TPR.

Keeping public records of temporary permissions

3.6 Details of firms with a temporary permission will be shown on the FS Register.[44]

Supervising firms while they are in the regime

3.7 We will continue to supervise the UK business of firms in the TPR in line with our published supervisory approach.[45] Firms may have more direct contact with us where we seek to identify or reduce harm and we may request information directly where we need to identify or quantify the risk of harm to consumer or markets. Under the TPR

42 www.fca.org.uk/firms/connect

43 If a firm established in the EEA which passports in to the UK does not have an EEA right or a Treaty right to carry on a particular regulated activity in the UK beyond its passported or Treaty activities, it must seek a permission under Part 4A of FSMA from the appropriate UK regulator to do so. This is known as a top-up permission.

44 The Financial Services Register is a public record that shows details of firms, individuals and other bodies that are, or have been, regulated by the PRA and/or the FCA: https://register.fca.org.uk/

45 FCA Mission: Our Approach to Supervision, FCA, March 2018: www.fca.org.uk/publication/corporate/our-approach-supervision.pdf

we will have access to the complete set of supervisory powers and tools which we can use to ensure that firms remain compliant with our rules.

3.8 In most instances, firms within TPR will be supervised in the same way as other authorised firms (see Chapter 1 of our Approach to Supervision[46]). For example, we may choose to dedicate supervision teams to certain firms in TPR.

3.9 Firms within TPR will be subject to portfolio analysis. Where they cause harm or pose a significant risk of causing harm, we may use our regulatory tools. For example, we can vary a firm's permission or impose a requirement. TP firms will be able to contact us as other authorised firms currently do.

3.10 In certain cases, TP firms will be subject to different rules than currently apply to firms passporting into the UK (eg certain rules in relation to safeguarding client money or custody assets). In these cases, there may be different reporting requirements for instance and firms may receive contact from our supervisors that they may not have received in the past. We may choose to apply further reporting or other requirements on firms within TPR that we would not be able to apply under the EU passporting regime. Firms may also need to contact us proactively, for example, because of the application of Principle 11.[47] Chapter 4 discusses the rules that will apply during the TPR.

3.11 We will seek to continue to work closely with regulators across Europe to ensure that firms operating across jurisdictions, including TP firms, are subject to appropriate oversight.

Changing a firm's activities during the temporary permission regime

3.12 Where a firm has a temporary permission and wants to undertake further regulated activities, the firm will have to apply for these new activities as part of its overall application for full authorisation in the UK.

Leaving the temporary permissions regime[48]

3.13 The TPR has been designed to allow firms that passport into the UK to continue their UK regulated activities for a limited period while working towards authorisation in the UK. As such, the primary route out of the regime will be for a firm to secure full authorisation in the UK for the regulated business that it wants to undertake.

Application periods and submitting applications for authorisation

3.14 Following exit day, we will allocate each firm a 3-month application period or 'landing slot' when it will need to submit its application for full authorisation in the UK. We will issue a direction shortly after exit day setting out which firms have been allocated to each landing slot. We will also write to firms confirming their landing slot.

46 *ibid*

47 Principle 11 Relations with regulators – A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which that regulator would reasonably expect notice: www.handbook.fca.org.uk/handbook/PRIN/2/1.html

48 This section does not apply to EMIs, PIs and RAISPs. See Chapter 5 for details of how these types of firms will leave the TPR.

3.15 We expect that firms will generally be given a landing slot based on the type of business undertaken.

3.16 We recognise that while firms can start to prepare their application for authorisation, we will need to give enough notice once the landing slots have been allocated. As such, we anticipate the first landing slot will be October to December 2019 followed by a further five landing slots with the last landing slot closing at the end of March 2021.

3.17 Applications for authorisation will need to be submitted using our Connect system.[49]

3.18 Firms with top-up permissions will need to submit a Variation of Permissions (VoP) application rather than an application for authorisation and these will also need to be submitted using our Connect system.[50]

3.19 There is further information about getting authorised by us on our website.[51] There is also further information about authorisation fees in Chapter 7 of this paper.

Cancellation

3.20 If a firm changes its plans and no longer needs a temporary permission and does not expect to apply for UK authorisation, it can apply to cancel its temporary permission once it has ceased all UK business.

3.21 Applications to cancel temporary permissions should be submitted using our Connect system.

Failing to apply for authorisation, withdrawing an application and unsuccessful applications

3.22 Where a firm's application for full authorisation (or application for variation if it has a top-up permission) is refused, the firm's temporary permission will come to an end automatically based on the FCA decision notice.

3.23 Where a firm does not apply for full authorisation (or for variation if it has a top-up permission) during its landing slot or withdraws its application without submitting another we will have the ability to cancel the firm's temporary permission.

3.24 We expect the Treasury to make provision for these firms to wind down their regulated UK business, including any outstanding contractual obligations, in an orderly manner in separate legislation. Further details will follow in due course.

49 www.fca.org.uk/firms/connect
50 www.fca.org.uk/firms/connect
51 www.fca.org.uk/firms/authorisation

4 Applying our rules to the temporary permissions regime

4.1 In this chapter, we set out how our rules should apply to TP firms, and operators, depositaries and trustees of EEA-domiciled investment funds in the TPR, in respect of their UK activities.

4.2 The overarching aim of our proposals is to preserve the status quo as much as possible, so that generally TP firms and operators, depositaries and trustees of EEA-domiciled investment funds will simply need to continue to comply with the rules which currently apply to them, either in the UK or (for TP firms) in their home state. We would become responsible for the supervision of the home state rules which we apply following exit day in respect of UK activities.

4.3 There are some FCA rules which apply to EMIs, PIs and RAISPs, but most of the rules that apply to these firms are contained in the EMRs and the PSRs. The extent to which this chapter is relevant to PIs, EMIs, and RAISPs is explained in Chapter 5, but these firms should also read the TPR Payments Regulations[52] for the requirements which will apply to them in the TPR.

4.4 As explained in Chapter 3, the TPR Regulations will have the effect of temporarily authorising a TP firm to undertake the regulated activities covered by its passport in the UK as if it were a Part 4A firm. Consequently, TP firms will come within the scope of our supervision and rule-making powers, so we need to amend our rules for these firms.

4.5 In the case of fund marketing activities, the TPR Funds Regulations will have the effect of enabling EEA-domiciled investment funds to continue to be marketed to UK investors after exit-day, so we also need to amend our rules to cater for this.

4.6 In this CP, we are consulting on the rules set out in Appendix 1. These relate to:

- the Principles for Businesses (PRIN)
- new rules to be added to the General Provisions Sourcebook (GEN) setting out the general approach for rules that will apply to TP firms, including how the approach applies to our prudential sourcebooks, together with amended definitions to be used in the new rules
- new rules to be added to GEN setting out the general approach for rules that will apply to marketing of EEA-domiciled investment funds in the TPR, together with amended definitions to be used in the new rules
- the Client Assets Sourcebook (CASS)
- funding the Single Financial Guidance Body and the Illegal Money Lending levy

52 The Electronic Money, Payment Services and Payment Systems (Amendment) (EU Exit) Regulations 2018, HMT, September 2018: www.gov.uk/government/publications/eu-exit-sis-for-payment-services-e-money-and-the-sepa-regulation

4.7 Chapter 7 also contains our proposals for FCA fees. The fee rules are also set out in Appendix 1.

4.8 For completeness, this CP also sets out our intended approach for TP firms in relation to the Financial Services Compensation Scheme (FSCS), the Financial Ombudsman Service, and the Approved Persons Regime (APR)/the Senior Managers and Certification Regime (SM&CR). Currently, we are not able to publish our proposed rule changes in these areas and so we are not formally consulting on these proposals in this CP. We will publish rule changes to give effect to our proposals in these areas in due course.

The general approach for TP firms

4.9 In looking at what rules should apply to TP firms, we have considered a variety of factors, including:

- **Consumer protection:** the need to ensure that there are appropriate protections for consumers in the UK when dealing with TP firms, bearing in mind that some protections applied and supervised in the TP firm's home state may fall away after exit day.
- **Compliance:** there needs to be a regime that TP firms can comply with from exit day. We have considered the proportionality of the approach in deciding what new provisions should apply. A regime that is unreasonably burdensome could have an adverse impact on customers and to competition in the UK.
- **Nature of the regime:** the regime is temporary, for firms wishing to remain in the UK market. It offers a bridge to the full application of our Handbook to TP firms. When firms leave the TPR following authorisation in the UK, the rules for third-country branches would apply.
- **How we will supervise TP firms:** our proposals consider what we can effectively supervise during the regime, and consider what firms wishing to continue to carry on new business in the UK will need to do to obtain full authorisation and exit from the TPR.
- **Time and resources:** we have looked at our ability to tailor our Handbook for TP firms in the time available, given external deadlines outside of our control and other demands on our resources.

4.10 We considered alternative options, including:

- Applying all rules to TP firms which apply to current third-country firms. However, this would be difficult for TP firms to comply with in time and therefore causes its own risks. Although we are not relying on home state regulators to supervise TP firms, some provisions of home state law/regulation would continue to apply to TP firms in relation to their UK business. We also believe that this approach would not be appropriate given the temporary nature of the TPR.
- Applying no additional rules to TP firms, other than the rules which currently apply to incoming passporting or Treaty firms. We believe that this would not result in a regime with appropriate protections for consumers, particularly in relation to TP

firms with no UK presence which are currently subject to very few UK rules and are generally supervised in their home state.

4.11 We are therefore proposing a balanced approach, requiring firms while they are in the TPR to comply, in respect of their UK business, with:

- **all FCA rules which currently apply to them**
- **all FCA rules which implement a requirement of an EU directive** which are currently reserved to the TP firm's home state and which therefore we do not currently apply to EEA firms (home state rules). We intend to accept 'substituted compliance' in respect of these rules. If firms can demonstrate they continue to comply with the equivalent home state rules in respect of their UK business (including where this is on a voluntary basis if the relevant rules cease to cover UK business) they will be deemed to comply with our rules
- **certain additional FCA rules which we believe are necessary to provide appropriate consumer protection or relate to funding requirements**

and to consider guidance on the rules above.

4.12 We do not propose to apply any home state rules which relate to capital adequacy (including both capital resources and liquidity resources) and related requirements. Otherwise, we would have to oversee the firm's worldwide capital position, rather than just supervise it in respect of its UK business. We do not consider that to be practical or appropriate in these circumstances. However, we propose to continue to apply to a TP firm rules relating to capital adequacy which would apply to that firm immediately before exit day.

4.13 Our approach as outlined in Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation[53] is to take out references to incoming EEA and Treaty firms, including in application rules, from our Handbook. In future EEA firms would be treated as third-country firms.

4.14 However, for TP firms, before they are authorised by us or the PRA (where appropriate), we need to amend the Handbook to apply the sub-set of rules as proposed above. Our 'general approach' is to include an overarching rule in GEN, rather than specifically tailoring each sourcebook throughout our Handbook. The overarching rule will set out the position described above, requiring users to apply it to each sourcebook to determine the rules with which TP firms must comply.

4.15 Firms will be able to see the version of our Handbook as it was before exit day on our Handbook website[54], so that TP firms will be able to view the rules that applied to them at that point. Firms will also need to check for changes that have been made to these rules arising from Brexit, as set out in Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation[55] and any further rule changes proposed and made to our Handbook.

53 Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation, FCA, October 2018: www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation

54 www.handbook.fca.org.uk/

55 Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation, FCA, October 2018: www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation

4.16 To determine which rules are home state rules that also apply to them, TP firms can use the editorial notes that we generally include in the Handbook to our home state rules which implement EU directives (using the Handbook website as described above). These show which rules implement which provisions of directives. Given that home state rules are subject to substituted compliance, TP firms can also start from the position that they should follow the same rules as those that they presently need to comply with in their home state in respect of UK business.

Additional points on the general approach

Features to note

4.17 There are various features of the general approach which we would draw to readers attention:

- **Different consumer protections:** The general approach outlined above preserves existing UK rules and ensures that rules which implement EU directives continue to apply, as well as various necessary protections. However, it would mean that certain protections which UK consumers would receive when dealing with TP firms (such as those with no UK branch) could differ depending on the way in which the firm's home state has implemented EU directive requirements. Because of the temporary nature of the regime, and the need to ensure a set of rules which TP firms can comply with in a short timeframe, we believe that this is an appropriate approach, and it preserves the current position.

- **MiFID II:** The general approach also seeks to apply certain directly applicable parts of MiFID II to TP firms. In implementing MiFID II we included a rule[56] to apply the directly applicable parts of MiFID II to UK branches of firms based outside the EEA who are authorised here and conduct investment services and activities. These provisions will apply to EEA firms with branches in the UK. However, while in the TPR, based on a similar approach, TP firms undertaking investment services and activities will have to comply with certain specified technical standards made under MiFID II, but in this case we propose that substituted compliance with home state requirements will be possible.[57] For TP firms doing MiFID business on a services basis, broadly, these technical standards will apply (subject to substituted compliance) consistent with the approach taken by the Treasury to the onshoring of MiFIR and the MiFID Org Regulation.[58]

- **Reporting requirements:** where a rule in Chapter 16 of the Supervision Manual (SUP) currently applies to an incoming EEA or Treaty firm requiring it to report to us, that rule will continue to apply to a TP firm under the general approach. Further, where a reporting rule in SUP 16 implements a directive on a matter reserved to the home state, our general approach would apply the rule in SUP 16 with substituted compliance and, therefore, the TP firm could choose to report to the FCA or to its home state regulator.

56 GEN 2.2.22A which applies both directly applicable regulations under the MiFID II directive and MiFIR.

57 Set out in proposed rule GEN 2.2.29R

58 TP firms will also wish to note that the effect of the Treasury legislation in relation to transaction reporting, is essentially to replicate the effect of GEN 2.2.22AR so that the UK branches of TP firms (but not TP firms doing MiFID business on a services basis) will be subject to similar requirements under onshored article 26 MiFIR and RTS 21 and 22 to UK firms doing the same business and likewise other non-EU third country firms subject to GEN 2.2.22AR.

Wider changes made to FCA rules because of Brexit

4.18 We propose that TP firms will need to comply with our rules, as they are being amended more widely to take account of Brexit[59], including the proposals in Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation.[60] In considering the content of the rules which will apply to TP firms, readers should take these proposed changes into account, together with any further changes which are proposed and then made in further FCA documents.

4.19 Where we propose changes to a rule which currently applies to a TP firm, and it would no longer be practicable for the firm to comply with the rule because of the amendment because the rule formerly allowed the firm to comply with the rule in an EEA wide context but is now limited to a UK context, our general approach includes some flexibility for TP firms.[61]

Changes in the home state classification of UK business

4.20 There might be some situations where Brexit will affect how a home state will treat the business that an EEA firm does in the UK. That might lead to a difference in approach between what is required in the UK and what is required in the home state. Under the general approach, TP firms will need to continue to classify its UK business in the same way as it would be classified if the TP firm were a UK firm. For example, this would mean that an EEA fund manager in the TPR which is managing a UK-domiciled UCITS scheme under the freedom to provide cross-border services would need to continue to comply with the home state rules relating to a UCITS management company, even though after exit day the home state would view the fund as a third country AIF and apply its rules for that. Given the potential for conflict in this situation between the UK rules and the actual home state requirements, the general approach includes a carve out to the extent necessary from the obligation to comply with the relevant UK home state rules where compliance would result in the TP firm breaching the rule which its home state applies to the relevant activity.[62]

Q1: **Do you agree that our proposed rule changes give adequate effect to our general approach for TP firms? If not, why not?**

Principles for Businesses

4.21 Our Principles for Businesses (the Principles) apply to incoming EEA firms and incoming Treaty firms in so far as responsibility for the matter in question is not reserved by an EU instrument to the firm's home state regulator.[63]

4.22 Given that after exit day, if there is no implementation period, there will no longer be a home/host state split in responsibility and noting the fundamental nature of the Principles, we propose to apply the Principles in full to TP firms. The only exception is Principle 4 (financial prudence), which we do not propose to apply in line with the

59 Except for deletion of rules or paragraphs of rules that currently apply only to EEA firms, which will generally continue to apply in line with the general approach – see proposed rule GEN 2.2.27R (2).

60 Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation, FCA, October 2018: www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation

61 Set out in proposed rule GEN 2.2.28R (1)

62 Set out in proposed rule GEN 2.2.28R (3)

63 PRIN 3.1.1R (1)

position explained above that we will not be overseeing the worldwide capital position of TP firms. In that case, Principle 4 would only apply where a TP firm is subject to capital adequacy rules at present.

4.23 Principle 11 (relations with regulators) requires firms to deal with their regulators in an open and cooperative way, and to disclose to us appropriately anything relating to the firm of which that regulator would reasonably expect notice. Where a notification requirement does not apply to a TP firm (for example in SUP 15), or can be satisfied by notifying the TP firm's home state regulator because of substituted compliance, that does not limit the scope of Principle 11, and TP firms should notify us of anything which falls within the requirements of that Principle as drafted.

4.24 In relation to EEA firms which market relevant funds in the UK (but do not manage funds in the UK) which we describe in our Handbook as UCITS qualifiers and AIFM qualifiers, a subset of the rules in PRIN currently apply to financial promotion activities. We will continue this approach for fund marketing activities in the TPR, but in addition propose to apply Principle 11 again only in relation to financial promotion matters.

Q2: Do you agree with our approach to applying the Principles? If not, why not?

Prudential sourcebooks

4.25 As explained above, we do not consider that it would be practical or appropriate to oversee a TP firm's worldwide capital position. We will supervise TP firms in respect of their UK business, and therefore we do not propose to apply any home state rules related to capital adequacy to TP firms, other than those rules that apply currently, for example, where a firm has a top up authorisation and is required to hold certain capital as a result. Instead, the proposed text in GEN specifically excludes most of the Prudential sourcebooks from applying to TP firms as they contain only home state rules or rules that do not currently apply to TP firms.

4.26 To the extent that chapters of the Prudential sourcebooks contain home state rules which do not relate to capital adequacy, or rules which do currently apply to TP firms, we propose these should be subject to the general approach as described above. The one exception to this is the liquidity requirements of BIPRU 12[64] which do currently apply to incoming EEA investment firm branches, but which we are not proposing to continue to apply to TP firms.

4.27 The definition of 'third country BIPRU firm' for the purposes of BIPRU 12 liquidity requirements does not include investment firms and, consequently, there are currently no liquidity requirements for third-country investment firm branches. EEA investment firm branches in the TPR will become third-country investment firm branches once they are UK authorised and will no longer be subject to the BIPRU 12 liquidity requirements when they leave TPR. Albeit that these current liquidity requirements are generally viewed as *de minimis*, we propose to remove that provision for TP firms. We will continue to review branch liquidity management as part of normal supervisory engagement.

64 Prudential Sourcebook for Banks, Building Societies and Investment Firms: www.handbook.fca.org.uk/handbook/BIPRU/12/?view=chapter

Q3: **Do you agree with our approach to applying the Prudential sourcebooks to TP firms?**

The general approach for fund marketing

4.28 We propose that, in line with our general approach, operators, depositaries and trustees of EEA-domiciled investment funds should comply with all our rules which applied immediately before exit day in relation to the marketing of the relevant fund in the UK.[65] We do not propose to take on responsibility for supervising rules that apply to the fund or its manager in their home states, because that would go beyond the aim of maintaining existing arrangements to avoid disruption to firms and investors.

4.29 The overall intention of our proposal is again to preserve the status quo as much as possible, so that generally operators, depositaries and trustees of EEA-domiciled investment funds will simply need to continue to comply with our rules which currently apply to them in the UK.

4.30 In addition, the TPR Funds Regulations would have the effect of applying current EU directive obligations that apply to the fund operator or the management company of the fund in their home state and which require them to fulfil certain obligations in the state where they are marketing the fund (the host state) and certain EU directive obligations that apply to the national competent authority of the fund or its management company, which require it to provide specified information to the national competent authority of the host state, in this case the UK.

4.31 Our approach as outlined in Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation[66] is generally to take out references to a 'UCITS qualifier' or an 'AIFM qualifier', including in application rules, from our Handbook. We therefore propose to extend the general approach described above for TP firms to fund marketing activities in the TPR and include an overarching rule in GEN.[67] The overarching rule will set out the position described above and require users to apply it to relevant sourcebooks to determine the rules with which operators, depositaries and trustees of EEA-domiciled investment funds must comply.

Q4: **Do you agree with our proposed legal drafting to apply our general approach to fund marketing activities in the TPR? If not, why not?**

65 Including the features discussed in paragraphs 4.18 to 4.19 above.

66 Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation, FCA, October 2018: www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation

67 Set out in proposed rule GEN 2.2.332R to 2.2.34R

Safeguarding client money and custody assets[68]

4.32 This section sets out the rules we propose to apply to TP firms that receive or hold client assets[69] in connection with investment business or insurance mediation. We will include these rules in a new Chapter 14 of CASS (CASS 14).

4.33 Currently, the protection of client assets for incoming EEA firms is a home state matter. Once these firms enter the TPR, we will become the relevant regulator for client assets protection in respect of UK business.

4.34 In the UK, CASS contains provisions on safeguarding assets and monies belonging to clients. Broadly speaking, these rules implement MiFID and the Insurance Distribution Directive (IDD) requirements. Under the proposed general approach to applying Handbook rules to TP firms, any CASS rules that implement these EU directives will apply to these firms.[70] TP firms will be able to comply with these obligations through substituted compliance with the corresponding requirements in their home state.[71]

4.35 Given EU directives are transposed into national law, we expect there will be some differences between member states' domestic implementation of these directives. This may mean that compliance practices vary between TP firms incoming from different EEA jurisdictions and between TP firms and UK firms.

Our proposals

4.36 To ensure client assets are protected and to enable us to effectively supervise TP firms, we propose making the following rules applicable to TP firms, in addition to the effect on client assets of the general approach set out above:

Reporting of client assets arrangements

4.37 We propose to require TP firms to report to us their client assets arrangements. They must submit this information by email using the template spreadsheet set out in the rules. Please see a copy of the proposed template in proposed rule CASS 14 Annex 1R.

4.38 The frequency of the reporting will depend on the TP firm's business type and size of client assets holdings.[72] We propose TP firms must report to us at the same frequencies and within the same submission deadlines for FCA-authorised firms:

Table 1: Proposed frequency and submission deadlines of client assets reporting by TP firms subject to MiFID II as implemented into CASS 6 and/or CASS 7 (as relevant)

Firm type	Frequency	Submission deadline
CASS small Client money: less than £1 million Custody assets: less than £10 million	Annually	Fifteenth business day of January

68 This section does not apply to payment institutions, account information service providers, and e-money issuers. See Chapter 5 for details about safeguarding for these types of firms.

69 References in this paper to client assets refer to both 'client money' and 'custody assets' unless otherwise stated. MiFID II refers to client money and assets as 'client funds' and 'financial instruments' respectively. IDD refers to client money as 'customers' monies'.

70 For investment firms, these are broadly set out in the custody rules (CASS 6), client money rules (CASS 7), CASS resolution pack rules (CASS 10) and auditors rules (SUP 3.10). For insurance intermediaries, these are broadly set out in the insurance client money rules (CASS 5).

71 Substituted compliance can be met either as a matter of home state law or voluntarily if the home state rule no longer applies to UK business.

72 This will be recorded in the firm's notification to join the TPR. We propose TP firms review this on an annual basis.

Firm type	Frequency	Submission deadline
CASS medium Client money: greater than £1 million and less than £1 billion Custody assets: greater than £10 million and less than £100 billion	Monthly	Within fifteen business days of the end of each month
CASS large Client money: more than £1 billion Custody assets more than £100 million	Monthly	Within fifteen business days of the end of each month

Note: *This follows reporting requirements for FCA-authorised investment firms in CASS 1A and SUP 16.14.*

Table 2: Proposed frequency and submission deadlines of client assets reporting by TP firms subject to IDD as implemented into CASS

Firm type	Frequency	Submission deadline
Annual TPR regulated business revenue up to and including £5 million	Half-yearly	Within 30 business days
Annual TPR regulated business revenue over £5 million	Quarterly	Within 30 business days

Note: *This follows reporting requirements for FCA-authorised insurance intermediaries in SUP 16.12.28AR.*

4.39 We propose the reporting period starts from 1 April 2019.

4.40 The proposed reporting will give us an overview of firm-specific client assets arrangements and their holdings, enabling us to identify client assets related risks on a timely basis. This proposal will also help to ensure information is available to insolvency practitioners (IPs) if a firm fails.

Client assets audit report

4.41 MiFID II requires investment firms to ensure that their external auditors report at least annually on the adequacy of their client assets arrangements and for the reports to be provided to the firm's home state competent authority.[73] We propose to require TP firms subject to MiFID II to provide an English translation of their client assets audit reports to us upon either:

- our request, or
- receipt of an audit opinion stating that the firm did not have adequate arrangements in respect of its client assets obligations.

4.42 We propose TP firms must submit these reports to us by email immediately (if we request it) or otherwise as soon it is available to the relevant home state competent authority.[74]

4.43 This proposal will help us to understand whether TP firms have adequate systems in place to comply with their client assets obligations, enabling us to identify client assets related risks.

Disclosure of client assets treatment on insolvency

4.44 TP firms are not UK persons and hence the UK insolvency procedures may not apply to them. We propose to require TP firms to disclose to UK clients the following information:

73 Article 8 of the MiFID II Delegated Directive.

74 Where a firm is required to arrange an English translation of their audit report, we propose this must be done within one month.

- the jurisdiction under which the firm's failure would be administered, and
- if there is a possibility that any client assets may be treated differently to money or assets belonging to other customers of the firm in the event of the firm's failure, a statement that explains that this is the case.

4.45 We propose TP firms must make this disclosure in English at the point of entry into the TPR for existing clients and in good time before it safeguards client money or custody assets for new clients. We propose TP firms must make this disclosure in a durable medium and that it should not be obscured or disguised by other information.[75]

4.46 The proposed disclosure provides transparency to UK clients on how their client assets may be treated if the firm fails.

Appointed Representatives and MiFID Tied Agents

4.47 We propose to prohibit tied agents and appointed representatives of TP firms subject to MiFID II from holding client assets. This proposal is consistent with our domestic policy for tied agents and appointed representatives of investment firms.

Q5: Do you agree with our proposals on protecting client assets held by firms in the TPR? If not, why not?

Single Financial Guidance Body and the Devolved Authorities

4.48 We propose that TP firms should be required to contribute to the Single Financial Guidance Body (SFGB) costs from the 2019/20 levy year onwards on the same basis as UK firms.

4.49 The SFGB will bring together the existing Money Advice Service (MAS), The Pensions Advisory Service and Pension Wise. Royal Assent for the creation of the SFGB was received on 10 May 2018 and the Government anticipates that the new body will be launched in January 2019. It will be funded by levies on firms regulated by us and will provide money and pensions guidance across the UK and debt advice in England. Debt advice in Scotland, Wales and Northern Ireland will be provided separately by the Devolved Authorities.

4.50 We consulted in April 2018 on new rules in FEES 7A to raise levies for the SFGB functions. The rules mirrored existing MAS money advice and debt advice rules and Pension Wise pensions guidance rules.[76] They came into effect for the 2018/19 levy-year.

4.51 The SFGB rules require branches of EEA firms to contribute to the costs of the SFGB using the same discounts that currently apply to FCA fees. Firms operating on a cross-border basis do not contribute to SFGB costs in line with the current position for FCA fees. Our proposal that all TP firms should contribute to the costs of the SFGB on the same basis as UK firms mirrors the approach to FCA fees for TP firms proposed in

75 Generally speaking, durable medium means on paper or any instrument which enables the recipient to store information addressed personally to them in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows unchanged reproduction of the information stored. The proposed rule is in CASS 14.5.

76 CP18/10 FCA regulated fees and levies: Rates proposals 2018/19, FCA, April 2018: www.fca.org.uk/publication/consultation/cp18-10.pdf

Chapter 7 (discounts will no longer apply for EEA branch firms and EEA services firms will pay fees where they currently do not). TP firms will be subject to the SFGB levy on the same basis as UK firms from 2019/20.

4.52 The SFGB levy will be added to firms' normal periodic fee invoices. Invoices will show the SFGB levy as a separate item, with a breakdown showing amounts for money guidance, debt advice, and pensions guidance.

4.53 Devolved Authorities refer to the Scottish Ministers, the Welsh Ministers and the Department for Communities in Northern Ireland, who will be responsible for providing debt advice in Scotland, Wales and Northern Ireland. Once the SFGB is set up, the Treasury will transfer the agreed amount of annual funding for the delivery of debt advice to each of the Devolved Authorities. We intend to consult in Autumn 2018 on the rules necessary to collect the debt advice levy from firms in relation to the amount transferred by the Treasury to the Devolved Authorities.

4.54 Annex 5 sets out indicative SFGB levy rates for firms so they can calculate an estimate of the level of SFGB levies they will pay in 2019/20. These indicative levy rates are based on the 2018/19 £100m raised to fund the existing services split between: MAS money advice £26.8m; MAS debt advice £56.3m; and Pension Wise £16.9m. The draft 2019/20 SFGB levy rates will be consulted on in our April 2019 fee rates CP. Those draft levy rates will be set to recover the funding amount required for the SFGB functions in 2019/20 so may vary from the indicative rates in this CP.

4.55 The consultation period will be 2 months and we will provide feedback on responses to that consultation and final SFGB levy-rates in July 2019 following which invoices are issued for the payment of SFGB levies. Payment will be due by 1 August 2019 or, if later, within 30 days of the date of the invoice. Payments to be made using either direct debit, credit transfer (Bacs/CHAPS), cheque, Maestro, Visa Debit or by credit card (Visa/Mastercard only).

Q6: **Do you agree that TP firms should be required to contribute to the SFGB costs on the same basis as UK firms from 30 March 2019 onwards? If not, why not?**

Illegal money lending (IML) levy

4.56 The IML levy is raised to recover the expenses that the Treasury incurs providing funding for the teams tackling illegal money lending. The IML levy mirrors the recovery of these costs from the same consumer credit firms that pay FCA fees, including EEA branch firms. We are proposing that the IML levy will also apply to consumer credit firms currently operating in the UK on a cross-border services basis to mirror our proposal in Chapter 7 that they will pay FCA fees under the TPR. Both EEA branch firms and EEA services firms in the TPR would pay the IML levy from 2019/20.

4.57 The Treasury advises us each year of the amount they require us to raise. This is allocated to the IML levy consumer credit fee-blocks and recovered from consumer credit firms using a combination of a minimum levy and variable levy. The variable levy uses a tariff base (measure of size) related to the consumer credit income of firms.

4.58 Table 3 sets out the indicative periodic IML levy rates for firms so they can calculate an estimate of the level of IML levy they will pay in 2019/20. These indicative fee rates are based on the levy rates for the 2018/19 fee-year.

4.59 The draft 2019/20 IML levy rates will be consulted in our April 2019 fees rates CP. Those draft fee-rates will be set to recover the amount Treasury wish us to raise in 2019/20. The consultation period is two months and we provide feedback on responses to that consultation and final IML levy-rates in July 2019 following which invoices are issued for the payment of the IML levy. Payment will be due by 1 August 2019 or, if later, within 30 days of the date of the invoice. Payments to be made using either direct debit, credit transfer (Bacs/CHAPS), cheque, Maestro, Visa Debit or by credit card (Visa/Mastercard only).

Table 3: Indicative IML levy rates

Fee-block	Fee
CC2. Full permission	Up to £250,000 consumer credit income: £10 minimum levy
	Over £250,000 consumer credit income: £10 + £0.20 per £1,000

Q7: Do you agree with our proposals for the IML levy payable by TP firms? If not, why not?

Supervision Manual (SUP)

4.60 Much of SUP is guidance on sections of FSMA about how the regulatory system works and our approach to supervision. We propose to set out in the general approach that guidance of this sort will apply to TP firms as it applies to other Part 4A firms to the extent the underlying legislation applies to both. This is in line with the approach in the TPR Regulations to treat TP firms as if they have permission under Part 4A of FSMA.

4.61 The reference to 'to the extent the underlying legislation applies to both' above means that where legislation applies to both a TP firm and a Part 4A firm, but that legislation has been modified for the purposes of the TPR, TP firms should read guidance on the legislation subject to the modifications. This includes SUP 6 (applications to vary and cancel Part 4A permissions and to impose, vary or cancel requirements). In relation to rules in SUP, such as in SUP 16 (reporting), rules will apply in accordance with the general approach if they already apply to a firm or if they are an implementation of a home state rule under a directive (in which case substituted compliance could apply).

Q8: Do you agree with the proposed guidance in GEN 2.2.35G in how it applies to SUP? If not, why not?

Financial Services Compensation Scheme (FSCS)

4.62 In this section, we explain our intended approach for FSCS cover for firms in the TPR under our compensation rules.

4.63 The FSCS is an industry funded scheme of last resort that acts as a compensation safety net for customers of authorised financial services firms. FSCS protection under

our rules extends to investment provision, investment intermediation, insurance intermediation, debt management and home finance intermediation. The PRA is responsible for rules providing FSCS protection for deposits and insurance policies. The PRA will be consulting on changes to its rules later in the autumn.

4.64 Currently, EEA branch firms passporting into the UK may choose to be covered by the FSCS via a 'top up' mechanism.[77] EEA services firms may have FSCS cover without setting up a branch (and topping up) (as is the case with some fund managers[78]) but most EEA services firms[79] do not have FSCS cover.

4.65 Most incoming EEA firms are not covered by the FSCS under our rules but they may be covered by a home state compensation scheme if they undertake certain activities in the UK, for example, as MIFID investment firms. The compensation schemes across the EEA offer varying levels of cover in terms of scope and the amounts of compensation that could be paid for a claim.

4.66 Brexit could result in customers of incoming EEA firms losing compensation scheme protection offered by home states, depending on the terms of the withdrawal.

Our intended approach

4.67 We plan to address the potential harm of some customers losing compensation scheme protection by providing consumers with access to the FSCS. Customers of EEA branch firms in the TPR (ie firms with a UK establishment) will have FSCS protection. This will provide cover equivalent to that available for customers of other UK authorised firms.

4.68 We also intend to continue to provide FSCS cover in respect of the activities of certain incoming fund managers (without an establishment) that are currently already covered by the FSCS.

4.69 We consider that this proposed approach provides an appropriate balance between necessary consumer protections and reasonable overall costs. As a result of this approach, customers of EEA services firms will need to be made aware of the lack of FSCS coverage.

4.70 Two alternatives have been considered, but rejected:

- Providing FSCS cover for activities by EEA firms' UK establishments during the regime only up to the level of cover that the firm would have received from its home state scheme. This option would limit potential compensation costs to the FSCS and so costs passed through to firms. But, we consider that it would be more complicated to explain to consumers and operationally more complex for the FSCS to operate.

- Providing FSCS cover on either of the bases set out above to consumers of EEA services firms. There is generally no existing FSCS protection for customers of these firms currently under the FCA's compensation rules. This is consistent with our approach to FSCS coverage more generally. In addition, FSCS coverage cannot be extended to these firms under the TPR Regulations.

77 As set out in COMP Chapter 14: www.handbook.fca.org.uk/handbook/COMP/14/?view=chapter
78 As set out in COMP 5.5.2R: www.handbook.fca.org.uk/handbook/COMP/5/?view=chapter
79 Except insurers, which are covered by the PRA's compensation rules.

Outline of costs for firms

4.71 The FSCS is funded by a levy that covers compensation costs, specific costs and base costs for the forthcoming financial year on a 'pay-as-you-go' basis, paid by firms.[80] We need to continue to ensure that the FSCS offers an effective and sustainable compensation scheme for consumers who have suffered harm.

4.72 Under the proposed approach, all TP firms whose activities will be protected by the FSCS during the TPR would be required to contribute to the cost of the FSCS. Generally speaking, all firms that pay FCA fees contribute towards the base costs part of the FSCS's levy. However, under the TPR Regulations, levies cannot be imposed on EEA services firms (whose activities will not be covered by the FSCS during the TPR) as they are not relevant persons. Therefore, those firms will not be asked to make any contribution towards the FSCS's base costs or any other contribution towards the FSCS levy.

Compensation costs and specific costs levies

4.73 The compensation costs and specific costs levies provide the funds to pay successful compensation claims and the costs associated with administering and paying those claims.

4.74 Firms are required to pay a percentage of their annual eligible income (AEI) for the compensation costs levy for any business they carry out that falls within a FSCS funding class. The percentage payable is variable - and it depends on the amount of compensation (and associated costs) the FSCS expects it will need to pay in respect of claims within the funding class. Table 4 shows indicative contributions that firms would need to make to the FSCS (per intermediary class). The figures in Table 4 are based on historical data over a five-year period (2012-17). If compensation claims remain at similar levels during the TPR, Table 4 shows an indication of the amount of annual FSCS levies to which TP firms would pay a contribution.

Table 4: Indicative contributions for the FSCS levy

	Actual Contributions Paid		Contributions under new FSCS funding structure (effective 1 April 2019)	
	Average 2012-17[74]	Levy as % of AEI	Average 2012-17[75]	Levy as % of AEI
Intermediation				
General Insurance	£28m	0.31%	£21m	0.23%
Life & Pensions	£65m	2.01%	£113m	1.54%
Investments	£86m	2.29%		
Home Finance	£7m	0.60%	£5m	0.45%
Debt Management	*N/A*		*Unknown*	*Unknown*
Investment provision[76]	<£1m		£23m	0.55%

4.75 Further information about compensation costs for the 2018/19 financial year is available on the FSCS website.[84] [85]

80 Details about how we collect levies from firms for organisations such as the FSCS is on our website: see www.fca.org.uk/firms/fees/organisations-we-collect-for

81 These are class totals and not per-firm figures.

82 These are class totals and not per-firm figures.

83 Investment provision levy as % of AEI calculation based on average contributions 2012-17 divided by average AEI for 2012-16.

84 The 2018/19 levy is for a 9-month period rather than a 12-month period following rule changes made to align the compensation costs levy with the financial year.

85 Outlook, FSCS, April 2018: https://secure.viewer.zmags.com/publication/dd19e42e#/dd19e42e/1

Base costs levy

4.76 The base costs levy covers the expected costs of running the scheme in a given financial year, other than specific costs. 50% of the total base costs in a financial year are allocated to firms under the FCA's rules and 50% under the PRA's rules. The total base costs and specific costs (together, management expenses) that the FSCS may levy in any given financial year is subject to an annual levy limit set by the FCA and PRA. Under our rules, a firm's share of base costs is calculated by reference to the amount it pays in FCA fees.

4.77 Some firms may be able to claim an exemption to some of the levies paid to the FSCS. Further information on exemptions and how the levy is calculated can be found on our website.[86]

Administrative costs

4.78 Firms paying the FSCS levies for the first time may incur new administrative costs relating to collecting the data required to calculate the levy, and arranging payment of the levy. These costs may vary depending on firms existing systems and controls.

Financial Ombudsman Service

4.79 In this section, we explain our intended approach on the inclusion of TP firms in the Compulsory Jurisdiction of the Financial Ombudsman Service and the application of our complaints-handling rules and guidance. The Financial Ombudsman Service has two jurisdictions:

- **Compulsory Jurisdiction (CJ)** – which covers the activities of UK and EEA authorised firms and their appointed representatives if they are carried out from an establishment in the UK. It also covers the activities of payment services providers and e-money issuers when carried out from a UK establishment.

- **Voluntary Jurisdiction (VJ)** – which covers some types of complaints which are not covered by the CJ. Firms can sign up to join the VJ by contractual agreement, for example if they operate from an establishment elsewhere in the EEA but offer services to UK consumers. When firms join the VJ they agree to deal with complaints and comply with ombudsman decisions in the same way as firms under the CJ.

4.80 The CJ does not generally cover EEA services firms. Currently, UK consumers of EEA services firms can refer complaints to alternative dispute resolution (ADR) schemes in other EEA member states if the firm that they are dealing with has not signed up to join the VJ of the Financial Ombudsman Service.

Our intended approach

4.81 It is not clear that UK consumers of EEA services firms would continue to be able to access ADR schemes in other EEA member states if the UK leaves the EU without an agreement. We plan to propose including EEA services firms in the CJ of the Financial Ombudsman Service and to apply our complaints-handling rules. This proposal ensures that consumers of these firms will be able to refer complaints to an ADR scheme on exit.

4.82 This means that EEA services firms will be required to pay case fees and annual fees which they were not previously required to pay. This proposal is intended to preserve

86 www.fca.org.uk/publication/fees-information/fscs-levy-calculation-notes-17-18-rates.pdf

consumer protection and access to redress and should also help to maintain consumer trust and confidence when dealing with EEA services firms in the TPR.

4.83 If we do not amend our rules to include these firms in the CJ this could have an impact on a consumer's decision to use EEA services firms in the TPR. If a consumer is unable to access an ADR scheme, progressing disputes through formal court processes could be lengthy and costly for both the firm and the consumer.

4.84 There may be legal and practical issues in relation to enforcing ombudsman awards against a firm which has no physical UK presence. It may also increase the challenges that we currently face in exercising our enforcement powers against these firms.

Outline of costs for firms

4.85 The Financial Ombudsman Service is free for consumers to use. The firms it covers pay a combination of:

- case fees – which are invoiced and collected by the Financial Ombudsman Service once cases have been resolved,
- annual fees (levies) which are collected by the FCA for the CJ.[87]

Case fees

4.86 Currently, the Financial Ombudsman Service does not charge a business for the first 25 cases that it deals with during a financial year. For the 26th and each subsequent complaint, the Financial Ombudsman Service charges a case fee of £550.

Annual fees and levies

4.87 Annual fees and levies are payable by all firms authorised or registered by us, including those that have not had any cases referred to the Financial Ombudsman Service, unless they have claimed exemption.

4.88 The general levy for the Financial Ombudsman Service is payable across industry blocks and a business will fall into one or more of the industry blocks depending on the business activities which it conducts. The amount raised from each industry block is based on the budgeted costs and numbers of Financial Ombudsman Service staff required to deal with the expected volume of complaints about the firms for their relevant business activity in each of those blocks.

4.89 There is a minimum levy in each industry block and, in most cases, the levy then increases in proportion to the amount of 'relevant business' (ie business done with consumers who are eligible to refer their complaint to the Financial Ombudsman Service, which is subject to the Financial Ombudsman Service jurisdiction) that each firm does. Annually, the amounts payable by each block will vary to reflect changes in the proportions of cases in each block.

4.90 The amount of levy that each FCA-regulated firm pays currently ranges from around £100 a year for a small firm of financial advisers to over £300,000 for a high-street bank or major insurance company.

87 Details about how we collect levies from firms for organisations such as the Financial Ombudsman Service is on our website: www.fca.org.uk/firms/fees/organisations-we-collect-for

Administrative costs

4.91 Firms may also incur administrative costs if cases are referred to the Financial Ombudsman Service. Some firms may already incur these costs for complaints referred to ADR schemes in their member state. We estimate that the administrative costs for handling cases at the Financial Ombudsman Service (including the costs of gathering evidence and corresponding with the Financial Ombudsman Service) will vary from low tens to several thousands of pounds per complaint depending on firm type, product type and the nature of the complaint.

Senior Managers & Certification Regime (SM&CR) and Approved Persons Regime (APR)

4.92 The SM&CR currently applies to all firms that have permission to accept deposits in the UK, including incoming EEA branch firms. We have published our near-final rules on extending the SM&CR to all insurers[88] and all solo regulated firms, including EEA branch firms.[89] This will replace[90] the APR, which currently applies to individuals carrying out specified roles for these firms.

4.93 The requirements under the SM&CR differ depending on whether a UK branch has been established by an EEA branch firm or third-country firm. More Senior Management Functions apply to a third-country firm branch than to EEA branch firms, as some functions are presently reserved to the home state supervisor.

Our intended approach

4.94 We plan to propose maintaining our current requirements that apply to EEA branch firms under the SM&CR and (until the SM&CR commences for solo-regulated firms) APR throughout their time in the TPR. This means that the additional controlled functions and requirements that apply to UK branches of third-country firms under SM&CR in our Handbook will only apply once an EEA branch firm in the TPR has been fully authorised as a third-country branch.

Dual-regulated EEA branch firms

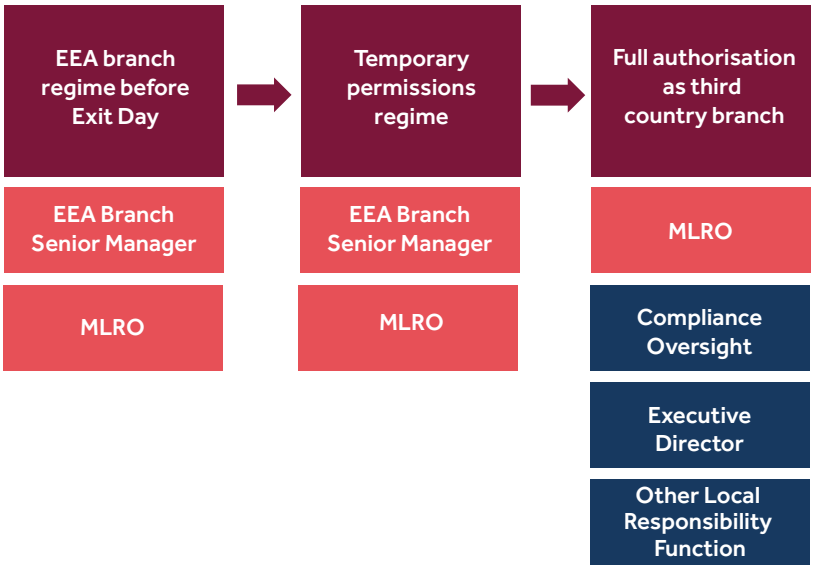
4.95 For dual-regulated EEA branch firms in the TPR, we plan to propose maintaining our current SM&CR requirements as they apply to EEA branch firms (or, in the case of insurers, that will apply to EEA branch firms by exit day) throughout their time in the TPR. The additional functions and requirements that apply to third-country firm branches will apply when the EEA branch firm has received full UK authorisation.

88 PS18/15: Extending the Senior Managers & Certification Regime to insurers – Feedback to CP17/26 and CP17/41 and near-final rules, FCA, July 2018: www.fca.org.uk/publication/policy/ps18-15.pdf

89 PS18/14: Extending the Senior Managers & Certification Regime to FCA firms – Feedback to CP17/25 and CP17/40, and near-final rules, FCA, July 2018: www.fca.org.uk/publication/policy/ps18-14.pdf

90 On 10 December 2018 for insurers, and 9 December 2019 for solo-regulated firms.

Figure 1: Application of FCA SM&CR functions to dual-regulated EEA branches.



4.96 The Certification Regime will continue to apply to dual-regulated EEA branch firms, as well as the Conduct Rules.

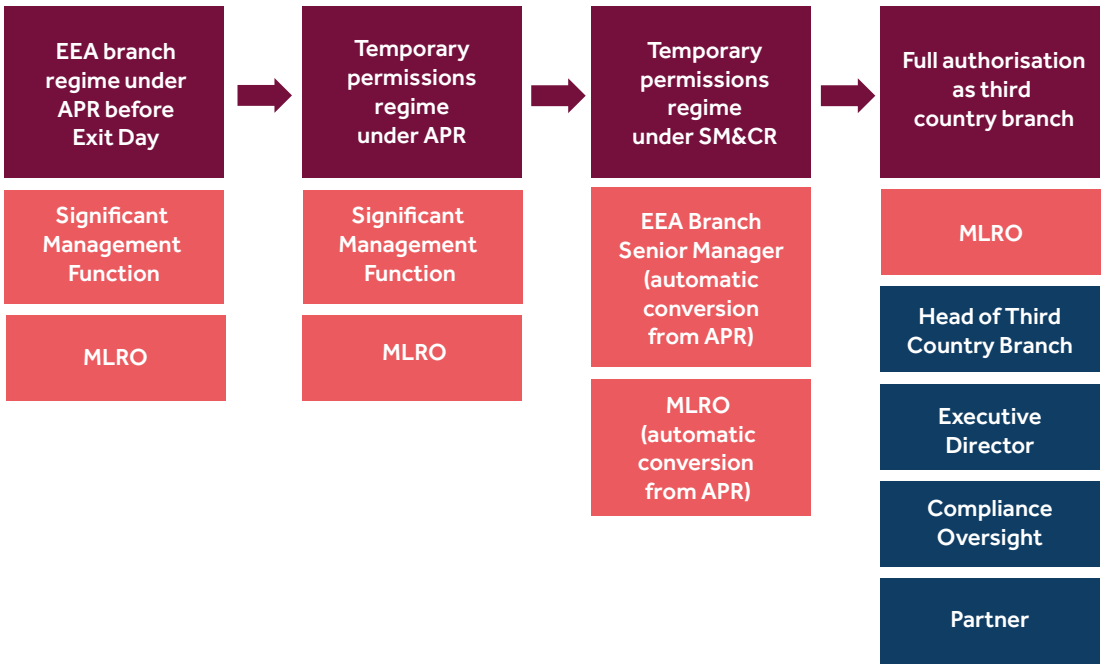
4.97 Dual-regulated EEA branch firms should also have regard to information published by the PRA in this area.

Solo-regulated EEA branch firms

4.98 For solo-regulated EEA branch firms, the APR will still be in force on exit day. As with dual-regulated EEA branch firms, we plan to maintain the current APR that applies to EEA branch firms in the TPR until the SM&CR commences. If an EEA branch firm has not received full authorisation as a third-country firm branch before the SM&CR commences for solo-regulated firms, their current APR functions will be converted to the SM&CR functions for EEA branch firms, in line with the final rules in PS 18/14.[91]

91 PS18/14 Extending the Senior Managers & Certification Regime to FCA firms – Feedback to CP17/25 and CP17/40, and near-final rules, FCA, July 2018: www.fca.org.uk/publication/policy/ps18-14.pdf

Figure 2: Application of FCA SM&CR functions to solo-regulated EEA branches.



4.99 There are some firm types with limited permissions or activities where fewer Senior Management Functions apply, known as 'limited scope firms'. The functions that apply to these firms were set out in PS18/14, and apply in the same way whether a firm is an EEA branch firm or third-country branch.

4.100 The Certification Regime will apply to solo-regulated EEA branch firms, as well as the Conduct Rules, as set out in PS18/14.

Moving from the EEA to third-country SM&CR

4.101 For both solo and dual-regulated EEA branch firms, the EEA Branch Senior Management Function will fall away once an EEA branch firm has been fully authorised as a third-country branch. The firm will need to apply to us for approval for individuals to hold the additional functions that will apply to them under the third-country branch regime. This applies even where an individual previously held the EEA Branch Senior Management Function as these are qualitatively different functions.

4.102 Where a firm has an MLRO under the EEA branch regime, the individual's approval for this function will be maintained once the firm is fully authorised as a third-country branch.

EEA services firms

4.103 The SM&CR and the APR do not currently apply to EEA services firms. We do not plan to propose to change this when these firms move into the TPR. However, the SM&CR will apply once they have been UK authorised as a third-country branch on their exit from the TPR.

4.104 Dual-regulated EEA services firms should also have regard to information published by the PRA in this area.

Disclosure of TP firm's authorisation status (status disclosure)

4.105 In our statement on the TPR published in July 2018, we noted that our starting point is that firms in the TPR would be required to include specific status disclosure wording in letters (or electronic equivalents) to indicate that they are in the regime. We are continuing to develop our proposals in this area, and intend to publish them in due course.

5 Additional information for electronic money institutions, payment institutions and registered account information service providers

5.1 There are some aspects of the Payment Services Regulations (PSRs) and E-Money Regulations (EMRs) (as amended to incorporate the TPR) which require a specific approach. We have set out the proposed approach in some of the areas in paragraphs 5.5 to 5.14 below for clarity, although we are not consulting on them in this paper as these do not require changes to our Handbook.

5.2 However, some of the changes to the Handbook that are proposed in this paper are relevant to PIs, EMIs and RAISPs, as set out below.

5.3 Our proposal (in paragraphs 4.48 to 4.55) that TP firms should be required to contribute to the costs of the Single Financial Guidance Body, and our planned proposal (in paragraphs 4.79 to 4.81) to include all TP firms (including those that do not have an establishment in the UK) in the compulsory jurisdiction of the Financial Ombudsman Service and our complaints handling rules and guidance, applies to any PI, EMI and RAISP in the TPR (in addition to other types of firms in the scope of this consultation).

5.4 In addition, our approach to funding the TPR as set out in Chapter 7 also applies to PIs, EMIs, and RAISPs in the TPR.

The use of agents

5.5 Currently, an inward passporting PI, EMI or RAISP may use an agent based in the UK or another EEA state to provide payment and e-money services in the UK if the agents are registered with the firm's home state regulator.

5.6 PIs, EMIs and RAISPs participating in the TPR will need to notify us of their existing agents which provide payment and e-money services in the UK as part of notifying us that they wish to join the TPR. Once the UK has left the EU, agents will not be able to provide services in the UK on behalf of the PI, EMI or RAISP, if the relevant firm has not notified us of their agents and those agents do not appear on the FS Register[92] by exit day.

Safeguarding

5.7 EEA PIs and EMIs operating under the TPR will have to comply with the safeguarding requirements of the amended PSRs and EMRs in relation to their UK customers' funds.

92 https://register.fca.org.uk/

5.8 The PSRs and EMRs will also require PIs and EMIs with temporary permission to provide us, at our request, with information to demonstrate that arrangements made to safeguard funds will protect the interests of payment service users against the claims of other creditors, in line with Article 10 of PSD2 or Article 7 of the revised Electronic Money Directive (2EMD). This requirement could be met, for instance, by providing a letter from the PI/EMI's bank providing their safeguarding account.

5.9 UK PIs and EMIs with temporary permission will not be restricted to holding a safeguarding account (or having equivalent arrangements) in the UK, providing they meet the requirements of the amended PSRs/EMRs summarised above.

Transition to authorisation or registration

5.10 EEA PIs, EMIs and RAISPs can access the TPR in the same way as other firms (see paragraph 3.2) but the manner of leaving the regime will be different for PIs and most EMIs due to the different authorisation and registration conditions that apply to these firms.

5.11 PIs will have to establish an authorised or registered UK subsidiary to provide services in the UK when the EEA firm's temporary permission ends. This will also apply to EMIs which provide payment services that are unrelated to e-money issuance.

5.12 EEA EMIs which only provide payment services related to e-money issuance, and EEA RAISPs, will have to become authorised or registered to continue providing services in the UK when their temporary permission ends. These firms will not have to set up a UK subsidiary.

5.13 Firms should bear in mind the statutory deadlines for us to determine authorisation or registration applications, given the 3-year maximum duration of the TPR.

5.14 PIs, EMIs and RAISPs will need to let us know within a year of exit day how they propose to leave the regime: by establishing a UK subsidiary, becoming authorised or registered, or running down their UK customer contracts. We will set out details of how to do this in due course.

6 How the temporary permission regime will work for investment funds

6.1 This chapter sets out how we expect the TPR will operate for relevant investment funds.

6.2 Investment funds can be legally constructed as stand-alone funds, or as an umbrella structure with several sub-funds. They can either be managed by a separate entity (a UCITS management company or AIFM) or be self-managed funds. In this CP, for umbrella funds, references to a 'fund' are to be read as a 'sub-fund' unless specified otherwise. For self-managed funds, references to a fund manager should be read as referring to the fund itself.

Notifying us that your fund(s) need a temporary permission

6.3 Fund managers will need to notify us that they want a temporary permission to continue to market their investment funds to investors in the UK. We expect notification will be an online process using our Connect system[93] and we will confirm via email that a fund's notification has been received. We will publish information on how to complete the notification process.

6.4 We expect to open the notification window in early 2019 and it will close before exit day. We will confirm the exact dates and times.

6.5 Once the notification window has closed, fund managers that have not submitted a notification for a fund will **not** be able to market it in the UK after exit day via the TPR. Please see paragraph 2.23 about the status of sub-funds in the TPR.

Failing to notify for a temporary permission to continue to market a fund in the UK

6.6 If a fund manager does not notify us that it wants to continue to market a EEA-domiciled fund to investors in the UK in the TPR, it will become subject to significantly more restrictions on its ability to market in the UK. This means the fund would lose its marketing passport rights as it would not enter TPR. In this case the fund operator would have to cease marketing the fund at 11 pm on exit day. The fund manager could reapply to market the fund at a later date outside of the TPR. However, any needed approval would take time to process and the fund may not be granted marketing permission, or may not be able to market to the same category of investors. Therefore opting in to the TPR will provide fund managers with a smooth transition mechanism to continue their business as usual.

93 www.fca.org.uk/firms/connect

Keeping public records of temporary permissions

6.7 Details of EU domiciled UCITS funds with temporary permission to be marketed in the UK, being retail funds, will be shown on the FS Register.[94]

Supervising funds while they are in the TPR

6.8 Funds being marketed under a temporary permission will continue to be subject to the same UK rules that applied to them on exit day and we will supervise them on that basis. We will not supervise compliance with any rule that applies to the fund or the fund manager in their home state. For example, the right to be notified of certain information and to have a defined period in which to consider it.

6.9 Fund managers must continue to provide us with updates to fund documents as currently required by FSMA s.264 or the AIFM UK Regulations. In addition, under the TPR Funds Regulations, where the requirement to notify information currently falls to the home state authority of the fund or the fund manager, the fund manager will instead need to provide the information directly to us. We will specify on our website nearer the time how this should be done.

Changing during the temporary permission regime

6.10 A fund manager can continue to market a fund to the same category of client that it was able to market to before exit day. However, the fund manager cannot:

- add any new schemes to the funds in the TPR (stand-alone or umbrellas)
- add new sub-funds to umbrella schemes in the TPR
- change or extend the category of customer to be marketed to while a fund is in the TPR. For example, an EEA AIF in the TPR with the right to market to professional investors only (MiFID definition) could not commence marketing to UK retail investors while still in the TPR

Leaving the temporary permission regime

Application periods and submitting applications for recognition

6.11 After exit day, we will allocate a landing slot within which the TP marketing fund manager will need to submit its applications for recognition or, where relevant, notification of EEA-domiciled funds.

6.12 It will not be possible for TP marketing fund managers to request changes to their funds' landing slots, unless exceptional circumstances apply, due to the volume of applications we expect to receive and our need to smooth the work over the period of the TPR.

94 https://register.fca.org.uk/

6.13 We recognise that while fund managers can start to prepare applications for recognition we will need to give enough notice when allocating the landing slots.

6.14 Applications for recognition under FSMA s.272, or notification under the national private placement regime (NPPR), will need to be submitted via our Connect system. After an application for recognition has been received, we will determine the outcome and the fund manager will be notified of the decision. Likewise, once a valid NPPR notification has been received, the fund manager will receive confirmation that the stated fund(s) can start marketing in the UK under the NPPR.

Opting out of the TPR

6.15 If a TP marketing fund manager no longer wishes to market a fund that has a temporary permission, it should submit a s264CH[95] to recognisedcis@fca.org.uk where the fund is an EU UCITS scheme or email aifmdmaterialchange@fca.org.uk where the fund is an EU AIF.

Failing to apply for recognition, withdrawing an application and unsuccessful applications

6.16 If a TP marketing fund manager does not apply for recognition or submit a notification for a fund during the allocated landing slot, the fund will no longer have a temporary permission and the TPR marketing fund manager will no longer be able to market it on the same basis as before exit day.

Leaving the temporary permissions regime

6.17 We and the Treasury will provide further information on how funds will exit the TPR in due course.

95 www.fca.org.uk/publication/forms/form264ch.doc

7 Funding the temporary permissions regime

7.1 In this chapter, we set out the background to how we raise fees to fund our activities and our proposals for how the TPR will be funded through fees paid by:

- firms in the regime – periodic fees and special project fees
- funds in the regime – periodic fees

7.2 We want firms and funds to know the fees they will pay in the TPR to inform their decision whether to make a notification to enter. We therefore set out how they can calculate their periodic fees for 2019/20 using indicative fee rates based on our 2018/19 periodic fees. We also direct them to the current authorisation and recognition application fees which will form the basis for such fees on exiting the TPR. We will consult on any changes to these fees, as applicable to TP firms or funds, in our annual fees rates CP in April 2019.

How we raise fees

7.3 The FCA is entirely funded by the industry we regulate and receives no government funding. Each year we publish our Business Plan which explains how our total annual funding requirement (AFR) for that year will be used to undertake work on our key priorities and ongoing activities.

7.4 We recover our AFR through periodic fees, paid annually in each fee-year (our fee-year runs from 1 April to 31 March). We consult each year, in April, on the allocation of the AFR across a series of fee-blocks that reflect broad sectors of the industry and are based on the regulated business activities firms undertake in the UK. Funds have a separate fee-block within this series.

Firms – periodic fees

7.5 Firms can be in more than one fee-block depending on the overall mix of their regulated business. The amount of AFR allocated to the fee-blocks for firms is recovered from the firms within that fee-block through periodic fees (charged annually) based on a measure of their size (tariff base), relative to all other firms in the same fee-block (we refer to these as variable fees). This ensures larger firms pay more than smaller firms.

7.6 The tariff base aims to be an objective measure of size that can be consistently applied to all firms in the fee-block. The tariff base varies across fee-blocks but the most common is income firms receive from the regulated activities covered by that fee-block.

7.7 The AFR allocated to a fee-block is divided by the total tariff base reported by all the firms in the fee-block to calculate the fee-rate per unit of tariff base. For the fee-blocks that use income as a tariff base the fee-rate is per £1,000 of income.

7.8 The variable fees fee-blocks have a minimum tariff base threshold below which no variable fees are paid. For the fee-blocks that use income as the tariff base the minimum threshold is £100,000. If a firm falls below the tariff base threshold for all the fee-blocks they come under they only pay minimum fees. This ensures that all firms, including small firms, contribute to recovering our AFR.

Firms – special project fees

7.9 Special project fees (SPFs) are charged to recover our exceptional supervisory costs where a firm undertakes certain restructuring transactions. The restructuring transactions include a significant change to its business model and a significant internal change programme. SPFs are calculated based on the number of hours individuals work on the specific restructuring transactions, plus external costs of professional advisers we need to engage.

7.10 SPFs are charged only where our additional costs exceed £25,000 where the firm is dual-regulated by us and the Prudential Regulation Authority and £50,000 for firms that are solo-regulated by us.

Funds – periodic fees

7.11 The amount of AFR allocated to the funds fee-block is recovered through periodic fees based on the types of funds and number of sub-funds.

Firms authorisation fees and funds recognition fees

7.12 The AFR we recover from periodic fees is net of the contribution to our costs made by applicants for authorisation/recognition. Applicants pay authorisation/recognition fees when they submit their applications. The level of application fee for authorisation depends on the type of regulated activities the applicant is seeking permission to undertake. The level of recognition fees for funds depends on the type of funds and number of sub-funds.

Firms in the TPR

7.13 We propose that firms in the TPR will pay periodic fees from the 2019/20 fee-year generally on the same basis as UK firms.

Periodic fees

7.14 Firms will be allocated to the fee-blocks based on the equivalent UK regulated activities that apply to the passport they hold at the point of entry to the regime. In Table A in Annex 4 we list the fee-blocks that can apply to firms in the TPR setting out which passports fall under each fee-block.

7.15 EEA branch firms in the TPR will remain in the fee-blocks that apply for fees calculation purposes at the point of entry to the regime. We are proposing these firms will no longer receive a discount on their periodic fees as we will be fully responsible for their regulation while in the regime. The only exception to this is the discount applied to the AP.0 FCA prudential fee-block discussed below.

7.16 EEA services firms do not currently pay periodic fees. Following consultation by our predecessor, the Financial Services Authority (FSA), service firms stopped paying periodic fees from 2008/09. This was because the FSA generally had minimal responsibilities for service firms, only a small proportion of FSA funding was received

from service firms and the cost of collecting those fees was no longer considered to be an efficient use of its resources.

7.17 We will be fully responsible for the regulation of cross-border service firms while in the regime and expect that the cost of collecting such fees will be proportionate relative to the contribution to our funding they will make. We are proposing that cross-border firms in the regime should pay periodic fees.

7.18 At the point of entry to the regime cross-border service firms will be notified of the fee-blocks that will apply to them. Before making a notification to enter the TPR cross-border service firms can use Table A in Annex 4 to see which fee-blocks apply to current passports.

7.19 Firms in the regime must supply us with the tariff data (measure of size) for each of the fee-blocks that will apply to them. We already collect these tariff data from EEA branch firms. We will collect tariff data from EEA services firms after they enter the TPR. Table B in Annex 4 sets out the type of tariff data used in each fee-block and the period it relates to (valuation point).

AP.0 FCA prudential fee-block

7.20 We allocate the AFR that represents the costs of our prudential regulation of solo-regulated firms to a separate AP.0 FCA prudential fee-block. We regulate solo-regulated firms for prudential as well as conduct purposes. The amount allocated to AP.0 fee-block is recovered from solo-regulated firms only, in proportion to the total fees they pay through the solo-regulated activity fee-blocks, these are noted in Table A in Annex 4.

7.21 Firms which are dual-regulated by the PRA do not pay fees in the AP.0 fee-block as they pay fees to the PRA for their prudential regulation. These firms include banks, building societies, credit unions, insurers and large investment firms. We are the conduct regulator for these firms.

7.22 As discussed in Chapter 4 we are not proposing to apply to TP firms any home state rules which relate to capital adequacy (including both capital resources and liquidity resources) and related requirements. This is because it would require us to oversee the firm's worldwide capital position, rather than just supervise it in respect of its UK business, which we do not consider to be practical or appropriate. We are therefore proposing that firms in the TPR do not pay fees in the AP.0 FCA prudential fee-block. This will continue the current position for EEA branch firms who receive a 100% discount from fees in the AP.0 fee-block and which will also be applied to service firms.

Firms leaving the TPR

7.23 As discussed in Chapter 3, the TPR has been designed to allow firms that currently passport into the UK to continue their UK regulated activities for a limited period while working towards authorisation in the UK. As such the primary way out of the regime will be for a firm to secure full authorisation in the UK for the regulated business that it wants to undertake. Firms who become authorised in the UK will continue to pay periodic fees after they become authorised.

7.24 There are other ways a firm can leave the TPR. Where a firm does not apply during its landing slot, withdraws its application without submitting another or where its application is unsuccessful, we will have the ability to cancel the firm's temporary permission.

7.25 We are proposing that periodic fees payable by firms in the TPR relate to the whole of any fee year (1 April to 31 March) and are not refundable. This is in line with the approach for UK firms.

Other periodic fees rules

7.26 The draft Handbook text in Appendix 1 sets out how the fees rules relating to these will apply to firms in the TPR as they do to UK firms:

- payment of on account fees
- late payment and recovery of unpaid fees
- method of payment
- groups of firms
- firms acquiring businesses from other firms
- information on which fees are calculated

Q9: Do you agree with our proposals for periodic fees payable by firms in the TPR? If not, why not?

Authorisation fees

7.27 While there will be no fee associated with the notification to join the TPR we intend that the authorisation fees for firms in the TPR that exit TPR, by applying for full authorisation, will be based on those for UK applicants for authorisation.

7.28 Authorisation fees for firms are linked to the regulated activities the applicant is applying to undertake and the fee-block those regulated activities would place them into. The 'A' fee-blocks are grouped together under 3 categories of authorisation application fees: complex; moderately complex; and straightforward. These categories determine the level of authorisation application fee that is payable.

7.29 Firms considering entering the TPR can use Table A in Annex 4 to see what fee-blocks cover the equivalent UK regulated activities based on the passports they currently hold. They can then refer to FEES 3 Annex 1 of our FEES Manual rules[96] which sets out the current application fees payable under the 3 categories. If the application falls within more than one of the category types only one application fee is payable. That fee is the one for the category to which the highest fee applies.

7.30 For firms that come under the 'G' fee-blocks they can refer to FEES 3 Annex 8[97] which sets out the current application fees payable under the payment services regulations and FEES 3 Annex 10[98] for the current application fees payable under the electronic money regulations.

7.31 Authorisation fees are payable on application and are not refunded if the applicant withdraws the application or the application is refused.

96 www.handbook.fca.org.uk/handbook/FEES/3/Annex1.html
97 www.handbook.fca.org.uk/handbook/FEES/3/Annex8.html
98 www.handbook.fca.org.uk/handbook/FEES/3/Annex10.html

7.32 We will consult on any changes to the current authorisation fees, as applicable to TP firms in our annual fees rates CP in April 2019.

Special project fees

7.33 We propose to apply special project fees (SPFs) to firms in the TPR, both EEA branch firms and EEA service firms, if they undertake the type of transactions that are within the scope of SPFs. EEA branch firms that currently undertake such transactions are already subject to SPFs.

7.34 When a UK firm undertakes a SPF restructuring transaction it can result in new entities seeking authorisation or existing firms seeking a variation in their permission (VoP) for which a separate fee is charged. The work carried out on such a restructuring transaction is interconnected with the work on the authorisation or VoP. In these cases, it may be inequitable to charge the authorisation or VoP fee in addition to the SPF.

7.35 Under our FEES 2.3[99] relieving provisions if it appears to us that, in the exceptional circumstances of a particular case the payment of a fee would be inequitable, we may reduce or remit all or part of a fee. Where such a SPF restructuring transaction is undertaken we will, on a case-by-case basis, consider using the relieving provisions to not charge the authorisation or VoP fees. We are proposing to take the same approach for any SPF restructuring transactions undertaken by firms in the TPR.

Q10: Do you agree with our special project fees proposals for firms in the TPR? If not, why not?

Funds in the temporary permissions regime

7.36 We propose that funds in the TPR will pay periodic fees from 2019/20 fee-year aligned to the current structure.

Periodic fees

7.37 We propose that funds in the TPR will pay periodic fees from 2019/20. Periodic fees are based on the types of funds and number of sub-funds. Table C in Annex 4 sets out how the structure of periodic fees for funds in the TPR has been aligned to the current structure.

7.38 We are proposing that periodic fees payable by funds in the TPR relate to the whole of any fee year (1 April to 31 March) and are not refundable. This is in line with the approach for UK funds.

Funds leaving the TPR

7.39 As discussed in Chapter 6, we and the Treasury will provide further information on how funds will exit the TPR in due course.

99 www.handbook.fca.org.uk/handbook/FEES/2/3.html

Other periodic fees rules

7.40 The draft Handbook text in Appendix 1 sets out how the fees rules relating to these will apply to funds in the TPR as they do to UK funds:

- late payment and recovery of unpaid fees
- method of payment

Q11: Do you agree with our proposals for periodic fees payable by funds in the TPR? If not, why not?

Application fees

7.41 We intend that funds in the TPR will pay recognition fees aligned to the current application fee structure, if they apply for recognition as the route to exit the regime.

7.42 Application fees are based on the type of funds and number of sub-funds. The current fees are set out in FEES 3 Annex 2.[100]

7.43 Application fees are payable on application and are not refunded if the applicant withdraws the application or the application is refused.

7.44 We will consult on any changes to the current application fees, as applicable to funds, in our annual fees rates CP in April 2019.

Indicative periodic fee rates

7.45 We want firms and funds to know the periodic fees they will pay in the TPR to inform their decision whether to make a notification to enter the regime.

7.46 In Table B for firms and C for funds of Annex 4 we have included indicative periodic fee rates so they can calculate an estimate of the level of periodic fees they will pay in 2019/20. These indicative fee rates are based on the fee rates for the 2018/19 fee-year.

7.47 The draft 2019/20 periodic fee rates will be consulted in our April 2019 fees rates CP. Those draft periodic fee rates will be set to raise the 2019/20 AFR to fund our work programme published in our 2019/20 Business Plan at the same time as the fee rates CP. The consultation period is two months and we provide feedback on responses to that consultation and final fee-rates in July 2019 following which invoices are issued for the payment of periodic fees. Payment will be due by 1 August 2019 or, if later, within 30 days of the date of the invoice. Payments to be made using either direct debit, credit transfer (Bacs/CHAPS), cheque, Maestro, Visa Debit or by credit card (Visa/Mastercard only).

100 www.handbook.fca.org.uk/handbook/FEES/3/Annex2.html

Annex 1
Questions in this paper

Q1: Do you agree that our proposed rule changes give adequate effect to our general approach for TP firms? If not, why not?

Q2: Do you agree with our approach to applying the Principles? If not, why not?

Q3: Do you agree with our approach to applying the Prudential sourcebooks to TP firms?

Q4: Do you agree with our proposed legal drafting to apply our general approach to fund marketing activities in the TPR? If not, why not?

Q5: Do you agree with our proposals on protecting client assets held by firms in the TPR? If not, why not?

Q6: Do you agree that TP firms should be required to contribute to the SFGB costs on the same basis as UK firms from 30 March 2019 onwards? If not, why not?

Q7: Do you agree with our proposals for the IML levy payable by TP firms? If not, why not?

Q8: Do you agree with the proposed guidance in GEN 2.2.35G in how it applies to SUP? If not, why not?

Q9: Do you agree with our proposals for periodic fees payable by firms in the TPR? If not, why not?

Q10: Do you agree with our special project fees proposals for firms in the TPR? If not, why not?

Q11: Do you agree with our proposals for periodic fees payable by funds in the TPR? If not, why not?

Annex 2
Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed Handbook rules. Specifically, section 138I(2)(a) requires us to publish 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'. It also requires us to include estimates of those costs and benefits, unless in our opinion these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate and in those cases we have to include a statement of that opinion.

2. This analysis presents estimates of the significant impacts of our proposals. We provide a quantitative estimate of the costs and benefits unless we think it is not reasonably practicable to do so or we cannot reasonably estimate them. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about ensuring that disruption for firms moving into the UK regulatory regime, and their customers, is minimised but still maintaining appropriate consumer protections, considering all the other impacts we foresee.

Problem and rationale for intervention

3. After Brexit, firms and investment funds which were passporting into the UK will no longer be able to do so. The TPR, which will be put in place through the Regulations aims to ensure that there is minimal disruption to markets and consumers because of the loss of passporting, by allowing EEA firms to continue to operate in the UK for a limited period while they get authorised in the UK, and EEA-domiciled investment funds to continue to be marketed in the UK while they are recognised or registered for private placement.

4. Without other rule changes, firms currently passporting into the UK that choose to participate in the TPR will have to comply with the Handbook as Part 4A firms (whose head or registered offices are overseas) because of the TPR Regulations. This would be challenging for many firms given the short time until exit day and would not minimise disruption for consumers and the UK market. Further, the costs to firms of making changes to comply with our full Handbook in a short period of time may be large because of the relatively short space of time firms would have to become compliant with UK rules. In addition, to the extent that Handbook rules would not apply to TP firms in this situation (in particular EEA services firms without an establishment in the UK), we need to consider what rules do need to be applied to provide appropriate consumer protection.

5. The TPR Funds Regulations would, without other rule changes, treat operators, depositaries and trustees of EEA-domiciled investment funds in the TPR as authorised

persons with Part 4A permission (in relation to UCITS), or directly as authorised persons (in relation to AIFs) which would mean that certain rules which currently apply to their activities would fall away. We therefore need to amend our Handbook in order to continue to apply these rules.

Our intervention

6. The CBA presented in this Annex is an analysis of the costs and benefits of applying:

- the Handbook rules which are given effect through the general approach, including our proposals relating to the application of the Prudential sourcebooks and certain specified technical standards made under MiFID II (the MiFID BTS)
- PRIN (to the extent described in Chapter 4)
- the proposed rules relating to safeguarding client assets

to TP firms as against the baseline scenario described below. It also covers the application of rules relating to fund marketing activities in the TPR as against the baseline scenario described below.

7. It does not cover the changes we intend to propose to make to the Handbook relating to:

- FSCS
- the Financial Ombudsman Service
- the APR and the SM&CR

which are described in Chapter 4 on the basis that we are not consulting on our proposals in these areas in this CP. There is no requirement under FSMA for us to publish a CBA in relation to the proposals we make in relation to funding the TPR, SFGB funding or the IML levy.

Baseline for TPR changes

8. This CBA does not analyse the costs and benefits of the TPR itself, which will be established by the Regulations rather than because of our proposed Handbook changes. Our duty is to analyse the costs and benefits of the changes to the Handbook rules on which we are consulting in this CP.

9. The baseline against which we are analysing the costs and benefits takes as its starting point the fact that TP firms will be treated as if they are Part 4A firms because of the TPR Regulations. Without any further changes, TP firms would therefore be subject to our rules to the extent that our Handbook (in its post-exit day form) states that they apply to a Part 4A firm, provided the TP firm meets any additional conditions of application of a rule.

10. This would generally mean that all of the Handbook would apply to TP firms in the same way as it would apply to a UK firm, with two broad exceptions:

- where rules are only expressed to apply to firms with UK establishments, such rules would not apply to EEA services firms in the TPR
- where rules are expressed to apply to firms with their head or registered offices in the UK, these rules would not apply to any TP firms

11. In the baseline scenario, our Handbook would apply certain MiFID/MiFIR technical standards to the UK branch of an EEA branch firm in the TPR because of GEN 2.2.22AR (without the possibility of substituted compliance), but not to EEA services firms.

12. In a similar way, the starting point for EEA-domiciled investment funds in TPR is that under the TPR Funds Regulations their operators, depositaries and trustees will be treated as authorised persons with Part 4A permission (in relation to UCITS), in the same manner as they were under Schedule 5 of FSMA pre-exit, or directly as authorised persons (in relation to AIFs) in the same way as they were as a result of Schedule 3 of FSMA pre-exit day. The FCA will have the same ability to make rules in relation to the operators of EEA-domiciled UCITS and AIFs within TPR (TPR funds) as it does for funds that are currently marketed in the UK under a passport. If the FCA did not exercise those powers in respect of EEA operators, depositaries and trustees of UCITS funds, then certain rules that presently apply to them under the Conduct of Business Sourcebook (COBS) (for example the e-commerce rules) and rules on facilities in the UK (in Chapter 9.4 of the Collective Investment Schemes Sourcebook (COLL)), would fall away. All other rules which currently apply to marketing of EEA-domiciled UCITS in the UK (being rules in COBS sourcebook about communicating with clients and financial promotions) would continue to apply in the baseline scenario.

13. The position for operators of EEA AIFs differs. Such firms are not subject to rules on facilities in COLL 9.4, and in the baseline scenario the rules in COBS about communicating with clients and financial promotions would not apply. The FCA therefore needs to exercise its powers to ensure that all the rules in the COBS sourcebook that presently apply to operators of EEA AIFs (including rules on e-commerce) continue to apply to them.

14. We would note that the baseline scenario being used does not correspond to the position that EEA firms and EEA-domiciled investment funds currently passporting into the UK are in, but instead represents the hypothetical situation that they would be in after Brexit absent any Handbook changes.

The general approach for TP firms

Costs of the general approach

15. The effect of the general approach is to alter the application of the whole of the Handbook for TP firms, other than where we specifically tailor application provisions (which we address separately below). As explained in more detail in Chapter 4, under the general approach, only a subset of the rules in the Handbook would apply to TP firms being:

- the rules which apply to a TP firm immediately before exit day

- the rules which apply to a UK firm of the same type and which implement an EU directive on a home state basis (subject to the possibility of substituted compliance with the rules of the TP firm's home state)

16. The general approach will also apply the specified MiFID BTS to TP firms, with substituted compliance with home state requirements again possible where relevant.

17. There will be some situations where the general approach applies a Handbook rule or a MiFID BTS which would not apply to a TP firm in the baseline scenario (eg because it does not otherwise apply to a third-country firm without a head office in the UK, or in the case of EEA services firms because the rule or the rule applying the MiFID BTS would otherwise require a UK establishment), and in these situations, the general approach would represent a cost to TP firms as against the baseline. In relation to EEA services firms this could represent a significant number of rules being applied which reflects that matters are generally reserved to the home state for EEA services firms. However, it is worth noting that these are rules or MiFID BTS with which a TP firm will already be complying in its home state (and with which the firm would be able to continue to comply in that form based on substituted compliance), and so there should, in principle, be no new costs of coming into compliance with these rules for TP firms.

18. Although without our changes the TP firm might have been able to temporarily cease to comply with the relevant rule or MiFID BTS in its home state in relation to its UK business (where the home state requirement is expressed as only applying to EEA business) and thereby reduce ongoing compliance costs, the firm would have to come into compliance with the UK implementation of the rule or MiFID BTS in respect of its UK business within three years in order to be authorised in the UK. There would therefore be costs involved in ceasing to comply with a rule on a temporary basis and then having to reinstate compliance with a similar rule before UK authorisation. It may be the case that for some home state rules or MiFID BTS the home state will require continued compliance with the relevant rule in respect of UK business in any event.

19. Where the general approach also results in a disapplication of UK rules that apply to third-country firms (including as a result of substituted compliance) and would therefore have applied to TP firms in the baseline scenario in the absence of our proposed changes, there is also a potential cost to users of financial services of TP firms not needing to apply the relevant UK protections as against the baseline scenario. As noted above, a key rationale of the general approach is to apply a regime that TP firms can comply with from exit day. A regime that is unreasonably burdensome, in particular in terms of requiring firms to come into compliance with it in a short timeframe, could have an adverse impact on consumers and competition in the UK which would need to be offset against any costs of not applying the protections.

20. We do not believe that it is reasonably practicable to produce a quantitative estimate of any of the costs described above, for these reasons:

- **Value of the estimate:** we have designed the general approach so that TP firms can generally continue to comply with rules/MiFID BTS with which they are already complying, rather than requiring firms to actually make significant changes. In addition, the TPR is only for a temporary period, and TP firms will need to come into compliance with the full Handbook as it applies to third-country firms on UK authorisation in due course. We therefore believe that the substantial amount of work involved in producing quantitative estimates as against the baseline scenario

which is a hypothetical situation (including requiring firms to provide data) would not be justified by the value of the estimates to consultees (including firms and their advisors, trade bodies and consumers and consumer bodies) in terms of their ability to consider the impact of the rules on them and to respond intelligently.

- **Number of firms:** we do not know how many incoming EEA firms will come into the TPR, or the split between the types of firms which will come into the TPR. This is because some firms, especially EEA services firms, may not require UK authorisation to continue to provide services to UK consumers, for example, because they carry on a particular activity in a way which is outside of the UK's regulatory perimeter and does not require authorisation here[101], or because of the overseas persons exclusion (in article 72 of the RAO[102]), or because firms have decided to run-down their business before exit day. We are running an ongoing survey of EEA firms to find out their intentions, which is ongoing. In addition, different firms will be in the regime for different periods of time, depending on when their landing slot is, and how long it takes to authorise them. As such the impact of the application of rules/MiFID BTS which will apply to TP firms during the TPR will vary from firm to firm.

- **Time constraints:** the scope and number of rules involved in this analysis means that it would require significant time to produce a quantitative estimate of the impact of applying or disapplying relevant rules as against the baseline scenario. For the purposes of estimating the impact of substituted compliance we would need to determine the content of many home state rules in each of the 30 other EEA member states, and analyse them against the UK implementation of the equivalent requirements. However, the time in which to conduct the analysis and produce quantitative estimates has by necessity been constrained by external dependencies, and the deadline for finalising this work is not moveable as we need to make the Handbook rules by early 2019.

21. Because of TP firms being treated as if they were Part 4A firms under the TPR Regulations, we will have more extensive powers to supervise them. As a result of our Handbook changes, fewer rules will generally apply than in the baseline scenario (albeit that substituted compliance might add extra complexity), although in the case of EEA services firms there will be additional rules applied as against the baseline scenario as explained above. We do not anticipate any increase in overall resources being allocated to the supervision of firms, but in the event of harm being identified, we will be in a better position to act, where appropriate, while noting the complexities involved in enforcing cross-border in this scenario.

Benefits of the general approach

22. The general approach has been designed to support the wider benefit of EEA firms continuing to operate in the UK, and thereby help to minimise disruption to UK markets and the consumers these markets serve. We believe that it is not reasonably practicable to quantify this benefit as it would involve an extensive exercise of understanding incoming EEA firms' intentions if we did not make these changes and the baseline scenario applied, and the consequential impact of them not coming into the regime. As explained above, we would only have a limited period in which to carry out any such analysis.

101 www.handbook.fca.org.uk/handbook/PERG/

102 The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 www.legislation.gov.uk/uksi/2001/544/contents/made

23. As explained above, the effect of the general approach is to generally apply a subset of requirements to TP firms rather than everything which would apply in the baseline scenario. In this analysis, as against the baseline scenario, this would generally represent a reduced burden for TP firms, as they will not have to comply with as many requirements as they otherwise would have to in that scenario.

24. By allowing substituted compliance, and flexibility where Brexit-related amendments to a Handbook rule make compliance impracticable for a TP firm, there would be a further reduced burden to TP firms in not requiring them to come into compliance with the UK implementation of home state rules/MiFID BTSs/post-exit day UK rules as quickly as they otherwise would have to.

25. There will be situations where the general approach applies Handbook rules or a MiFID BTS which would not apply to a TP firm in the baseline scenario (eg because it does not otherwise apply to a third country firms without a head office in the UK, or in the case of EEA services firms because the rule only applies where a firm has a UK establishment). In these situations, while the general approach would be a cost to TP firms as against the baseline scenario, it would also represent a corresponding benefit to consumers of the relevant protections continuing to apply.

26. For the reasons explained in paragraph 20 above, we do not believe that it is reasonably practicable to produce a quantitative estimate of these potential benefits.

Prudential sourcebooks

27. To the extent that our approach to the Prudential sourcebooks differs from the general approach, in particular by not switching on home state rules related to capital adequacy and not continuing to apply the liquidity requirements which currently apply to EEA branch firms, this effectively puts TP firms in the same position as third-country firms, which is the same as the baseline scenario. As against that scenario there are therefore no costs or costs of minimal significance, and therefore no cost benefit analysis is required in this regard.

The general approach for fund marketing

28. The effect of the general approach for fund marketing is to continue to apply the same rules that applied to operators, depositaries and trustees of investment funds marketing under a passport that applied pre-exit day. In the baseline scenario, only rules in COBS 4 relating to communicating with clients and financial promotions in our post-Brexit Handbook would apply to operators, depositaries and trustees of EEA UCITS, and no Handbook rules would apply to operators of EEA AIFs. The approach we have taken results in the application of certain rules under the COBS sourcebook for operators, depositaries and trustees of both EEA-domiciled UCITS and EEA-domiciled AIFs (being rules on communicating with clients and financial promotions, and rules on e-commerce), and for operators, depositaries and trustees of UCITS, rules on facilities in the UK (in COLL 9.4).

Costs

29. The general approach would represent a cost to EEA operators, depositaries and trustees of TPR funds as against the baseline scenario because it applies rules that would not apply in the baseline scenario, as described above. It is worth noting that these are requirements with which such firms actually already comply. In principle, there should therefore be no new costs of coming into compliance with these rules.

30. To the extent that the general approach applies the same rules as would apply in the baseline scenario, we believe that there are no costs or costs of minimal significance in relation to the remainder of the general approach. We are not disapplying any rules which would apply in the baseline scenario, therefore as against the baseline scenario we believe that there should not be costs to consumers of relevant protections ceasing to apply.

31. We do not believe it is reasonably practicable to produce a quantitative estimate of the costs of compliance with the rules referred to in paragraph 29 above, for the same reasons we have explained in relation to TP firms as set out in paragraph 20 above.

Benefits

32. The general approach has been designed to bring the wider benefit of EEA-domiciled investment funds continuing to be marketed in the UK, and thereby minimise disruption to UK markets and the consumers these markets serve. For the same reasons explained for firms in paragraph 22 above, we do not believe it is reasonably practicable to quantify this benefit.

33. In relation to the rules being reapplied to EEA operators, depositaries and trustees of TPR funds, whilst this represents a cost to them as against the baseline, it also represents a corresponding benefit to consumers. Again, as explained in paragraph 31 above, we do not believe it is reasonably practicable to produce a quantitative estimate of these benefits.

Principles for Businesses (Principles)

34. In the baseline scenario, the Principles would apply in their entirety to EEA branch firms in the TPR, but would apply to EEA services firms in the TPR in a more limited way in line with PRIN 3.3.1R. We are proposing to apply the Principles generally to TP firms but to adjust this application of the Principles to only apply Principle 4 in relation to EEA branch firms where UK capital adequacy rules currently apply. On the face of it there is therefore a benefit to those EEA branch firms to which capital adequacy rules do not currently apply (with a corresponding cost to consumers) and a cost to EEA services firms (with a corresponding benefit to consumers) as against the baseline scenario. The costs arise as firms must change their behaviour to comply with the Principles with the associated costs arising from any changes to their business. They may also earn lower profits. The benefits arise as consumers benefit from the higher standards of conduct required from firms. These benefits cover a whole array of improved outcomes for consumers.

35. For fund marketing, as against the baseline, we are proposing to apply Principle 11 in addition to those Principles which would otherwise already apply in relation to operators and depositaries of UCITS that are TPR funds. As no Principles would apply to the operators of AIFs that are TPR funds in the baseline scenario, we are re-applying

the Principles that applied to such firms pre-exit day, and then applying Principle 11 in addition. This represents a cost for EEA operators, depositaries and trustees, with a corresponding benefit for consumers.

36. As the Principles are high-level and do not specify in detail how firms should act, it is difficult to say how they might affect a firm's behaviour given firms will need to consider what to do in order to comply with them in every aspect of their business. Any analysis to understand this would require a large amount of data from firms, and even then would require the application of assumptions to apply this to all firms across the range of activities included in TPR, so we believe that the value of any quantitative estimate to consultees would not be justified by what would be involved (including requiring firms to provide data). In addition, firms may already be required to act in a certain way because of rules which will apply, so that there is no straightforward way to attribute the extent of the relevant costs and benefits of a particular course of action to the Principles.

37. As a result, and considering the broad scope of the Principles and taking into account the points in paragraph 20 above, we believe it is not reasonably practicable to produce a quantitative estimate of the costs and benefits of our application of the Principles.

Safeguarding client assets

38. In the baseline scenario, EEA branch firms would have to comply with the CASS regime for Part 4A firms under our Handbook following exit day. Firms may find it difficult to comply with these CASS rules at this point given the short amount of time. Consequently, these firms may incur material costs.

39. EEA services firms would not have to comply with any CASS requirements in our Handbook as the current CASS rules only apply to Part 4A firms with a UK establishment. EEA services firms do not have a UK establishment and therefore without changes consumers would not have their assets protected by the CASS regime in the event of their firm failing.

40. In addition to the application of the general approach to CASS (addressed above), our proposals are

- a simplified reporting approach for TP firms
- a requirement to provide the client assets audit report in English
- a disclosure requirement to explain the treatment of client assets in the event of the firm's insolvency
- a prohibition on tied agents and appointed representatives of TP firms subject to MiFID II from holding client assets

Application of the baseline scenario

41. As explained above, the CBA compares the overall position if the proposed rule amendments are applied against the overall position if no changes were made to the FCA Handbook for TP firms. Without the proposed rule changes, TP firms would be

third-country firms with a permission under Part 4A of FSMA with or (in the case of EEA services firms) without an establishment.

42. CASS applies to third-country firms with a permission under Part 4A of FSMA with an establishment in the UK[103] but not to EEA services firms.

Costs

Reporting of client assets arrangements

43. We estimate there will be costs to EEA services firms in the TPR as against the baseline scenario as this requirement would not otherwise apply to them (see paragraph 39 above). We estimate minimal one-off costs associated with requiring TP firms to report their client assets arrangements to us, given we are requiring firms to email a spreadsheet template and firms should already have the required information available under their existing client assets obligations.

44. In terms of on-going costs, we estimate it would take one person one hour to complete the form at £40 per hour[104] given there are only 17 questions (of which only a proportion applies to each firm type). We therefore estimate the following on-going costs for each firm on an annual basis:

Table 5: Estimated on-going annual costs of proposed reporting of client assets arrangements

Firm type	On-going costs (£)
Reporting by investment firms	
CASS small	40
CASS medium	480
CASS large	480
Reporting by insurance intermediaries	
Annual regulated business revenue up to and including £5 million	80
Annual regulated business revenue over £5 million	160

Note: *These costs have been estimated as follows: £40 x proposed frequency in Tables 1 and 2 above. For example, CASS medium firms are subject to monthly reporting; therefore, the cost is £40 x 12 = £480.*

45. We think there will be few additional costs to EEA branch firms in the TPR as against the baseline. For the period these firms are in the TPR, they will have lighter reporting requirements than they would if they were subject to the full CASS regime under the baseline scenario. Although EEA branch firms will be subject to a lighter reporting requirement (than under the baseline scenario), we consider the proposed requirement will enable us to adequately identify and monitor client assets related risks for consumers.

46. We note that TP firms will eventually have to comply with full CASS regime if they obtain full UK authorisation. Our changes mean that firms can delay the cost of fully implementing CASS but we realise that firms will bear the costs of setting compliance to CASS in the TPR as well as full CASS compliance. We think the additional costs will be relatively small.

103 CASS 1.3.2R

104 This is based on cost figures for client assets reporting in CP10/9, CP11/04 and CP17/29.

Client assets audit report

47. We estimate there will only be costs to EEA services firms as against the baseline scenario as this requirement would not otherwise apply to them (see paragraph 39 above). In the event a TP firm is required to submit an audit report to us, we estimate such firms will incur one-off costs from providing their annual client assets audit report to us in English. We estimate these to be on average approximately £300 per firm.[105]

48. We estimate minimal on-going costs given firms will only need to submit the report to us upon either request or receiving an adverse audit opinion.

Disclosure of client assets treatment on insolvency

49. We estimate there will be costs to both EEA branch firms and EEA services firms as against the baseline scenario as this specific requirement is new, rather than an existing CASS requirement. As stated above, incoming EEA firms are already subject to client disclosure requirements under COBS and MiFID II. We are allowing firms to make the disclosures required by this proposal in durable medium, or via a website, which is consistent with existing disclosure requirements.

50. Based on previous cost figures for client disclosures, we estimate one-off median costs of approximately £1,500[106] per firm. We expect on-going costs to be minimal and absorbed into the firm's regular on-going reviews of its disclosures and financial promotions under existing disclosure requirements.

Appointed Representatives and MiFID Tied Agents

51. In respect of the prohibition on tied agents and appointed representatives of TP firms subject to MiFID II from holding client assets, we estimate there will only be costs to EEA services firms and their tied agents and appointed representatives as against the baseline scenario. Firms may have to make some changes to their client money flows if their home state does not have the same restrictions as the UK. However, we do not expect the impact to be significant as we understand firms will have existing systems to prevent tied agents from holding client assets.

Benefits

Reporting of client assets arrangements

52. Regular reporting will enable us to identify and monitor client assets related risks in EEA services firms in the TPR. It will also ensure that EEA services firms in the TPR have the systems in place to provide the information relating to their existing client assets obligations and that it can be provided to IPs and regulators quickly in the event of a firm failure.

53. Third-country branch firms with permission under Part 4A of FSMA (which would include EEA branch firms in the TPR in the baseline scenario) are subject to the client money and asset return (CMAR).[107] Under our proposal, EEA branch firms will be subject to a lighter reporting requirement. We therefore estimate a cost saving of £120

105 This is based on typical translation costs (if needed). We understand the industry-standard rates range from £100 to £140 per 1,000 words (about 3-4 pages of A4 text) dependent on the language combination (source: www.sure-languages.com/how-much-does-translation-cost/). Given client assets audit reports in the UK are typically 5-10 pages and the complexity of these reports, we estimate the translation cost to be approximately £300. We do not expect firms to incur any other material costs with providing their audit reports to us given the audit requirement is an existing requirement under MiFID II and we propose firms submit the reports by email.

106 This is based on cost figures for client disclosures in CP13/5 and CP17/29.

107 Required under SUP 16.14

for CASS small TP firms and £480 for CASS medium and large TP firms[108] as against the full reporting requirement which would otherwise apply to EEA branch firms in the baseline scenario.

Client assets audit report

54. Allowing us to obtain client assets audit reports from TP firms will enable us to readily access key information on firms' protection of client assets in line with their client assets obligations. It will also enable us to identify and monitor client assets related risks on a timely basis, particularly where the firm has received an adverse audit opinion on its client assets arrangements. This enables us to check whether client funds will be adequately protected and to mitigate the risk that consumers do not face the risk of losing their assets.

Disclosure of client assets treatment on insolvency

55. Disclosing the treatment of client assets on insolvency will alert UK clients of potential risks associated with their client assets being held by TP firms. It will enable UK clients to be more aware of the implications in the event of a TP firm failure than they would be without the disclosure. Consumers can therefore better assess the risks to their assets and their ability to access their assets in the event of firm failure.

Appointed Representatives and MiFID Tied Agents

56. Prohibiting tied agents and appointed representatives of TP firms subject to MiFID II from holding client assets will enable us to provide adequate oversight over client assets and prevent any loss to client assets held in these arrangements.

Supervision Manual

57. In the absence of our proposed changes to make clear how relevant guidance in SUP applies to TP firms, the relevant chapters of SUP would apply in their entirety to TP firms in the baseline scenario in any event. The only change we are making to this position is to make clear that firms should read this guidance subject to the modifications made by the Regulations to relevant legislation. We believe that, as against the baseline scenario, there are therefore no costs or costs of minimal significance because of this guidance applying to TP firms.

Impact of our rule changes on market disruption and competition

58. As explained elsewhere in this CP, we have designed the TPR to balance the need to create a regime which TP firms can comply with from exit day with the need for appropriate consumer protection. As against the baseline, the proposals on which we are consulting in this CP would increase costs for EEA services firms as explained in the rest of the CBA. While there is a possibility that this could be a factor in these firms' decision to continue to operate in the UK market, with potential disruption for consumers and the market more widely, any firm which wants to continue to operate in the UK in the long term would need to come into compliance with our Handbook as it applies to third-country branches in a relatively short timeframe to be authorised in the

108 Based on cost figures on client assets reporting in CP10/9. In this CP, in respect of the CMAR, we estimated on-going costs of £160 to CASS small firms and £960 to CASS medium and CASS large firms. In respect of the proposed TP report, the relevant cost estimates are included in Table 3.

UK in any event. In addition, these firms will already be complying with most of these rules in their home state. Considering the limited additional rules that we propose should apply that do not otherwise already apply either in the UK or a TP firm's home state, we therefore believe our proposals support the aim of minimising disruption to consumers and the UK market.

Familiarisation costs

59. We would normally estimate the costs of familiarisation with new rules for those affected by considering the number of pages of policy documents involved with our rule changes, and the amount of time it would take to read this, analyse it and consider how it would apply. In this case the effect of the general approach (which constitutes the largest part of our proposals) is to apply either Handbook rules/MiFID BTS which already apply to TP firms and fund marketing activities (and with which TP firms and TP marketing fund managers are therefore already familiar), or in the case of TP firms rules/MiFID BTS which, because of substituted compliance being possible, already apply in their home state (and again with which they are already familiar). We therefore think this approach to the estimation of familiarisation costs would be misleading in this case.

60. We have explained in Chapter 4 what Handbook users will need to do to determine the exact rules which would apply under the general approach. To carry out a more detailed analysis of the costs involved for TP firms and TP marketing fund managers in applying the general approach as set out in the GEN sourcebook, this would involve either extensive information gathering from TP firms and TP marketing fund managers or speculation about how they will act. We therefore believe it is not reasonably practicable to quantify familiarisation costs in this case, taking into account the time available for the exercise.

61. We note for completeness that firms and TP marketing fund managers will also need to familiarise themselves with any changes which are being made to the Handbook/ MiFID BTS in connection with the Brexit more widely – these changes are addressed in our Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation[109]or will be addressed in future publications.

109 Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation, FCA, October 2018: www.fca.org.uk/publications/consultation-papers/cp18-28-brexit-proposed-changes-handbook-bts-first-consultation

Annex 3
Compatibility statement

Compliance with legal requirements

1. This Annex records our compliance with legal requirements applicable to the proposals in this consultation including an explanation of our reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).

2. When consulting on new rules, we are required by FSMA s.138I(2)(d) to include an explanation of why we believe making the proposed rules is (a) compatible with our general duties, under FSMA s.1B(1), so far as reasonably possible, to act in a way which is compatible with our strategic objective and advances one or more of our operational objectives, and (b) our duty in discharging our function of making rules (one of our "general functions") under FSMA s.1B(5)(a) to have regard to the regulatory principles in FSMA s.3B. We are also required by FSMA s.138K(2) to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

3. This Annex also sets out our view of how the proposed rules are compatible with the duty on us to discharge our general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (FSMA s.1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.

4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under FSMA s.1JA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.

5. Our assessment of the equality and diversity implications of our proposals is found below.

6. Under the Legislative and Regulatory Reform Act 2006 (LRRA), we are subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRA.

Our objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are primarily intended to advance our operational objectives of consumer protection and market integrity. They are also relevant to our objective of promoting effective competition.

8. Our consumer protection objective is to secure an appropriate degree of protection for consumers. In considering what degree of protection may be appropriate we are required to have regard to the 8 matters listed in FSMA s.1C(2)(a)-(h).

9. For the TPR, we are generally proposing to continue to apply existing protections either contained in Handbook rules which currently apply to TP firms or operators, depositaries and trustees of EEA-domiciled investment funds, or which are based on EU directives but reserved to the home state (in the case of TP firms). We are not seeking to change the design of those protections. We have had regard to the matters listed in FSMA s.1C(2)(a)-(f) in deciding which rules to apply, and those matters were also considered in the design of those protections when they were developed.

10. By applying the home state rules under the general approach through our Handbook, we are seeking to prevent consumers from being prejudiced because, following exit day, home state protections in relation to UK business may fall away.

11. Where we have identified key protections, which fall away and cannot be dealt with by way of substituted compliance with a home state rule, in particular compensation scheme cover or access to an alternative dispute resolution scheme, we are intending to propose later in the year to replicate those protections on a UK basis (for compensation scheme cover, only to the extent it is permitted by the TPR Regulations). We are also proposing to apply certain other key protections which we consider vital, for example, the Principles and our proposals in relation to client assets.

12. The matter listed in FSMA s.1C(2)(g) is not relevant to our proposals. In relation to the matter referred to in FSMA s.1C(2)(h), we have consulted with the Financial Ombudsman Service while developing our planned proposal to include EEA services firms in the TPR in the Compulsory Jurisdiction.

13. Our market integrity objective is to protect and enhance the integrity of the UK financial system, which includes the matters listed in FSMA s.1D(2)(a)-(e). In addition to considering appropriate consumer protection, our proposals for the TPR also seek to create a regime which TP firms and operators, depositaries and trustees of EEA-domiciled investment funds can comply with from exit day. This is to help mitigate the harms that could result from an abrupt loss of permission following exit day, which could impact on the orderly operation of financial markets.

14. A regime which TP firms and operators, depositaries and trustees of EEA-domiciled investment funds can comply with from exit day also promotes competition by making it more likely that TP firms will continue to operate in the UK market going forward and that EEA-domiciled funds will continue to be marketed in the UK so that these funds will continue to be available to UK investors after exit day.

15. We consider these proposals are compatible with our strategic objective of ensuring that the relevant markets function well because, for the TPR, we are proposing a regime that balances:

- the need for appropriate consumer protection taking into account the possibility of home state protections falling away

- the need to create a regime which TP firms and operators, depositaries and trustees of EEA-domiciled investment funds can comply with as of exit day to help mitigate the harm presented by an abrupt loss of permission and promote competition

as explained above. For the purposes of our strategic objective, 'relevant markets' are defined by FSMA s.1F.

16. The proposals for FCA fees are not intended in themselves to advance our operational objectives. However, they will enable us to fund our activities to meet our responsibilities under the regime. Therefore, these proposals will indirectly advance our operational objectives.

17. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in FSMA s.3B.

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

18. Our approach to which of our rules should apply to TP firms and operators, depositaries and trustees of EEA-domiciled investment funds, and how we propose to apply most of the Handbook (by including an overarching rule in the GEN sourcebook rather than specifically tailoring each sourcebook as a matter of course as explained in Chapter 4), takes into account the significant amount of work in a short timeframe that would be required to design a new regime and tailor our Handbook specifically for the TPR. Given the regime is time limited and ultimately the Handbook will apply in the normal way to TP firms and fund marketing activities following the end of TPR, the value of this work would be limited. We believe the approach we are proposing represents a proportionate use of our resources to achieve our objectives in the circumstances.

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

19. Our proposals seek to preserve the status quo as much as possible so that TP firms and operators, depositaries and trustees of EEA-domiciled investment funds generally need to simply continue to comply with rules which currently apply to them, either in the UK or (for TP firms) their home state, and the relevant Handbook rules were designed having regard to the proportionality principle. We are only seeking to apply a limited number of new requirements where we consider that these are vital and proportionate (in particular, for consumer protection).

20. The proposals for FCA TPR fees rules are based on those for UK firms and investment funds which were designed having regard to the proportionality principle. Firms are grouped together into fee-blocks, reflecting broad sectors of the industry, based on the regulated activities undertaken in the UK. Funds have their own specific fee-block. This enables us to allocate our funding requirement across fee-blocks in proportion to the total resources we apply to meeting our operational objectives in relation to the regulated activities covered by all firms in each fee-block and funds in their specific fee-block. Recovering, the funding allocated to fee-blocks from the firms in each fee-block based on their size ensures that the periodic fees they pay are proportionate to the benefits they receive from being authorised. This also applies to funds as the proportion of the funding allocated to their fee-block relates to the type of fund and number of sub-funds.

21. The proposals for the SFGB levy rules and IML levy rules are based on those for UK firms. They mirror the FCA rules for the fee-blocks used to allocate the funding required by the Department of Work and Pensions (DWP) and the Treasury. They use the same measures of size to recover the allocated funding from firms within the fee-blocks.

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

22. By designing the TPR in a way that we believe offers firms an effective bridge to the UK's third-country regime, we hope to encourage EEA firms which currently passport into the UK to continue to operate here and seek full authorisation in the UK while in the TPR, rather than choosing to cease to operate in the UK on exit day. In the same way, the design of the TPR should encourage EEA fund managers which already market EEA-domiciled investment funds in the UK to maintain their presence and seek individual recognised scheme status (if marketing to retail investors) or else registration for private placement.

The general principle that consumers should take responsibility for their decisions

23. The design of the TPR seeks to generally preserve current rules in terms of the information which consumers receive. In addition, we consider that any new disclosure requirements we are proposing are vital to enable consumers to make informed decisions.

The responsibilities of senior management

24. We are intending to propose to maintain the current requirements that apply to EEA branch firms under the SM&CR and (where relevant) APR throughout their time in the TPR. This means that the additional controlled functions and requirements that apply under the SM&CR for third-country branches will only apply once a firm has been fully authorised in the UK. We do not propose any requirements for EEA services firms in line with the current position, but the SM&CR will apply to them once they have been fully authorised with a branch. Further details are set out in Chapter 4.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

25. By generally only applying existing rules which are relevant to each type of firm plus certain additional key protections, the TPR does not seek to make any changes to the way in which the Handbook currently address this principle.

26. The proposals for FCA TPR fees rules are based on those for UK firms which recognises the differences in the nature of the business carried out by different firms. The fee-blocks are defined by reference to related types of permitted business firms can undertake and the tariff base used to recover the allocated funding to the fee-blocks reflects the size of that business. For funds, the TPR fees rules differentiates between types of funds and their size by taking into account the number of sub-funds.

27. Mirroring the FCA rules for fee-blocks and measures of size the proposed rules for the SFGB levy and IML levy recognises the differences in the nature of the business carried out by different firms.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

28. We have explained how the TPR will function in this CP and in our statement issued when the TPR Regulations were published by the Treasury in July this year. Certain proposals we are making will require firms to publish information about themselves.

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

29. We launched a survey for incoming EEA firms in March 2018 to enable us to better understand firms' intentions, and keep firms which expressed an interest in joining the TPR updated. In July 2018, we published a statement setting out more detail on how the TPR would operate, including our initial views on the rules which we would propose will apply to firms while they are in the regime. It also explained which firms and funds would be able to use the TPR and the process by which firms and funds will need to notify us that they want to enter the regime and get a temporary permission. We will continue to engage with stakeholders throughout this consultation process before making any rules.

Action to minimise the extent to which a business is used for a purpose connected with financial crime

30. We have had regard to the importance of taking action as required by FSMA s.1B(5)(b). As previously explained, we are seeking to apply the requirements which currently apply to TP firms and operators, depositaries and trustees of EEA-domiciled investment funds in our Handbook or in the case of TP firms, which are covered by home state rules (subject to substituted compliance).

Expected effect on mutual societies

31. We do not expect the proposals in this paper to have a significantly different impact on mutual societies. To the extent any mutual societies come into the TPR, they will be treated in line with the proposals set out in this CP in the same way as all other TP firms.

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

32. The proposals set out in this consultation are designed to promote effective competition in the interests of consumers, to the extent this is compatible with advancing our consumer protection or market integrity objectives. As noted above in relation to our objectives, a regime which TP firms and operators, depositaries and trustees of EEA-domiciled investment funds can comply with from exit day should promote competition. In addition, the approach we propose will apply a wide range of rules to incoming firms, such that these firms will need to comply with a similar range of rules as UK firms.

33. The proposals for FCA TPR fees rules for firms support our objective of promoting effective competition. The fee-blocks take account of the aggregate riskiness of the regulated activities undertaken by the firms in them and the recovery of allocated funding to fee-blocks is based on the size of business undertaken by the individual firms.

34. Mirroring the FCA rules for using measures of size to recover SFGB and IML allocated funding from individual firms within fee-blocks, also supports our objective of promoting effective competition.

Treasury recommendations about economic policy

35. In the remit letter[110] published by the Treasury on 8 March 2017, the Chancellor of the Exchequer affirms our role in ensuring that effective competition in financial services can create the right conditions for access to finance and long-term investment, ensuring that there is a diversity of business models within the financial sector and competition that works in the interest of consumers, encouraging trade and inward investment, and ensuring consumers are appropriately protected and supporting financial inclusion by promoting competition. This is part of the Government's economic policy objective to create strong, sustainable and balanced growth. We have regard to this letter and the recommendations within. As set out in this CP, our proposals are aimed at creating a regime which balances the need to continue to apply appropriate consumer protections but which TP firms or operators, depositaries and trustees of EEA-domiciled investment funds can comply with from exit day and so continue to operate in the UK market.

Equality and diversity

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

37. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered.

38. We have considered the equality and diversity issues that may arise from the proposals in this CP. Our proposals on the rules which should apply to TP firms and fund marketing activities in the TPR largely either continue to apply existing Handbook rules, or permit firms the option to apply rules in their home state in order to comply with our rules.

39. Since 2011[111], we have been required by the Equality Act 2010 to take broad equality and diversity considerations into account when making new UK rules or changing existing UK rules. Additionally – in common with authorities in other EU states – we must also apply the EU Charter of Fundamental Rights (the Charter), which prevents discrimination in similar areas to the Equality Act, when adopting or applying a national law implementing an EU directive. Therefore, in relation to our proposal for substituted compliance, which would permit TP firms to comply with rules in their home state that

110 www.gov.uk/government/publications/recommendations-for-the-financial-conduct-authority-spring-budget-2017

111 The Public Sector Equality Duty (s.149 of the Equality Act 2010) – which requires us to take a much broader set of equality and diversity considerations into account – would only apply to changes (ie new rules/guidance or amendments to existing rules/guidance) made by the FSA or us after 5 April 2011. Previous legislation was focused only on sex, race and disability.

implement a requirement of an EU directive as a substitute for the corresponding UK rules, the application of the Charter to these home state rules gives us confidence that sufficient account should have been taken of equality and diversity considerations in their implementation in EU member states.

40. Our proposals relate to a temporary regime which is in effect a bridge to our Handbook in how it applies to TP firms and fund marketing activities when the leave the TPR. We do not think it is necessary, or would be a proportionate use of our resources, to attempt to analyse from an equality and diversity perspective the actual implementation of all the relevant rules in each of the 30 EEA states which our proposals effectively switch on for that limited period. This is in consideration of the number of rules involved, and the time available for that exercise.

41. We recognise that the effect of the TPR, and the impact of our proposals for the Handbook on the protections which are available to consumers may be particularly challenging for vulnerable consumers to understand. We expect firms to communicate with affected customers in a clear and timely fashion, including, for example, what regulatory protections will apply for their customers. We also intend to publish information on our website to help consumers understand how Brexit may affect them.

42. Aside from this, we generally do not consider that the proposals in this CP materially impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when making the final rules.

43. In the meantime, we welcome input to this consultation on this.

Legislative and Regulatory Reform Act 2006 (LRRA)

44. We have had regard to the principles in the LRRA for the parts of the proposals that consist of general policies, principles or guidance, and consider that the regime we are proposing is proportionate, and balances the need to create a workable regime that TP firms and operators, depositaries and trustees of EEA-domiciled investment funds can comply with from exit day with the need for appropriate consumer protection. We are consulting on our proposals in this CP, and will continue to engage with stakeholders throughout this consultation process before making any rules.

45. We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that that our proposals meet the following principles:

- Regulators should carry out their activities in a way that supports those they regulate to comply and grow
- Regulators should base their regulatory activities on risk
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply

- Regulators should ensure that their approach to their regulatory activities is transparent

46. Having regard to this:

- The rules are designed to enable firms and investment funds to continue their existing UK business and indeed to develop new business in the UK with a view to enabling firms to achieve full UK authorisation and investment funds to be individually recognised or registered for private placement

- The underlying rules that we apply through the general approach have been developed based on the risks involved in particular activities. We have also restricted new rules we are applying to TP firms to situations where protections would otherwise fall away because of Brexit or are otherwise considered vital

- We published a statement of our approach when the TPR Regulations were published in July, and this CP sets out our proposed regulatory approach. The approach is based predominantly around continuing to comply with known rules, either in the UK or in the home state.

Annex 4
Funding the temporary permissions regime – FCA periodic fees indicative 2019/20 fee rates

Table A: TP firms – current passport activities mapped to fee-blocks

1. EEA branches will be allocated to the fee-blocks based on the equivalent UK regulated activities that apply to the passport they hold at the point of entry to the temporary permissions regime (TPR). At the point of entry to the TPR cross-border service firms will be notified of the fee-blocks that will apply to them. Table A lists the fee-blocks that can apply to firms in the TPR setting out which passports fall under each fee-block. Before making a notification to enter the TPR cross-border service firms can use Table A in Annex 4 to see which fee-blocks apply to current passports.

Table B: TP firms – tariff base, valuation point, indicative fee-rate

2. Firms in the TPR must supply us with the tariff data (measure of size) for each of the fee-blocks that will apply to them (as identified through Table A). We already collect this tariff data from EEA branch firms. We will collect tariff data from EEA services firms after they enter the TPR. Table B sets out the type of tariff data used in each fee-block and the period it relates to (valuation point). Before making a notification to enter the TPR, EEA branches and cross border service firms can make an estimate of the tariff data for the fee-blocks that they have identified as applying to them and use the thresholds and indicative fee-rates to calculate the periodic fees that would be payable under those fee-blocks. Total periodic fees payable will be the sum of the fees under the fee-blocks that apply to them.

Table C: Funds in the TPR – periodic fees

3. Before making a notification to enter the TPR, Table C will enable an estimate to be made of the indicative periodic fees payable by funds in TPR.

Basis of indicative periodic fee-rates

4. The indicative periodic fee rates in this Annex are based on the fee-rates for the 2018/19 fee-year. They will therefore differ from the actual 2019/20 fee rates which will be consulted on in our April 2019 fees rates CP.

Table A: TP firms – current passport activities mapped to fee-blocks

Fee-blocks	(i)	Directive (ii)	Passported activity (ii)
A.1 Deposit acceptors	DR	CRD	1 – Taking deposits and other repayable funds from the public
A.2 Home finance providers and administrators	Solo	CRD	2 – Lending
A.3 Insurers – general	DR	SII	1 – Taking up and carrying on direct non-life insurance business 2 – Classes 1 to 18 of non-life insurance business in Point A of Annex 1 to the Solvency II Directive

Fee-blocks	(i)	Directive (ii)	Passported activity (ii)
A.4 Insurers – life	DR	SII	1 – Taking up and carrying on direct life insurance business 2 – Classes I to IX of direct life insurance business in Annex II to the Solvency II Directive
A.7 Portfolio managers	Solo	CRD	11 – Portfolio management and advice 12 – Safekeeping and administration of securities 14 – Safe custody services
		MiFID	4 – Portfolio management
		MiFID (ancillary services)	1 – Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/ collateral management (iii) 7 – Investment services and activities as well as ancillary services of the type included under Section A or B of Annex 1 related to the underlying of the derivatives included under Section C 5, 6, 7 and 10 – where these are connected to the provision of investment or ancillary services
		UCITS	1 – The management of UCITS in the form of unit trusts/common funds or of investment companies; this includes the function mentioned in Annex 11 of the UCITS Directive 2 – Managing portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section C of Annex I to MiFID 4 – Safekeeping and administration services in relation to units of collective investment undertakings (iii)
		AIFMD	1 – AIFM management functions 2 – Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement in accordance with article 19(1) of Directive 2003/41/ EC, in accordance with mandates given by investors on a discretionary client-by-client basis 4 – Safe-keeping and administration in relation to shares or units of collective investment undertakings (iii)
A.9 Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes	Solo	UCITS	1 – as fee-block A.7
		AIFMD	1 – as fee-block A.7

Fee-blocks	(i)	Directive (ii)	Passported activity (ii)
A.10 Firms dealing as principal (iv)	Solo & DR	CRD IV	7 – Trading for own account or for account of customers in: (a) money market instruments (b) foreign exchange (c) financial futures and options (d) exchange and interest rate instruments (e) transferable securities 8 – Participation in share issues and the provision of services relating to such issues
		MiFID	3 – Dealing on own account 6 – Underwriting of financial instruments and/ or placing of financial instruments on a firm commitment basis
		MiFID (ancillary services)	4 – Foreign exchange services where these are connected with the provision of investment services
A.13 Advisory arrangers, dealers or brokers	Solo	CRD	7 and 8 – as fee-block A.10 10 – Money broking 11 – Portfolio management and advice
		MiFID	1 – Reception and transmission of orders in relation to one or more financial instruments 2 – Execution of orders on behalf of clients 4 – Portfolio management 5 – Investment advice 6 – as fee-block A.10 7 – Placing of financial instruments without a firm commitment basis
		MiFID (ancillary services)	4 – Foreign exchange services where these are connected with the provision of investment services 5 – Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments 7 – as fee-block A.7
		UCITS	1 – as fee-block A.7 2 – as fee-block A.7 3 – Investment advice concerning one or more of the instruments listed in Section C of Annex I to MiFID.
		AIFMD	2 – as fee-block A.7 3 – Investment advice 5 – Reception and transmission or orders in relation to financial instruments.
A.14 Corporate finance advisors	Solo	CRD	9- Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings

Fee-blocks	(i)	Directive (ii)	Passported activity (ii)
		MiFID (ancillary services)	3 – Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings 6 – Services related to underwriting
A.18 Home finance providers, advisers and arrangers	Solo	CRD	2 – Lending
		MCD	1 – Acting as credit intermediary
A.19 General insurance mediation	Solo	IDD	1– Introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance or reinsurance 1A – Advising on contracts of insurance or reinsurance 2 – Concluding contracts of insurance or reinsurance 3 – Assisting in the administration and performance of contracts of insurance or reinsurance, in particular in the event of a claim
CC2. Consumer credit – full permission	Solo	CRD	2 – Lending 13 – Credit reference services
		MCD	1 – Acting as credit intermediary
G.2 Certain deposit acceptors	Solo	Full credit institutions that are European Economic Area (EAA) firms	
G.3 Large payment institutions and registered account information service providers	Solo	EAA authorised payment institutions EAA registered account information service provider	
G.10 Large electronic money institutions	Solo	EAA authorised electronic money institutions	

Notes:

(i) Solo = FCA solo-regulated fee-block activities. DR = fee-block activities that are dual-regulated by the FCA for conduct purposes and the Prudential Regulation Authority (PRA) for prudential purposes.

(ii) Directive and passported activity against each fee-block represent those set out in SUP Appendix 3[112] for:

a. CRD – Capital Requirements Directive
b. SII – Solvency II Directive
c. MiFID – Markets in Financial Instruments Directive
d. UCITS – UCITS Directive
e. AIFMD – Alternative Investment Fund Managers Directive
f. MCD – Mortgage Credit Directive
g. IDD – Insurance Distribution Directive

(iii) Allocated to the fee-block if this is the only passported activity the firm is carrying out.

(iv) Includes certain investment firms that have been designated by the PRA to be regulated by the PRA for prudential purposes.

112 www.handbook.fca.org.uk/handbook/SUP/App/3/?view=chapter

Table B: TP firms – tariff base, valuation point, indicative fee-rate

Fee-blocks (i)	Tariff base (i)	Valuation point (i)	Thresholds and indicative fee-rates (ii)	
A.1 Deposit acceptors	Modified eligible liabilities (MELs)	MELs) valued at: for a firm which reports monthly, the average of the MELs for October, November and December; for a firm which reports quarterly, the MELs for December.	Band width (£million of MELs)	Fee (£/£m or part £m of MELs)
			>10 – 140	14.5780
			>140 – 630	14.5780
			>630 – 1,580	14.5780
			>1,580 – 13,400	18.2230
			>13,400	24.0540
A.2 Home finance providers and administrators	Number of mortgages or other home finance transactions	Number of mortgages, home purchase plans, home reversion plans and regulated sale and rent back agreements entered into in the twelve months ending 31 December. **AND** Number of mortgages, home purchase plans, home reversion plans and regulated sale and rent back agreements being administered on 31 December.	Band width (No. of mortgages and/ or home finance transactions)	Fee (£/mortgage)
			>50	2.473
A.3 Insurers – general	Gross written premium (GWP)	The firm's gross written premium for fees purposes and its best estimate liabilities for fees purposes for the firm's financial year which ends in the calendar year to 31 December prior to commencement of the fee year.	Band Width (£million of GWP)	Fee (£/m or part £m of GWP)
			>0.5	331.1700
			PLUS:	
	Best estimate liabilities (BEL)		Band Width (£million of BEL)	Fee (£/£m or part £m of BEL)
			>1	18.0760
A.4 Insurers – life	Gross written premium	For UK Solvency II firms, including composite UK Solvency II firms to the extent that they are required to report data used for this tariff base, the firm's gross written premium for fees purposes and its best estimate liabilities for fees purposes, for the firm's financial year which ends in the calendar year to 31 December prior to commencement of the fee year	Band Width (£million of GWP)	Fee (£/£m or part £m of GWP)
			>1	262.0000
			PLUS:	
	Best estimate liabilities		Band Width (£million of BEL)	Fee (£/£m or part £m of BEL)
			>1	8.2440
A.7 Portfolio managers	Funds under management (FuM)	FuM, valued at 31 December.	Band Width (£million FuM)	Fee (£/£m or part £m of FuM)
			>10	5.6880

Fee-blocks (i)	Tariff base (i)	Valuation point (i)	Thresholds and indicative fee-rates (ii)	
A.9 Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes	Gross income (GI)	Annual GI for the financial year ended in the calendar year ending 31 December.	Band Width (£million of GI)	Fee (£/£m or part £m of GI)
			>1	814.6600
A.10 Firms dealing as principal (ii)	Traders	Number of traders as at 31 December.	Band Width (No. of traders)	Fee (£/person)
			>1	5420.5810
A.13 Advisory arrangers, dealers or brokers	Annual income	Annual income (AI) for the financial year ended in the calendar year ending 31 December.	Band Width (£thousand of AI)	Fee (£/£thousand or part £thousand of AI)
			>100	2.5526
A.14 Corporate finance advisors	Annual income		Band Width (£thousand of AI)	Fee (£/£thousand or part £thousand of AI)
			>100	1.631
A.18 Home finance providers, advisers and arrangers	Annual income		Band Width (£thousand of AI)	Fee (£/£thousand or part £thousand of AI)
			>100	11.0310
A.19 General insurance mediation	Annual income		Band Width (£thousand of AI)	Fee (£/£thousand or part £thousand of AI)
			>100	1.6065
Minimum fee: For firms in one or more of the fee-blocks A.1 to A.19 (iii)				£1,128
CC2. Consumer credit – full permission	Annual income	Annual income (AI) for the financial year ended in the calendar year ending 31 December.	Band Width (£thousand of AI)	Fee (£)
			0 – 50	312
			>50 – 100	520
			>100	1,040
			PLUS:	
				Fee (£/£thousand or part £thousand of AI)
			>250	1.30
G.2 Certain deposit acceptors	Modified eligible liabilities (MELs)	MELs valued at: for a firm which reports monthly, the average of the MELs for October, November and December; for a firm which reports quarterly, the MELs for December.	Minimum fee (£)	515
			£million or part £m MELS)	Fee (£/£m or part £m of MELS)
			> 0.1	0.5172

Fee-blocks (i)	Tariff base (i)	Valuation point (i)	Thresholds and indicative fee-rates (ii)	
G.3 Large payment institutions and registered account information service providers	Relevant Income	Relevant income (RI) for the financial year ended in the calendar year ending 31 December.	Minimum fee (£)	515
			£thousand or part thousand of RI	Fee (£/£thousand or part £thousand of RI)
			> 100	0.3568
G.10 Large electronic money institutions	Average outstanding electronic money (AOEM)	31 December	Minimum fee (£)	1,692
			£million or part m of AOEM	Fee (£/£m, or part £m of AOEM)
			>5.0	79.7200

(i) Full definitions of fee-blocks, tariff base and valuation can be found in the following sections of the FEES Manual:

a. For A.1 to A.19 and CC2 – FEES 4 Annex 1A www.handbook.fca.org.uk/handbook/FEES/4/Annex1A.html

b. For G.2, G.3, and G.10 – FEES 4 Annex 11 www.handbook.fca.org.uk/handbook/FEES/4/Annex11.html

(ii) These indicative fee rates are based on the fee rates for the 2018/19 fee-year. The draft 2019/20 periodic fee rates will be consulted in our April 2019 fees rates CP. Those draft periodic fee rates will be set to raise the 2019/20 AFR to fund our work programme published in our 2019/20 Business Plan at the same time as the fee rates CP.

(iii) If a firm's reported tariff data is below the minimum size threshold in all of the A.1 to A.19 fee-blocks that they come under they only pay the minimum fee. Firms which are dual regulated by the FCA and PRA will pay 50% of the minimum fee.

Table C: Funds in the TPR – periodic fees

Scheme type	Basic fee (£)	Total funds/ sub-funds aggregate	Indicative fee (£)
EEA UCITS scheme recognised under Part 6 of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018. [Aligned to current section 264 of FSMA, schemes]	386	1-2	386
		3-6	965
		7-15	1,930
		16-50	4,246
		>50	8,492

Schemes charged according to the number of funds or sub-funds which a TP firm is operating and marketing into the UK as at 31 March immediately before the start of the period to which the fee applies. For example, for 2019/20 fees a reference to 31 March means 31 March 2019.

Scheme type	Fee (£)
EEA AIF, EuVECA, EuSEF, or EEA ELTIF which may be marketed in the *UK* under Part 9A of The Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018. [Aligned to these funds currently not paying periodic fees]	0

(i) EEA UCITS – European Economic Area, Undertakings for Collective Investment in Transferable Securities

(ii) FSMA - Financial Services and Markets Act 2000

(iii) EEA AIF – EEA Alternative Investment Fund

(iv) EuVECA - European Venture Capital Fund

(v) EuSEF - European Social Entrepreneurship Funds

(vi) EEA ELTIF – EEA EU European Long-Term Investment Fund

Annex 5
Single Financial Guidance Body – indicative 2019/20 levy rates

1. The Single Financial Guidance Body (SFGB) levy is made up of the:

- SFGB money advice levy
- SFGB debt advice levy
- SFGB pensions guidance levy

2. The fee-blocks used for these SFGB levies mirror those used for FCA periodic fees set out in Annex 4. Before making a notification to enter the TPR, EEA branches and cross border service firms can use the same tariff data used to calculate FCA periodic fees in Annex 4 together with the indicative levy rates in the table below to calculate the SFGB levies payable under the fee-blocks identified. The total SFGB levies payable will be the sum of the levies under the fee-blocks that apply to them.

3. The indicative SFGB levy rates in this Annex are based on the levy rates for the 2018/19 fee-year. They will therefore differ from the actual 2019/20 levy rates which will be consulted on in our April 2019 fees rates CP.

Fee-blocks for SFGB money advice levy	**Thresholds and indicative levy-rates**	
A.1 Deposit acceptors	Band width (£million of MELs)	Levy (£/£m or part £m of MELs)
	>10	1.53400
A.2 Home finance providers and administrators	Band width (No. of mortgages and/ or home finance transactions)	Levy (£/mortgage)
	>50	0.593
A.3 Insurers – general	Band Width (£million of GWP)	Levy (£/m or part £m of GWP)
	>0.5	30.73000
	PLUS:	
	Band Width (£million of BEL)	Levy (£/£m or part £m of BEL)
	>1	1.69000
A.4 Insurers – life	Band Width (£million of GWP)	Levy (£/£m or part £m of GWP)
	>1	20.42000
	PLUS:	
	Band Width (£million of BEL)	Levy (£/£m or part £m of BEL)
	>1	0.64180
A.7 Portfolio managers	Band Width (£million FuM)	Levy (£/£m or part £m of FuM)
	>10	0.16180
A.9 Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes	Band Width (£million of GI)	Levy (£/£m or part £m of GI)
	>1	92.42000
A.10 Firms dealing as principal	Band Width (No. of traders)	Levy (£/person)
	>1	146.63000

A.13 Advisory arrangers, dealers or brokers	Band Width (£thousand of AI)	Levy (£/£ thousand or part £ thousand of AI)
	>100	0.07030
A.14 Corporate finance advisors	Band Width (£thousand of AI)	Levy (£/£thousand or part £thousand of AI)
	>100	0.031
A.18 Home finance providers, advisers and arrangers	Band Width (£thousand of AI)	Levy (£/£thousand or part £ thousand of AI)
	>100	0.21080
A.19 General insurance mediation	Band Width (£thousand of AI)	Levy (£/£thousand or part £thousand of AI)
	>100	0.03792
Minimum fee: For firms in one or more of the fee-blocks A.1 to A.19		£10
CC2. Consumer credit – full permission	Minimum fee	£10
	PLUS:	
		Levy (£/£thousand or part £thousand of AI)
	>250	0.102
G.3 Large payment institutions and registered account information service providers	Minimum fee (£)	10
	£thousand or part £thousand of RI	Levy (£/£thousand or part £thousand of RI)
	> 100	0.02887
G.10 Large electronic money institutions	Minimum fee (£)	10
	£million or part m of AOEM	Levy (£/£m, or part £m of AOEM)
	>5.0	7.30000
Fee-blocks for SFGB debt advice levy	**Thresholds and indicative levy fee-rates**	
A.2 Home finance providers and administrators	Band width (No. of mortgages and/ or home finance transactions)	Levy (£/mortgage)
	>50	21.13
CC3. Consumer credit lending (i)	Band width (£million of value of lending)	Levy (£/£m or part £m of value of lending)
	>0	109.96
Fee-blocks for SFGB pensions guidance levy	**Thresholds and indicative fee-rates**	
A.1 Deposit acceptors	Band width (£million of MELs)	Levy (£/£m or part £m of MELs)
	>10	1.258
A.4 Insurers – life	Band Width (£million of GWP)	Levy (£/£m or part £m of GWP)
	>1	32.887
A.7 Portfolio managers	Band Width (£million FuM)	Levy (£/£m or part £m of FuM)
	>10	0.4811
A.9 Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes	Band Width (£million of GI)	Levy (£/£m or part £m of GI)
	>1	190.995
A.13 Advisory arrangers, dealers or brokers	Band Width (£thousand of AI)	Levy (£/£thousand or part £thousand of AI)
	>100	0.0673

(i) The full definition of fee-block CC3 together with tariff base and valuation point can be found in FEES 7A Annex 2 www.handbook.fca.org.uk/handbook/FEES/7A/Annex2.html

Annex 6
Abbreviations in this paper

ADR	Alternative Dispute Resolution (Scheme)
AEI	Annual Eligible Income
AFR	Annual funding requirement
AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive
APR	Approved Persons Regime
BCD	Banking Consolidation Directive
BIPRU	Prudential Sourcebook for Banks, Building Societies and Investment Firms (FCA Handbook)
BTS	Binding Technical Standards
CASS	Client Assets Sourcebook (FCA Handbook)
CBA	Cost benefit analysis
CJ	Compulsory Jurisdiction (of the Financial Ombudsmen Service)
CMAR	Client Money and Asset Return
COBS	Conduct of Business Sourcebook (FCA Handbook)
COLL	Collective Investment Schemes Sourcebook (FCA Handbook)
CP	Consultation Paper
CRD	Capital Requirements Directive
DWP	Department of Work and Pensions
EEA	European Economic Area

ELTIF	EU European Long-Term Investment Fund
EMD	Electronic Money Directive
EMR	Electronic Money Regulations
EMI	Electronic Money Institution
EU	European Union
EuSEF	European Social Entrepreneurship Funds
EUVECA	European Venture Capital Fund
FEES	Fees Manual (FCA Handbook)
FRP	Financial Regulators Powers (Statutory Instrument)
FSA	Financial Services Authority
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
GEN	General Provisions (FCA Handbook)
HMT	Her Majesty's Treasury
IDD	Insurance Distribution Directive
IMD	Insurance Mediation Directive
IML	Illegal money lending (levy)
IP	Insolvency practitioner
LRRA	Legislative and Regulatory Reform Act 2006
MAS	Money Advice Service
MiFID II	Markets in Financial Instruments Directive II
MiFIR	Markets in Financial Instruments Regulation
MLRO	Money Laundering Reporting Officer
MMF	Money Market Funds Regulation

NPPR	National Private Placement Regime
NURS	Non-UCITS Retail Scheme
PRA	Prudential Regulation Authority
PSD2	Payments Services Directive
QIS	Qualified Investor Scheme
PI	Payment Institution
PRA	Prudential Regulation Authority
PRIN	Principles for Businesses (FCA Handbook)
PSR	Payment Services Regulations
RAISP	Registered Account Information Service Provider
RAO	Regulated Activities Order
RTS	Regulatory Technical Standards
S2	Solvency II Directive
SFGB	Single Financial Guidance Body
SI	Statutory Instrument
SM&CR	Senior Managers & Certification Regime
SPF	Special project fee
SUP	Supervision Manual (FCA Handbook)
TPR	Temporary Permissions Regime
UCITS	Undertakings for Collective Investment in Transferable Securities
VJ	Voluntary Jurisdiction (of the Financial Ombudsmen Service)
VoP	Variation of Permission

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

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

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

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

Appendix 1
Draft Handbook text

EXITING THE EUROPEAN UNION: TEMPORARY PERMISSION (GENERAL RULES) INSTRUMENT 2019

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under the:

(1) following sections of the Financial Services and Markets Act 2000 ("the Act"):

(a) section 137A (The FCA's general rules);
(b) section 137B (FCA General rules: clients' money, right to rescind etc);
(c) section 137R (Financial promotion rules);
(d) section 137SA (Rules to recover expenses - single financial guidance body);
(e) 137T (General supplementary powers);
(f) section 139A (Power of the FCA to give guidance);
(g) section 266 (disapplication of rules in relation to recognised schemes);
(h) section 333T (Funding of action against illegal money lending);
(i) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and

(2) relevant powers and related provisions referred to in schedule 4 to the General Provisions of the FCA Handbook.

B. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [29 March 2019 at 11pm].

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Principles for Business (PRIN)	Annex B
General Provisions (GEN)	Annex C
Fees manual (FEES)	Annex D
Client Assets sourcebook (CASS)	Annex E

Notes

E. In this instrument, notes shown as "*Editor's note*:" or as "**Note**:" are intended for the convenience of the reader and do not form part of the legislative text.

Citation

F. This instrument may be cited as the Exiting The European Union: Temporary Permission (General Rules) Instrument 2019.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

In Part 1 of this Annex, underlining indicates new text.

[*Editor's note*: Part 1 of this Annex takes account of the changes proposed in CP18/28 'Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation' (October 2018) as if they were made.]

Part 1

Amend the following definitions as shown.

Home State	(1)	…
	(17)	(in relation to a *TP firm*) the *EEA State* that was indicated by the *EU* measure under which, immediately before *exit day*, the *TP firm* derived its authorisation to carry on a *regulated activity* in the *UK*.
permission	(1)	permission to carry on *regulated activities*; that is, any of the following:
		…
	(2)	the authorisation that a *TP AIFM qualifier* has under regulation 78B of the *AIFMD UK regulation*.

Part 2

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

CASS large TP firm	has the meaning in *CASS* 14.2.8R (CASS firm types).
CASS medium TP firm	has the meaning in *CASS* 14.2.8R (CASS firm types).
CASS small TP firm	has the meaning in *CASS* 14.2.8R (CASS firm types).
TA EMI firm	a *person* who has *temporary EMI authorisation.*
TA PI firm	a *person* who has *temporary PI authorisation.*
TA RAISP firm	a *person* who has *temporary RAISP registration*.

temporary EMI authorisation	(in accordance with paragraph 2 of Part 1 of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018) authorisation under regulation 9 of the Electronic Money Regulations 2011 that a *person* is to be taken as having under that paragraph in the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.
temporary permission	(in accordance with regulation 8 or 11 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018) *Part 4A permission* (or variation to that *permission*) that a *person* is treated as having under that article of those Regulations.
temporary PI authorisation	(in accordance with paragraph 14(2)(a)(i) of Part 2 of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018) authorisation under the Payment Services Regulations 2017 that a *person* is taken as having under that paragraph in the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.
temporary RAISP registration	(in accordance with paragraph 14(2)(a)(ii) of Part 2 of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018) registration under the Payment Services Regulations 2017 that a *person* is taken as having under that paragraph in the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.
TPCAR	a Temporary Permissions Client Assets Return, containing the information specified in *CASS* 14 Annex 1.
TP AIFM qualifier	an *EEA AIFM* which is *marketing*, or has *marketed*, an *AIF* in the *UK* by: (a) exercising its right to *market* in relation to funds referred to in paragraph (2) of regulation 78A of the *AIFMD UK regulation*; and (b) is not exercising a right to manage a *UK AIF* under *temporary permission*.
TP firm	(in accordance with regulation 8 or 11 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018) a *person* who has *temporary permission*.
TP person	(in *FEES*) any of the following: (1) a *TP firm*; (2) a *TA EMI firm*;

(3) a *TA PI firm;*

(4) a *TA RAISP firm*; and

(5) a *TPR fund*.

TP UCITS qualifier a *firm* (other than a *firm* which manages a *scheme* under a *temporary permission*) which:

(a) for the time being is an *operator*, *trustee* or *depositary* of a *scheme* which is temporarily recognised under Part 6 of the Collective Investment Schemes (Amendment) (EU Exit) Regulations 2018; and

(b) is an *authorised person* as a result of Part 7 of those Regulations;

a reference to a *firm* as a "*TP UCITS qualifier*" applies in relation to the carrying on by the *firm* of activities for which it has *permission* in that capacity.

TPR fund (in *FEES*) any of the following:

(1) an *EEA UCITS scheme* recognised under Part 6 of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018; or

(2) an *EEA AIF, EuVECA, EuSEF,* or *EEA ELTIF* which may be marketed in the *UK* under Part 9A of The Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018.

TPR IML levy the levy payable to the *FCA* under *FEES* 13A.

TPR SFGB debt advice levy the amount payable to the *FCA* by a firm to which *FEES* 7B.3 (The TPR SFGB money advice levy and debt advice levy) and *FEES* 7B Annex 2R apply.

TPR SFGB levy the levy payable to the *FCA* under *FEES* 7B.

TPR SFGB money advice levy the amount payable to the *FCA* by a *firm* to which *FEES* 7B.3 (The TPR SFGB money advice levy and debt advice levy) and *FEES* 7B Annex 1R apply.

TPR SFGB pensions guidance levy the amount payable to the *FCA* by a firm to which *FEES* 7B.4 (The TPR SFGB pensions guidance levy) applies.

Annex B

Amendments to the Principles for Businesses sourcebook (PRIN)

In this Annex underlining indicates new text.

3 Rules about application

3.1 Who?

…

3.1.9 R *PRIN* applies to a *TP firm*, except that *Principle* 4 only applies to the extent that a *TP firm* is subject to *rules* relating to capital adequacy.

3.1.10 R Only *Principles* 1, 2, 3, 7, 9 and 11 apply to a *TP UCITS qualifier* and a *TP AIFM qualifier*, and only with respect to the activities in *PRIN* 3.2.2R (Communication and approval of financial promotions).

3.1.11 G For the purposes of *PRIN* 3.1.9, a *TP firm* should refer to *GEN* 2.2.30R and *GEN* 2.2.31G to determine which *rules* relating to capital adequacy apply to it.

…

3.3 Where?

…

3.3.3 R Notwithstanding *PRIN* 3.3.1R, *PRIN* applies to:

(1) a *TP firm* with respect to activities carried on from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*;

(2) a *TP firm* with respect to services provided into the *United Kingdom* by the *firm* from an establishment in an *EEA State*; and

(3) a *TP AIFM qualifier* or a *TP UCITS qualifier* with respect to the *firm's* activities in relation to the *AIF* or *scheme* in question, in the *United Kingdom*.

…

Annex C

Amendments to the General Provisions

In Part 1 of this Annex underlining indicates new text and striking through indicates deleted text.

[*Editor's note*: the text in Part 1 of this Annex is not proposed in this instrument but instead is proposed in the instrument included in CP18/28 'Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation' (October 2018). We include it here only for information because we refer to this approach in this CP and to show readers MiFID related rules deriving from EU regulations that will apply when a TP firm obtains Part 4A authorisation from the appropriate regulator.]

Part 1

Amend the following as shown.

2.2 Interpreting the Handbook

…

~~EU~~ Onshored Regulations and third country firms

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

…

(2) Paragraph (1) does not apply:

(a) to the extent *MiFIR* or an ~~*EU regulation*~~ *onshored regulation* ~~adopted under~~ previously deriving from *MiFIR* or *MiFID* imposes a specific requirement in relation to a *third country investment firm*; and

(b) to ~~*EU regulations*~~ *onshored regulations* which were previously *EU regulations* adopted under ~~articles~~ article 7~~, 34 and 35~~ of *MiFID*

…

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

(5) In relation to *TP firms GEN* 2.2.22AR(1) does not apply requirements imposed by and under *MiFIR* or by the *MiFID Org Regulation* in

addition to those referred to in article 2A to 2E *MiFIR* and article 1(3) to (5) of the *MiFID Org Regulation*.

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

(2) …

Part 2

In Part 2 of this Annex the text is new and not shown underlined.

Rules applying while a firm has temporary permission: the General Rules

2.2.26 R Unless the contrary intention appears, a *rule* does not apply to a *TP firm* except that:

(1) A *rule* which imposed an obligation on a *person* immediately before *exit day* who becomes a *TP firm* continues to apply to the *TP firm* to the same extent and to the same activities to which the *rule* applied at that time.

(2) In addition, a *rule* which deals with a matter which immediately before *exit day* was reserved to the *Home State* of the *firm* (or of the *EEA state* where it has the establishment from which the service is provided) under an *EU* directive also applies to a *TP firm* if and to the extent that that *rule*:

(a) applies to a *UK firm* (or other cognate expression) that carries on the same *regulated activity* as the *TP firm*; and

(b) immediately before *exit day*, implemented a provision of an *EU* directive (disregarding any provision of a directive which allocates responsibility between different member states).

(3) A *TP firm* which carries on an activity from its *UK branch* (or that of its *appointed representative*) does not contravene a *rule* applied by (2) to the extent that:

(a) at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* (or its *appointed representative*) complied with or applied a provision which

implements the same provision of the relevant directive reserved to its *Home State* and imposed by that state's law; and

(b) the *firm's* compliance with or application of the provision covers the *firm's* activities provided from its *UK branch* (or that of its *appointed representative*).

(4) A *TP firm* which carries on an activity other than from its *UK branch* (or that of its *appointed representative*) into the *United Kingdom* does not contravene a *rule* applied by (2) to the extent that:

(a) at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* complied with or applied a provision which implements the same provision of the relevant directive reserved to its *Home State* (or of the state where it has the establishment from which the service is provided) and imposed by that state's law; and

(b) the *firm's* compliance with or application of the provision covers the *firm's* activities in the *UK* (or that of its *appointed representative*).

(5) A *rule* in (3) or (4) does not apply unless a *TP firm* can demonstrate to the *FCA* that, at the relevant time, it complied with or applied a provision in (3) or (4) to the extent referred to there.

Amendments to rules applied by the General Rules

2.2.27 R (1) A *rule* applied by *GEN* 2.2.26R(1) or *GEN* 2.2.26R(2):

(a) applies with any amendment made to the *rule* in question which comes into force on *exit day* to address an issue resulting from the *UK's* withdrawal from the *European Union*;

(b) applies until it is deleted after *exit day,* or where a *rule* is amended or replaced after *exit day* it continues to apply as amended or replaced unless the *rule* states that it does not apply; and

(c) only applies to the *firm's* activities carried on from a *UK branch* (maintained by the *firm* or by its *appointed representative*) or carried on other than from a *UK branch* into the *UK* (by the *firm* or its *appointed representative*).

(2) Apart from in *COMP* and *FEES* 6, where a *rule* (or paragraph of a *rule*) applied by *GEN* 2.2.26R(1) or *GEN* 2.2.26R(2):

(a) only applied to a *person* who becomes a *TP firm*; and

(b) is deleted on *exit day*;

deletion is disregarded and it continues to apply to the *TP firm*; and references in the *rule* (or paragraph of the *rule*) to the *EU* or to an *EU* matter or thing are deemed to be references to the *UK* or a *UK* matter or thing, as the case may be.

Modification of rules applied by the General Rules in cases of conflict

2.2.28 R (1) Where a *rule* in *GEN* 2.2.26R(1) applies and:

(a) as a result of an amendment which comes into force on *exit day* which removes a reference to a matter in relation to the *EEA*; and

(b) it is no longer practicable for the *TP firm* to comply with the *rule* because of the amendment,

the *firm* may treat the *rule,* to the extent necessary, as if it continued to refer to a matter in relation to the *EEA*.

(2) Where a *rule* applied by *GEN* 2.2.26R(1) contradicts a *rule* applied by *GEN* 2.2.26R(2), to the extent necessary the *rule* in *GEN* 2.2.26R(2) does not apply.

(3) Where as a result of the *UK's* withdrawal from the *EU* different provisions (than those which applied to the *person* immediately before *exit day*) apply in an *EEA State* to a *TP firm* and if as a result of complying with a *rule* applied by *GEN* 2.2.26R(2) the *firm* would contravene a provision in that *EEA State*, the *rule* in *GEN* 2.2.26R(2), to the extent necessary, does not apply.

MiFID technical standards

2.2.29 R (1) The provisions, as amended on or after *exit day*, in (2) apply to a *TP firm* which is an *EEA MiFID investment firm* as if it were a *MiFID investment firm* when the following conditions are met:

(a) where it carries on *MiFID or equivalent third country business*; and

(b) that business is carried on from a *UK branch* (maintained by the *firm* or its *appointed representative*) or, where it is carried on other than from a *UK branch*, that business is provided into the *United Kingdom* (by the *firm* or its *appointed representative*).

(2) The provisions referred to in (1) are technical standards deriving from previously adopted *EU regulations* under *MiFID* which are retained EU law, except:

(a) those deriving from previously adopted *EU regulations* under article 7 of *MiFID*;

(b) those deriving from previously adopted *EU regulations* under article 32(2) and (3) of *MiFID* where they apply to a *firm* other than a *TP firm operating an organised trading facility* or acting as a *systematic internaliser* from a *branch* in the *United Kingdom*; or

(c) to the extent that their application to a *TP firm* would be inconsistent with the application to that *firm* of Chapter 5 of the *MiFID Org Regulation* or *MAR* 10.4.

(3) A *TP firm* which carries on business from a *UK branch* (maintained by the *firm* or its *appointed representative*) does not contravene a *rule* applied by (1) to the extent that:

(a) at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* complied with or applied the same provision of the relevant measure referred to in (2) applied by its *Home State*; and

(b) the *firm's* compliance with or application of the provision covers the *firm's* activities provided from the *UK branch* (maintained by the *firm* or its *appointed representative*).

(4) A *TP firm* which carries on business other than from a *UK branch* into the *United Kingdom* (by the *firm* or its *appointed representative*) does not contravene a *rule* applied by (1) to the extent that:

(a) at the time the *firm* was required to comply with the *rule* ("the relevant time"), the *firm* complied with or applied the same provision of the relevant measure referred to in (2) applied by its *Home State*; and

(b) the *firm's* compliance with or application of the provision covers the *firm's* or its *appointed representative's* activities in the *UK*.

(5) A *rule* in (3) or (4) does not apply unless a *TP firm* can demonstrate to the *FCA* that, at the relevant time, it complied with or applied a provision in (3) or (4) to the extent referred to there.

(6) Neither of paragraphs (3) and (5) apply to *rules* applied by (1) which are provisions deriving from previously adopted *EU regulations* under article 27 of *MiFID*.

Rules and guidance applying while a firm has temporary permission – capital adequacy requirements

2.2.30 R (1) Nothing in *GENPRU*, *BIPRU*, *IFPRU*, *INSPRU*, *MIPRU*, *IPRU(FSOC)*, *IPRU(INS)* or *IPRU(INV)* applies to a *TP firm*, except for the provisions in (2).

(2) To the extent *a TP firm* carries on the relevant *regulated activity*, the following apply by virtue of *GEN* 2.2.26R:

(a) *INSPRU* 1.5.33R;

(b) *MIPRU*;

(c) *IPRU(FSOC)*; and

(d) *IPRU(INV)* 5, 6, 9, 12 and13, except that *rules* relating to capital adequacy in these chapters, which would apply to a *TP firm* through the operation of *GEN* 2.2.26R(2), do not apply to that *TP firm*. Specifically, the financial resources requirements for *depositaries* of *UCITS schemes* and *depositaries* of certain *AIFs* in *IPRU(INV)* 5, and requirements involving the holding of professional indemnity insurance which relate to capital adequacy in *IPRU(INV)* 9 and 13.

2.2.31 G (1) *GEN* 2.2.30R operates by excluding the application of the sourcebooks contained in the Prudential Standards part of the *FCA Handbook*, except for the sourcebooks or parts of sourcebooks referred to in *GEN* 2.2.30R(2).

(2) The sourcebooks referred to in *GEN* 2.2.30R(2) contain *rules* that may apply to a *TP firm* either by virtue of *GEN* 2.2.26R(1) if they applied to that *firm* immediately before *exit day*, or *rules* that may apply to a *TP firm* by virtue of *GEN* 2.2.26R(2) if the conditions in that provision are met, and the *rule* does not relate to capital adequacy.

(3) The approach in *GEN* 2.2.30R to applying *rules* relating to capital adequacy to a *TP firm* is generally to ensure that the *firm* is only subject to those *rules* that applied to it immediately before *exit day*. Therefore, a *TP firm* will not be subject to additional capital adequacy requirements to those that applied to the *firm* immediately before *exit day*.

(4) The sourcebooks referred to in *GEN* 2.2.30R(2) contain some *rules* which do not relate to capital adequacy. Such *rules* may apply to *TP firms* by virtue of *GEN* 2.2.26R. Certain of these *rules* may apply to *TP firms* by virtue of *GEN* 2.2.26R(2), as follows:

(a) *rules* in *MIPRU* 2.2 (Allocation of the responsibility for insurance distribution activity or MCD credit intermediation activity);

(b) certain of the *rules* in *MIPRU* 3.2 (Professional indemnity insurance requirements);

(c) *rules* in *MIPRU* 5.2 (Use of intermediaries); and

(d) certain of the *rules* in *IPRU(INV)* 13.1 (Application, general requirements and professional indemnity insurance requirements).

(5) The sourcebooks contained in the Prudential Standards part of the *FCA Handbook* are not the only sourcebooks which include *rules* relating to capital adequacy. For example, see the *rules* in *CONC* 10 and *MAR* 8. The capital adequacy requirements in such other sourcebooks may apply to a *TP firm* by virtue of *GEN* 2.2.26R, to the extent the *firm* carries on the relevant *regulated activity*. However, a *TP firm* will not be subject to additional capital adequacy requirements to those that applied to the *firm* immediately before *exit day*.

(6) For the purpose of this *guidance*, *rules* relating to capital adequacy comprise *rules* relating to the adequacy of a *firm's* financial resources, including both capital resources and liquidity resources. However, *rules* relating to capital adequacy do not include *rules* involving the holding of professional indemnity insurance, except where such *rules* are tied to capital adequacy requirements by a form of optionality (for examples of such *rules*, see *IPRU(INV)* 9.2.4R and *IPRU(INV)* 13.1A.3R). Therefore, *rules* involving the holding of professional indemnity insurance may apply to a *TP firm* by virtue of *GEN* 2.2.26R, but if such *rules* are tied to capital adequacy requirements, they cannot apply by virtue of *GEN* 2.2.26R(2).

Rules applying while a firm has temporary recognition – general – TP UCITS qualifiers and TP AIFM qualifiers

2.2.32 R Unless the contrary intention appears, a *rule* does not apply to a *TP UCITS qualifier* or a *TP AIFM qualifier*, except that a *rule* which imposed an obligation on a *person* immediately before *exit day* who becomes a *TP UCITS qualifier* or a *TP AIFM qualifier* continues to apply to that *person* to the same extent and to the same activities to which the *rule* applied at that time.

Amendments to rules applied to TP AIFM qualifiers and TP UCITS qualifiers

2.2.33 R (1) A *rule* applied by *GEN* 2.2.32R:

(a) applies with any amendment made to the *rule* in question which comes into force on *exit day* arising from the *United Kingdom's* exit from the *European Union*;

(b) applies until it is deleted after *exit day,* or, where a *rule* is amended or replaced after *exit day*, it continues to apply as amended or replaced unless the *rule* states that it does not apply; and

(c) only applies to the *firm's* activities in relation to the *AIF* or the *scheme* in the *United Kingdom*.

(2) Apart from in *COMP* and *FEES* 6, where a *rule* (or paragraph of a *rule*) applied by *GEN* 2.2.32R:

(a) only applied to a *person* who becomes a *TP UCITS qualifier* or a *person* that becomes a *TP AIFM qualifier*; and

(b) is deleted on *exit day*;

deletion is disregarded and it continues to apply to that *person*; and references in the *rule* (or paragraph of the *rule*) to the *EU* or to an *EU* matter or thing are deemed to be references to the *UK* or a *UK* matter or thing, as the case may be.

Modification of rules applied to TP AIFM qualifiers and TP UCITS qualifiers

2.2.34 R (1) Where a *rule* in *GEN* 2.2.32R applies and:

(a) as a result of an amendment which comes into force on *exit day* which removes a reference to a matter in relation to the *EEA*; and

(b) it is no longer practicable for the *TP UCITS qualifier* or the *TP AIFM qualifier* to comply with the *rule* because of the amendment,

the *TP UCITS qualifier* or the *TP AIFM qualifier* may treat the *rule,* to the extent necessary, as if it continued to refer to a matter in relation to the *EEA*.

(2) If as a result of:

(a) the *UK's* withdrawal from the *EU*; and

(b) complying with a *rule* applied by *GEN* 2.2.32R,

a *TP UCITS qualifier* or a *TP AIFM qualifier* would contravene a provision in its *Home State*, the *rule* applied by *GEN* 2.2.32R which caused the contravention, to the extent necessary, does not apply.

Guidance applying while a firm has temporary permission

2.2.35 R Unless the contrary intention appears, *guidance* does not apply to a *TP firm,* a *TP UCITS qualifier* or a *TP AIFM qualifier* except that:

(1) *guidance* on or in connection with a *rule* applied by *GEN* 2.2.26R(1) applies to a *TP firm* to the same extent as that *rule*;

(2) *guidance* on or in connection with a *rule* applied by *GEN* 2.2.26R(2) applies to a *TP firm* to the same extent as that *rule*;

(3) *guidance* on or in connection with a *rule* applied by *GEN* 2.2.32R applies to a *TP UCITS qualifier* and a *TP AIFM qualifier* to the same extent as that *rule*; and

(4) to the extent that an enactment, other than a *rule,* applies to both a *TP firm* and a *firm* with a *Part 4A permission* granted by the *FCA* or *PRA, guidance* on, or in connection with, that enactment (or relevant part of that enactment) applies to a *TP firm* to the same extent as it applies to a *firm* with Part 4A permission granted by the *FCA* or *PRA*. To the extent an enactment is modified for the purposes of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, *guidance* on, or in connection with, that enactment must be read subject to those modifications. This provision applies mutatis mutandis to *guidance* which applies to a *TP UCITS qualifier* or a *TP AIFM qualifier*.

Purpose

2.2.36 G (1) The approach to what *rules* apply to *TP firms* is broadly to apply *rules* to *TP firms* which applied to them immediately prior to the *UK's* exit from the *EU*, whether those *rules* applied in the *United Kingdom* (as was the case for host state *rules*) or, where rules are directive-based, in the *firm's Home State* or, where relevant, the state where the *branch* is located from which the *firm's* service is provided.

(2) *GEN* 2.2.26R (1) and *GEN* 2.2.33R refer to "a *rule* which imposed an obligation on a *person"* this is to distinguish a *rule* which imposes substantive obligations from a *rule* which sets out the application of *rules*.

(3) *GEN* 2.2.26R to *GEN* 2.2.35R apply *rules* and *guidance* to *firms* which before *exit day* had passporting rights by virtue of the Treaty on the Functioning of the European Union, or of that Treaty as applied by the Agreement on the European Economic Area signed at Oporto on 2 May 1992 whose parties consist of the EEA States.

(4) The application of *rules* and *guidance* to *TP firms* must be read in the light of the purpose of *temporary permission*, which is to allow *TP firms* to continue to carry on *regulated activities* in the *United Kingdom*, or of the purpose of the temporary recognition regime for *TP UCITS qualifiers* or for *TP AIFM qualifiers* to continue to

market funds in the *United Kingdom.* In each case that purpose takes into account that the legal framework underpinning cross border financial services has changed because the *Treaty*, EU regulations and EU directives no longer apply in the *United Kingdom* by virtue of EU law.

(5) The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 preserve the scope of authorisation of an EEA-based *firm* which qualified for authorisation under Schedule 3 or 4 to the *Act*. Those Regulations do not extend the means by which a *TP firm* can carry on *regulated activities* in the *United Kingdom*, which remain limited (leaving aside top-up permission) to those which were available under the Treaty on the Functioning of the European Union, for example, a *firm* carrying on *regulated activities* in the *United Kingdom* from an establishment outside of the *EEA* cannot rely upon this means to do so.

(6) The General Rules apply where *regulated activities* have been amended on *exit day*, because the purpose of *temporary permission* is to enable *TP firms* to continue to carry on such *regulated activities* in the *United Kingdom*.

2.2.37 G (1) The approach in these *rules* is a general one and does not apply where a *rule* states explicitly that a different provision applies to such a *firm* or that position is stated in relation to the *rule*.

(2) The effect of *GEN* 2.2.26R(1) and *GEN* 2.2.32R also includes a *rule* which applied immediately before *exit day* to a *firm's* activity beyond the activity that was its permitted activity under Schedule 3 (or its permitted activity under Schedule 4 to the *Act* or beyond the activity that was permitted under paragraph 2(1) of Schedule 5 to the *Act*). For example, where such a *firm* had a *Part 4A permission* for that other activity before *exit day* (i.e. it had a top-up permission).

(3) None of *GEN* 2.2.26R(1), *GEN* 2.2.26R(2) and *GEN* 2.2.32R prevent changes being made to the *rules* that apply to such *firms* on and after *exit day*.

(4) The effect of *GEN* 2.2.26R(2) is to apply a *rule* to the extent it implemented an EU directive and notwithstanding that before *exit day* the matter was reserved to the *Home State* or to the state where the *branch* from which the service is provided is situated. A *rule* which the *FCA* imposes by virtue of a national discretion set out in a directive is to be taken as a *rule* which implements a directive. To the extent a *rule* goes beyond what is necessary to implement a directive, it does not apply as a result of *GEN* 2.2.26R(2).

(5) The General Rules do not apply in certain cases, where the *FCA* has decided specific *rules* must apply to *TP firms*, and instead in those cases a tailored approach to the specific *rules* to be applied is

appropriate, for example, in relation to the application of our Principles for Businesses.

(6) The General Rules set out in *GEN* 2.2.26R do not address EEA fund managers which only market funds in the *UK* without carrying on any *regulated activity* here (e.g. without managing any funds). The definition of *TP firm* does not include a *person* which was a recognised scheme under section 264 of the *Act* and a *person* which exercised its right only to market an *AIF* in the *UK* in accordance with Schedule 3 to the *Act*. *Persons* when only marketing are defined for these *rules* and *guidance* as *TP UCITS qualifiers* and *TP AIFM qualifiers*, and are covered by *GEN* 2.2.32R, *GEN* 2.2.33R, *GEN* 2.2.34R and *GEN* 2.2.35R.

(7) An example of a matter falling within *GEN* 2.2.28R(1) or *GEN* 2.2.34R(1) may be a *rule* which on *exit day* (as a result of an amendment made under the European Union (Withdrawal) Act 2018) then only refers to membership of a UK professional body. Where *GEN* 2.2.28R(1) or *GEN* 2.2.34R(1) applies, the *firm* may treat the *rule* in question as if it continued to refer to an EEA professional body.

(8) In determining the *rules* that apply to them by virtue of *GEN* 2.2.26R(1), *TP firms* may as a starting point find it helpful to refer to the table in *SUP* 13A Annex 1 (Rules that apply to incoming EEA firms) as it applied immediately before *exit day*. However, the table will not apply in its entirety to each *TP firm*, for example, because a *TP firm* with top-up permission (see paragraph (2)) needs to continue to comply with *rules* that applied in relation to that activity before *exit day*, and specified *rules* referred to in the table were deleted on exit day and are not applied by the General Rules as set out in *GEN* 2.2.27R(2)), namely those in *COMP* and *FEES* 6.

(9) In determining the *rules* that apply to them by virtue of *GEN* 2.2.26R(2), *TP firms* may as a starting point find it helpful to refer to the table in *SUP* 13A Annex 2G (Matters reserved to the home state) as it applied immediately before *exit day*.

Annex D

Amendments to the Fees manual (FEES)

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

1 Fees Manual

1.1 Application and Purpose

1.1.1 G …

(4A) *FEES* 4A relates to periodic fees for a *TP person*.

…

(9) *FEES* 7B relates to the *TPR SFGB levy*.

…

Application

1.1.2 R …

(8) *FEES* 7B (in relation to the *TPR SFGB money advice levy* and *TPR SFGB debt advice levy* only) apply to:

(a) *TP firms*;

(b) *TA EMI firms*;

(c) *TA PI firms*; and

(d) *TA RAISP firms.*

(9) *FEES* 7B (in relation to the *TPR SFGB pensions guidance levy* only) applies to firms referred to in *FEES* 7B.1.2R.

…

2 General Provisions

2.2 Late Payments and Recovery of Unpaid Fees

2.2.1 R If a *person* does not pay the total amount of any periodic fee, *FOS* levy, or share of the *FSCS* levy, *CFEB levy* or *SFGB levy*, before the end of the date on which it is due, under the relevant provision in *FEES* 4, 4A, 5, 6, 7, ~~or~~ 7A~~,~~ or 7B, that person must pay an additional amount as follows:

…

…

Recovery of Fees

2.2.3 G

(1) Paragraph 23(8) of Schedule 1ZA of the *Act* permits the *FCA* to recover fees (including fees relating to *payment services*, the issuance of *electronic money*, *CBTL firms*, *data reporting services providers*, *designated credit reference agencies*, *designated finance platforms* and, where relevant, *FOS* levies, *CFEB levies*, ~~and~~ *SFGB levies* and *TPR SFGB levies*).

…

…

2.4 VAT

2.4.1 R All fees payable or any stated hourly rate under *FEES 3* (Application, notification and vetting fees), *FEES 4* (Periodic fees), FEES 4A (Periodic fees for *TP persons*), *FEES* 7 (The CFEB levy), ~~and~~ *FEES 7A* (The *SFGB levy*) and *FEES 7B* (The Temporary Permissions Regime SFGB levy) are stated net of VAT. Where VAT is applicable this must also be included.

After FEES 4 (Periodic fees) insert the following new chapter. The text is not underlined.

4A Temporary Permissions Regime (TPR) – periodic fees

4A.1 Introduction

Application

4A.1.1 R This chapter applies to *TP persons*.

Purpose

4A.1.2 G The purpose of this chapter is to set out the requirements on *TP persons* to pay periodic fees.

4A.1.3 G The detail of the special project fees payable by certain *TP persons* is set out in *FEES* 4A Annex 3R.

4A.2 Obligation to pay periodic fees

4A.2.1 R A *TP person* must pay periodic fees applicable to it:

(1) in full and without deduction by 1 August or, if later, within 30 days of the *fee year* to which the sum relates, unless modified by *FEES* 4A.2.2R; and

(2) in accordance with the *rules* in this chapter.

A *TP person* must pay any special project fees applicable to it under *FEES* 4A Annex 3R.

4A.2.2 R If a *TP firm*'s periodic fee for the previous financial year was at least £50,000, the *TP firm* must pay:

(1) an amount equal to 50% of the periodic fee payable for the previous year, by 1 April (or if later, within 30 days of the date of the invoice) in the *financial year* to which the sum due under *FEES* 4A.2.1R relates; and

(2) the balance of the periodic fee due for the current *financial year* by 1 September (or if later, within 30 days of the date of the invoice) in the *financial year* to which that sum relates.

Calculation of periodic fees for TP persons, excluding TPR funds

4A.2.3 R Periodic fees for *TP persons,* excluding *TPR funds,* are calculated as follows:

(1) identify each of the activity groups set out in Parts 1, 3 and 4 of *FEES* 4A Annex 1R that apply to the business of the *TP person* (excluding *TPR funds*) for the relevant period (for this purpose, the activity groups under *FEES* 4A Annex 1R are defined in accordance with Part 1 of *FEES* 4 Annex 1AR and Part 2 of *FEES* 4 Annex 11R);

(2) calculate the size of the *TP person's* tariff base for the activity groups identified under (1) using:

(a) the tariff base calculations in Part 3 of *FEES* 4 Annex 1AR and Part 3 of *FEES* 4 Annex 11R; and

(b) the valuation date requirements in Part 5 of *FEES* 4 Annex 1AR and Part 4 of *FEES* 4 Annex 11R;

(3) multiply the value of the *TP person's* tariff base by the rate applicable to each band of tariff base under *FEES* 4A Annex 1R;

(4) work out whether a minimum fee is payable under Part 2 of *FEES* 4A Annex 1R and if so how much;

(5) add together the fixed sums, as set out in the tables in Parts 1, 3 and 4 of *FEES* 4A Annex 1R, applicable to each band identified under (1);

(6) add together the amounts in (3), (4), and (5); and

(7) the amount in (6) is the amount of periodic fees payable by the *TP person.*

4A.2.4 R For the purposes of *FEES* 4A.2.3R:

(1) a *TP person* may apply the relevant tariff bases and rates to its non-*UK* business, as well as to its *UK* business, if:

(a) it has reasonable grounds for believing that the costs of identifying the *TP person's UK* business separately from its non-*UK* business in the way described in Part 3 of *FEES* 4 Annex 1AR and Part 3 of *FEES* 4 Annex 11R are disproportionate to the difference in fees payable; and

(b) it notifies the *FCA* in writing at the same time as it provides the information concerned under *FEES* 4A.2.5R, or, if earlier, at the time it pays the fees concerned.

(2) for a *TP person* which has not complied with *FEES* 4A.2.5R for this period, the periodic fee is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10.

Information on which TP person's periodic fees are calculated

4A.2.5 R A *TP person*, excluding *TPR funds*, must notify to the *FCA* (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*) the value (as at the valuation date specified in Part 5 of *FEES* 4 Annex 1AR and Part 4 of *FEES* 4 Annex 11R) of each element of business on which the periodic fee payable by the *TP person* is to be calculated.

4A.2.6 R A *TP person* must send to the *FCA* (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*) in writing the information required under *FEES* 4A.2.3R as soon as reasonably practicable, and in any event within two *months*, after the date specified as the valuation date in Part 5 of *FEES* 4 Annex 1AR and Part 4 of *FEES* 4 Annex 11R in relation to fees payable to the *FCA.*

4A.2.7 R For a *TP person* which has not complied with *FEES* 4A.2.6R for the period covered by *FEES* 4A Annex 1R:

(1) the fee is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10; and

(2) an additional fee of £250 is payable, unless the *TP person* also pays periodic fees under the *PRA Rulebook* in which case an additional fee of £125 is payable instead.

4A.2.8 R If a *TP person,* other than a *TPR fund,* is subject to *Solvency II Directive* in activity group A.3 or A.4 and the *PRA* or the *FCA* has either:

(1) not received the necessary tariff data on a timely basis in line with Part 3 and 5 of *FEES* 4 Annex 1AR; or

(2) deemed the tariff data received to be incomplete or insufficiently reliable, by reference to a specific *TP person* or across all or part of the activity group, the *FCA* may use tariff data from the previous reporting period for the periodic fees calculation.

Periodic fees commencement

4A.2.9 R Periodic fees payable by *TP persons* under *FEES* 4A.2.1R relate to the whole of any fee year and are due for payment from the commencement of the fee year. Any payment made under *FEES* 4A.2.1R is not refundable.

Periodic fees for TPR funds

4A.2.10 R Periodic fees for *TPR funds* are set out in *FEES* 4A Annex 2R.

FEES 4 rules incorporated into FEES 4A by cross-reference

4A.2.11 G The *FCA Handbook* provisions relating to the periodic fees for *TP persons* in *FEES* 4A are meant to follow closely the provisions relating to the general provisions under *FEES* 4. For brevity, not all of the provisions in *FEES* 4 are set out again in *FEES* 4A. In some cases, certain *FEES* 4 rules are applied to the payment of the periodic fees for *TP persons* by individual rules in *FEES* 4A. The rest are set out in the table in *FEES* 4A.2.13R.

4A.2.12 R The *FEES* 2 and *FEES* 4 *rules* set out in the table in *FEES* 4A.2.13R and any other *rules* in *FEES* 4 included in *FEES* 4A by cross-reference apply to the periodic fees for *TP persons* in the same way as they apply to periodic fees payable under *FEES* 4.

4A.2.13 R Table of rules in *FEES* 4 that also apply to *FEES* 4A to the extent that in *FEES* 4 they apply to *fees* payable to the *FCA*

FEES 4 rules incorporated into *FEES* 4A	Description	Applicable to *TP persons* other than *TPR funds*	Applicable to *TPR funds*

FEES 4.2.4R	Method of payment	Yes	Yes
FEES 4.2.10R	Extension of time	Yes	Yes
FEES 4.3.7R	Groups of *firms*	Yes	No
FEES 4.3.17R	*Firms* acquiring business from other *firms*	Yes	No

4A Annex 1R TP persons periodic fees for the period from 1 April 2019 to 31 March 2020

Part 1

Activity group	Fee payable	
A.1	Band Width (£ million of Modified Eligible Liabilities (MELs))	Fee (£/£m or part £m of MELs)
		General Periodic fee
	>10 - 140	[tbc]
	>140 - 630	[tbc]
	>630 – 1,580	[tbc]
	>1,580 – 13,400	[tbc]
	>13,400	[tbc]
A.2	Band Width (no. of mortgages and/or *home finance transactions*)	Fee (£/mortgage)
	>50	[tbc]
A.3	Gross written premium for fees purposes (GWP)	Periodic fee
	Band Width (£ million of GPI)	Fee (£/£m or part £m of GWP)
	>0.5	[tbc]
	PLUS	

	Best estimate liabilities for fees purposes (BEL)	General Periodic fee
	Band Width (£ million of BEL)	Fee (£/£m of part £m of BEL)
	>1	[tbc]
A.4	Gross written premium for fees purposes (GWP)	General Periodic fee
	Band Width (£ million of GWP)	Fee (£/£m or part £m of GWP)
	>1	[tbc]
	PLUS	
	Best estimate liabilities for fees purposes	General Periodic fee
	Band Width (£ million of BEL)	Fee (£/£m or part £m of BEL)
	>1	[tbc]
A.7	For class 1(C), (2), (3) and (4) *firms*:	
	Band Width (£ million of Funds under Management (FuM))	Fee (£/£m of part £m of FuM)
	>10	[tbc]
	Class 1 (C) firms are defined in *FEES 4 Annex 1A*	
A.9	Band Width (£ million of Gross Income (GI))	Fee (£/£m of part £m of GI)
	>1	[tbc]
A.10	Band Width (no. of traders)	Fee (£/trader)
	>1	[tbc]
A.13	For class (2) firms	
	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]

	For a *professional firm* in A.13 the fee is calculated as above less 10%.	
A.14	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	> 100	[tbc]
A.18	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]
A.19	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]
	more than £100 billion	[tbc]
CC.2	Band Width (£ thousands of annual income (AI))	Fee (£)
	0 - 50	[tbc]
	>50 - 100	[tbc]
	>100	[tbc]
	PLUS:	
		Fee (£/£ thousand or part £ thousand of AI)
	>250	[tbc]

Part 2

The table below shows the tariff rates (minimum fees) applicable to each of the fee blocks set out in Part 1 of *FEES* 4A Annex 1R other than fee-block CC2.

Activity group	Fee payable
A.0	£[tbc] unless it is a *TP firm* that also pays minimum fees set out in the PRA Rulebook in which case it is £[tbc].

Part 3

TA PI firm or *TA RAISP firm*

Activity group	Fee payable	
G.2	Minimum fee (£)	[tbc]
	£ million or part £ million of Modified Eligible Liabilities (MELs)	Fee (£/£m or part £m of MELs)
	>0.1	[tbc]
	>10 -140	[tbc]
G.3	Minimum fee (£)	[tbc]
	£ thousands or part £ thousand of Relevant Income	Fee (£/£thousand or part £ thousand of Relevant Income)
	>100	[tbc]

Part 4

TA EMI firm

Activity group	Fee payable	
G.10	Minimum fee (£)	[tbc]
	£ million or part £ million of average outstanding electronic money (AOEM)	Fee (£/£m or part £m of AOEM)
	>5.0	[tbc]

4A Annex 2R **TPR funds periodic fees for the period from 1 April 2019 to 31 March 2020**

Part 1

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fee (£)

EEA UCITS scheme recognised under Part 6 of The Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018	[tbc]	1-2	[tbc]
		3-6	[tbc]
		7-15	[tbc]
		16-50	[tbc]
		>50	[tbc]
Note: Schemes are charged according to the number of funds or sub-funds which a TP firm is operating and marketing in the UK as at 31 March immediately before the start of the period to which the fee applies. For example, for 2019/20 fees a reference to 31 March means 31 March 2019.			

Part 2

Scheme type	Fee (£)
EEA AIF, EuVECA, EuSEF, or *EEA ELTIF* which may be marketed in the *UK* under Part 9A of The Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018	0

4A Annex 3R Special Project Fee for restructuring

(1) R		The Special Project Fee for restructuring (the SPFR) is only payable by a *TP firm or TA PI firm* in one of the following categories:
	(a)	if it is in any of the A fee-blocks (as defined in Part 1 of *FEES* 4 Annex 1AR); or
	(b)	if it is in fee-block G.3 (as defined in *FEES* 4 Annex 11).
(2) R		The SPFR becomes payable by a *TP firm or TA PI firm* falling into (1)(a) or (b) if it engages in, or prepares to engage in, activity which involves it undertaking or making arrangements with a view to any of the following:
	(a)	raising additional capital; or
	(b)	a significant restructuring of the *TP firm* or *TA PI firm* or the *group* to which it belongs, including:

		(i) mergers or acquisitions;
		(ii) reorganising the *TP firm's* or *TA PI firm's group* structure;
		(iv) a significant change to the *TP firm's* or *TA PI firm's* business model; and
		(v) a significant internal change programme.
(3) R		No SPFR is payable under (2) if the transaction only involves the *TP firm* or *TA PI firm* seeking to raise capital within the *group* to which it belongs.
(4) R		Where the transaction in (2) involves raising capital outside the *TP firm* or *TA PI firm* to which the *TP firm* or *TA PI firm* belongs, any SPFR in relation to that transaction is only payable by the largest *TP firm* or *TA PI firm* in that *group*. The largest *firm* is the one that pays the highest periodic fee in the *fee year* in which the bill is raised. For the purpose of the calculation in (9), all time spent and fees and disbursements incurred in relation to the *group* are added together.
(5) R		The definition of *group* is limited for the purposes of calculating the SPFR to *parent undertakings* and their *subsidiary undertakings*.
(6) R		The *FCA* will levy its own SPFR separate to any levy issued by the *PRA*, and this may be in relation to the same event or circumstance.
(7) R		No SPFR is payable to the *FCA*:
	(a)	if the amount calculated in accordance with (8) in relation to the regulatory work conducted by the *FCA* totals less than £25,000 in the case of a *TP firm* in fee-blocks A.1 or A.3 or A.4, or £50,000 in the case of a *TP firm* in any of the other A fee-blocks; or
	(b)	for time spent giving *guidance* to the *TP firm* or *TA PI firm* in relation to the same matter if the *FCA* has charged that *TP firm* or *TA PI firm* for that *guidance*.
(8) R		The SPFR for the *FCA* is calculated as follows:

	(a)	Determine the number of hours, or part of an hour, taken by the *FCA* in relation to regulatory work conducted as a consequence of the activities referred to in (2).
	(b)	Next, multiply the applicable rate in the table at (11) by the number of hours or part hours obtained under (a).
	(c)	Then add any fees and disbursements invoiced to the *FCA* by any *person* in respect of services performed by that *person* for the *FCA* in relation to assisting the *FCA* in performing the regulatory work referred to in (a).
	(d)	The resulting figure is the fee.
	(e)	The number of hours or part hours referred to in (a) are the number of hours or part hours as recorded on the *FCA's* systems in relation to the regulatory work referred to in (a).
(9) R		The first column in the table at (10) sets out the relevant pay grades of those employed by the *FCA* and the second column sets out the hourly rates chargeable in respect of those pay grades.
(10) R	Table of *FCA* hourly rates:	
	FCA pay grade	Hourly rate (£)
	Administrator	45
	Associate	75
	Technical Specialist	130
	Manager	145
	Any other person employed by the *FCA*	255
(11) G	The obligation to pay the SPFR is ongoing. Accordingly, there is no limitation on the number of times that the *FCA* may invoice a *TP firm* or *TA PI firm* for the SPFR in	

	relation to the same events or circumstances referred to in (2). If the *FCA* does so, there is a single floor under (7)(a) and not a separate one for each instalment.
(12) G	If the SPFR is payable, the full amount calculated under (8) is payable, and not just the excess over £50,000 or £25,000.

After FEES 7A (SFGB levies) insert the following new chapter. The text is not underlined.

7B Temporary Permissions Regime (TPR) - Single Financial Guidance Body levy

7B.1 Application and purpose

Application

7B.1.1 R This chapter applies to the *persons* listed in:

(1) *FEES* 1.1.2R(8) in relation to the *TPR SFGB money advice levy* and *TPR SFGB debt advice levy*; and

(2) *FEES* 7B.1.2R in relation to the *TPR SFGB pensions guidance levy*.

7B.1.2 R The *TPR SFGB pensions guidance levy* applies to a *TP firm* that falls within one or more of the following activity groups listed in Part 1 of *FEES* 4 Annex 1AR:

(1) A.1 Deposit acceptors;

(2) A.4 Insurers - life;

(3) A.7 Portfolio managers except Class (1)A firms;

(4) A.9 Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes; and

(5) A.13 Advisors, arrangers, dealers or brokers.

Purpose

7B.1.3 G The purpose of this chapter is to set out the requirements on the *persons* listed in *FEES* 7B.1.1R to fund the Secretary of State costs relating to the *SFGB*, and the related *FCA* collection costs.

Background

7B.1.4 G Under section 137SA(1) (Rules to recover expenses relating to the single financial guidance body) of the *Act*, the Secretary of State may, from time to time, notify the *FCA* of the expenses incurred, or expected to be incurred, in connection with the operation of the *SFGB* or under section 11 of the Financial Guidance and Claims Act 2018. Expenses arise under section 11 when the Secretary of State:

(1) pays grants or makes loans, or gives any other form of financial assistance, to meet expenditure in connection with the establishment of the *SFGB*; and

(2) pays grants or makes loans, or gives any other form of financial assistance, to the *SFGB* for the purpose of enabling the *SFGB* to carry out its functions.

7B.1.5 G When the Secretary of State has notified the *FCA* under section 137SA(1), under subsections (2) and (3) the *FCA* must make rules requiring *authorised persons*, *electronic money issuers* or *payment service providers* (or any specified class of the same) to pay specified sums, or sums calculated in a specified way to the *FCA* with a view to recovering:

(1) the amount notified by the Secretary of State; and

(2) expenses incurred by the *FCA* in connection with its functions under section 137SA of the *Act*.

7B.1.6 G This chapter contains the *rules* referred to in *FEES* 7B.1.4G(2).

7B.1.7 G Under section 137SA(8) of the *Act*, the *FCA* must pay to the Secretary of State the amounts that it receives pursuant to the *rules* in this chapter, apart from amounts covering its collection costs (which the *FCA* may keep).

7A.1.8 G The total amount raised by the *TPR SFGB levy* may vary from year to year depending on the amount notified to the *FCA* by the Secretary of State.

7B.2 The TPR SFGB levy

7B.2.1 R The *TPR SFGB levy* is made up of:

(1) The *TPR SFGB money advice levy*, as set out in *FEES* 7B.3;

(2) The *TPR SFGB debt advice levy*, as set out in *FEES* 7B.3; and

(3) The *TPR SFGB pensions guidance levy*, as set out in *FEES* 7B.4.

7B.3 The TPR SFGB money advice levy and debt advice levy

Obligation to pay TPR SFGB money advice levy or debt advice levy

7B.3.1 R A *firm* must pay the *TPR SFGB money advice levy* or *TPR SFGB debt advice levy* applicable to it:

(1) in full and without deduction by 1 August (or, if later, within 30 days of the date of the invoice) in the *financial year* to which the sum relates, unless modified by *FEES* 7B.3.2R; and

(2) in accordance with the *rules* in this chapter.

7B.3.2 R If a *firm's TPR SFGB money advice levy* or *TPR SFGB debt advice levy* for the previous *financial year* was at least £50,000, the *firm* must pay:

(1) an amount equal to 50% of the *TPR SFGB money advice levy* or *TPR SFGB debt advice levy* payable for the previous year, by 1 April (or if later, within 30 days of the date of the invoice) in the *financial year* to which the sum due under *FEES* 7B.3.1R relates; and

(2) the balance of the *TPR SFGB money advice levy* or *TPR SFGB debt advice levy* due for the current *financial year* by 1 September (or if later, within 30 days of the date of the invoice) in the *financial year* to which that sum relates.

Calculation of the TPR SFGB money advice levy and debt advice levy

7B.3.3 R The *TPR SFGB money advice levy* and *TPR SFGB debt advice levy* are each calculated as follows:

(1) identify each of the activity groups set out in Parts 1 to 3 of *FEES* 7B Annex 1R and Part 1 of *FEES* 7B Annex 2R that apply to the business of the *firm* for the relevant period (for this purpose, the activity groups under *FEES* 7B Annex 1R are defined in accordance with Part 1 of *FEES* 4 Annex 1AR and Parts 2 and 2A of *FEES* 4 Annex 11R, and the activity groups under *FEES* 7B Annex 2R are defined in accordance with Part 1 of that Annex);

(2) calculate, for each of those activity groups identified in (1), the amount payable in the way set out in *FEES* 7B.3.4R;

(3) add each of the amounts calculated under (2);

(4) work out whether a minimum fee is payable under Parts 2 to 4 of *FEES* 7B Annex 1R and if so how much; and

(5) add together the amounts calculated under (3) and (4).

7B.3.4 R The amount payable by a *firm* with respect to a particular activity group is calculated as follows:

(1) calculate the size of the *firm*'s tariff base for that activity group using:

(a) the tariff base calculations in Part 3 of *FEES* 4 Annex 1AR, Part 3 of *FEES* 4 Annex 11R and Part 2 of *FEES* 7B Annex 2R; and

(b) the valuation date requirements in Part 5 of *FEES* 4 Annex 1AR, Part 4 of *FEES* 4 Annex 11R and Part 3 of *FEES* 7B Annex 2R;

(2) use the figure in (1) to calculate which of the bands set out in the tables in Parts 1 to 3 of *FEES* 7B Annex 1R and Part 4 of *FEES* 7B Annex 2R the *firm* falls into;

(3) add together the fixed sums, as set out in the tables in Parts 1 to 3 of *FEES* 7B Annex 1R and Part 4 of *FEES* 7B Annex 2R, applicable to each band identified under (2);

(4) the amount in (3) is the amount payable by the *firm* with respect to that activity group.

7B.3.5 R For the purposes of *FEES* 7B.3.4R:

(1) a *firm* may apply the relevant tariff bases and rates to its non-*UK* business, as well as to its *UK* business, if:

(a) it has reasonable grounds for believing that the costs of identifying its *UK* business separately from its non-*UK* business in the way described in Part 3 of *FEES* 4 Annex 1AR, Part 3 of *FEES* 4 Annex 11R and Part 2 of *FEES* 7B Annex 2R are disproportionate to the difference in fees payable; and

(b) it notifies the *FCA* in writing at the same time as it provides the information concerned under *FEES* 7B.3.4R(1), or, if earlier, at the time it pays the *TPR SFGB money advice levy* or *TPR SFGB debt advice levy* applicable to it.

(2) for a *firm* which has not complied with *FEES* 7B.3.4R(1) for this period, the *TPR SFGB money advice levy* and *TPR SFGB debt advice levy* is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10.

TPR SFGB money advice levy and TPR SFGB debt advice levy commencement

7B.3.6 R The *TPR SFGB money advice levy* and *TPR SFGB debt advice levy* under *FEES 7B* relate to the whole of any *fee year* and are due for

payment from the commencement of the fee year. Any payment made under *FEES* 7B.3.1R is not refundable.

7B.4 The TPR SFGB pensions guidance advice levy

Obligation to pay TPR SFGB pensions guidance levy

7B.4.1 R A firm must pay the *TPR SFGB pensions guidance levy* applicable to it:

(1) in full and without deduction by 1 August (or, if later, within 30 days of the date of the invoice) in the *financial year* to which the sum relates; and

(2) in accordance with the *rules* in this section.

Calculation of TPR SFGB pensions guidance levy

7B.4.2 R The *TPR SFGB pensions guidance levy* applicable to a particular *firm* is calculated as follows:

(1) identify each of the activity groups in *FEES* 7B.1.2R(2) that apply to the business of the *firm* for the relevant period;

(2) calculate the amount payable under *FEES* 7B.4.3R for each of those activity groups;

(3) add together each of the amounts calculated under (2).

7B.4.3 R The amount payable for a particular activity group is calculated as follows:

(1) (a) calculate the size of the *firm*'s tariff base for the activity group using:

(i) the tariff base calculations in Part 3 of *FEES* 4 Annex 1R; and

(ii) the valuation date requirements in Part 5 of *FEES* 4 Annex 1AR;

(b) exclude best estimate liabilities for fees purposes in the calculation for fee-block A4;

(2) use the figure in (1) to calculate the levy applicable for each band in *FEES* 7B Annex 3R;

(3) add together the sums for each applicable band under (2);

(4) the amount in (3) is the amount payable by the *firm* for that activity group.

7B.4.4 R For the purposes of *FEES* 7B.4.3R:

(1) a *firm* may apply the relevant tariff bases and rates to its non-*UK* business, as well as to its *UK* business, if:

(a) it has reasonable grounds for believing that the costs of identifying its *UK* business separately from its non-*UK* business in the way described in Part 3 of *FEES* 4 Annex 1AR are disproportionate to the difference in fees payable; and

(b) it notifies the *FCA* in writing at the same time as it provides the information concerned under FEES 7B.4.4R(1), or, if earlier, at the time it pays the *TPR SFGB pensions guidance levy* applicable to it.

(2) for a *firm* which has not complied with *FEES* 7B.4.3R(1) for this period, the *TPR SFGB pensions guidance levy* is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10.

7B.4.5 R The *TPR SFGB pensions guidance levy* is calculated using the same information that is used to calculate a *firm's* periodic fee under *FEES* 4.

TPR SFGB pensions guidance levy commencement

7B.4.6 R The *TPR SFGB pensions guidance levy* under *FEES* 7B relates to the whole of any fee year and is due for payment from the commencement of the fee year. Any payment made under *FEES* 7B.4.1R is not refundable.

7B.5 FEES 4 rules incorporated into FEES 7B by cross-reference

7B.5.1 R The *Handbook* provisions relating to *FEES* 7B are meant to follow closely the provisions relating to the payment of the periodic fees in *FEES* 4. In the interests of brevity, not all of these provisions are set out again in *FEES* 7B. In some cases, certain *FEES* 4 *rules* are applied to the payment of the *TPR SFGB money advice levy, TPR SFGB debt advice levy* and *TPR SFGB pensions guidance levy* by individual rules in *FEES* 7B. The rest are set out in the table in *FEES* 7B.5.3R.

7B.5.2 R The *rules* set out in the table in *FEES* 7B.5.3R and any other *rules* in *FEES* 4 included in *FEES* 7B by cross-reference apply to the *TPR SFGB money advice levy, TPR SFGB debt advice levy* and *TPR SFGB pensions guidance levy* in the same way as they apply to periodic fees payable under *FEES* 4.

7B.5.3 R Table of rules in *FEES* 4 that also apply to *FEES* 7B to the extent that in *FEES* 4 they apply to fees payable to the *FCA*

FEES 4 rules incorporated into FEES 7B	Description

FEES 4.2.4R	Method of payment
FEES 4.2.10R	Extension of time
FEES 4.3.7R	Groups of firms
FEES 4.3.17R	Firms acquiring businesses from other firms

7B Annex 1R **TPR SFGB money advice levy for the period from 1 April 2019 to 31 March 2020**

This table shows the *TPR SFGB money advice levy* applicable to each activity group (fee-block).

Activity group	TPR SFGB money advice levy payable	
Part 1 *TP firms*		
A.1	Band Width (£ million of Modified Eligible Liabilities (MELs))	Fee (£/£m or part £m of MELs)
	>10	[tbc]
A.2	Band Width (no. of mortgages and/or *home finance transactions*)	Fee (£/mortgage)
	>50	[tbc]
A.3	Gross written premium for fees purposes (GWP	
	Band Width (£ million of GWP)	Fee (£/£m or part £m of GWP)
	>0.5	[tbc]
	PLUS	
	Best estimate liabilities for fees purposes (BEL)	

	Band Width (£ million of BEL)	Fee (£/£m of part £m of BEL)
	>1	[tbc]
A.4	Gross written premium for fees purposes (GWP)	
	Band Width (£ million of GWP)	Fee (£/£m or part £m of GWP)
	>1	[tbc]
	PLUS	
	Best estimate liabilities for fees purposes (BEL)	
	Band Width (£ million of BEL)	Fee (£/£m or part £m of BEL)
	>1	[tbc]
A.7	For class 1(C), (2), (3) and (4) *firms*:	
	Band Width (£ million of Funds under Management (FuM))	Fee (£/£m of part £m of FuM)
	>10	[tbc]
	Class 1(C) firms are defined in *FEES* 4 Annex 1AR.	
A.9	Band Width (£ million of Gross Income (GI))	Fee (£/£m of part £m of GI)
	>1	[tbc]
A.10	Band Width (no. of traders)	Fee (£/trader)
	>1	[tbc]

A.13	For class (2) firms	
	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]
	For a *professional firm* in A.13 the fee is calculated as above less 10%.	
A.14	Band Width (£ thousands of annual income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]
A.18	Band Width (£ thousands of Annual Income (AI))	Fee ((£/£ thousand or part £ thousand of AI)
	>100	[tbc]
A.19	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100	[tbc]
CC.2	Minimum fee (£)	[tbc]
	£ thousands of annual income (AI)	Fee (£/£ thousand or part £ thousand of AI
	>250	[tbc]
Part 2 *TA PI firms* and *TA RAISP firms*		
G.3	Minimum fee (£)	[tbc]

	£ thousands or part £ thousand of Relevant Income	Fee (£/£thousand or part £ thousand of Relevant Income)
	>100	[tbc]
Part 3 *TA EMI firms*		
G.10	Minimum fee (£)	[tbc]
	£ million or part £m of average outstanding electronic money (AOEM)	Fee (£/£m or part £m of AOEM)
	>5.0	[tbc]
	£ thousands of annual income (AI)	Fee (£/£ thousand or part £ thousand of AI
	>250	[tbc]

Part 4	
(1)	This Part sets out the minimum *TPR SFGB money advice levy* applicable to the *TPR firms* specified in (3) below.
(2)	The minimum *TPR SFGB money advice levy* payable by any *firm* referred to in (3) is £[tbc].
(3)	A *TP firm* is referred to in this paragraph if it falls within the following activity groups: A.1; A.2; A.3; A.4; A.7; A.9; A.10; A.13; A.14; A.18; and A.19.

7B Annex 2R TPR SFGB debt advice levy for the period from 1 April 2019 to 31 March 2020

This table shows the *TPR SFGB debt advice levy* applicable to each activity group (fee-block).

Part 1

Activity group	A *TP firm* falls in the activity group if:
A.2 Home finance providers and administrators	It falls under activity group A.2 as defined in Part 1 of *FEES 4 Annex 1AR*.
CC.3 Consumer credit lending	Its permission is in relation to the following regulated activities: - *entering into a regulated credit agreement as lender* (article 60B(1) of the *Regulated Activities Order*); - *exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement* (article 60B(2) of the *Regulated Activities Order*); which is carried on by way of business and relates to the following *specified investments*: (a) a regulated credit agreement (excluding *high-cost short-term credit*, a *home credit loan agreement* and a *bill of sale loan agreement*); (b) *high-cost short-term credit*; (c) a *home credit loan agreement*; (d) a *bill of sale loan agreement*.

Part 2

Activity group	Tariff base
A.2 Home finance providers and administrators	The sterling value of any residential loans to individuals being the sum of gross unsecuritised and securitised balances (applying the definitions of Unsecuritised balances and Securitised balances set out in Section A: Balance Sheet of *SUP* 16 Annex 19BG.)
CC.3 Consumer credit lending	Value of lending in column A of *data item* CCR003 reported by *firms* under *SUP*

	16 Annex 38AR, being the sum of *data elements* entered in rows: - 1 Debt purchasing; - 2 Hire purchase/conditional sale agreements; - 3 Home credit loan agreements; - 4 Bill of sale loan agreements; - 5 Pawnbroking; - 6 High-cost short-term credit; - 11 Overdrafts; - 12 Other running-account credit; and - 8 Other lending.

Part 3

This table indicates the valuation date for each fee-block. A *firm* can calculate its tariff data in respect of the *TPR SFB debt advice levy* payable to the *FCA* by that *firm*.

Activity group	Valuation date
A.2 Home finance providers and administrators	The 31 December before the start of the period to which the fee applies or, if earlier, the date of the valuation as disclosed by the annual return made in the calendar year prior to the 31 December.
CC.3 Consumer credit lending	Value of lending under Part 2 valued at the *firm's accounting reference date* in the calendar year ending 31 December occurring before the start of the period to which the *TPR SFGB debt advice levy* applies.

Part 4

This table shows the tariff rates applicable to each of the fee-blocks set out in Part 1.

Activity group	TPR SFGB debt advice levy payable	
A.2 Home finance providers and administrators	Band width (£ million of secured debt) >0	Fee (£/£m or part £m of secured debt) [tbc]
CC.3 Consumer credit lending	Band width (£ million of value of lending)	Fee (£/£m or part £m of value of lending)

	>0 (Note 1)	[tbc]

7B Annex 3R **TPR SFGB pensions guidance levy for the period 1 April 2019 to 31 March 2020**

This table shows the *TPR SFGB pensions guidance levy* applicable to each activity group (fee-block).

Activity group	SFGB pensions guidance levy payable	
TP firms		
A.1	Band width (£ million of modified eligible liabilities (MELs)) >10	Fee (£/£m or part £m of MELS) [tbc]
A.4	Gross written premium for fees purposes (GWP)	
	Band Width (£ million of GWP)	Fee (£/£m or part £m of GWP)
	>1	[tbc]
A.7	For class 1(B), 1(C), (2) and (3) firms: Band width (£ million of funds under management (FuM)) >10	Fee (£/£m or part £m of FuM) [tbc]
A.9	Band width (£ million of gross income (GI)) >1	Fee (£/£m or part £m of GI) [tbc]
A.13	Band width (£ thousands of annual income (AI)) >100	Fee (£/£ thousand or part of £ thousand of AI) [tbc]

After FEES 13 (Illegal money lending levy) insert the following new chapter. The text is not underlined.

13A **Temporary Permissions Regime (TPR) – Illegal money lending levy**

13A.1 Application and purpose

Application

13A.1.1 R This chapter applies to every *TP person* carrying on an activity which would fall within activity group CC2 (Credit-related regulated activities).

Purpose

13A.1.2 R The purpose of this chapter is to set out the requirements on the *persons* listed in *FEES* 13A.1.1R to pay the annual *TPR IML levy* to fund the costs of taking action against illegal money lending.

13A.1.3 G Section 333S of the *Act* (Financial assistance for action against illegal money lending) provides that the Treasury may make grants or loans, or give other forms of financial assistance, to *persons* for the purpose of taking action against illegal money lending.

13A.1.4 G Section 333T of the *Act* (Funding of action against illegal money lending) requires the Treasury to notify the *FCA* of the amount of the Treasury's illegal money lending costs. The *FCA* must make *rules* requiring *authorised persons*, or any specified class of authorised persons, to pay to the *FCA* the specified amounts or amounts calculated in a specified way, with a view to recovering the amounts notified to it by the Treasury.

13A.1.5 G FEES 13A sets out the rules referred to in *FEES* 13A.1.4G.

13A.1 Obligation to pay the IML levy

13A.2.1 R A *TP person* must pay the *TPR IML levy* applicable to it:

(1) in full and without deduction by 1 August (or, if later, within 30 *days* of the date of the invoice) in the *financial year* to which the sum relates; and

(2) in accordance with the *rules* in this chapter.

Calculation of the TPR IML levy

13A.2.2 R The *TPR IML levy* is calculated as follows:

(1) identify whether activity group CC2 applies to the business of the *TP person* for the relevant period (for this purpose, the activity group is defined in accordance with Part 1 of *FEES* 4 Annex 1AR);

(2) calculate the amount payable in accordance with *FEES* 13A Annex 1;

(3) a *TP person* in activity group CC2 must calculate its tariff base using the annual income calculation in Part 3 of *FEES* 4 Annex 1AR and *FEES* 4 Annex 11BR and the valuation date requirements in Part 5 of *FEES* 4 Annex 1AR.

13A.2.3 R For the purposes of *FEES* 13A.2.2R:

(1) a *TP person* may apply the relevant tariff bases and rates to its non-*UK* business, as well as to its *UK* business, if:

(a) it has reasonable grounds for believing that the costs of identifying the *TP person's UK* business separately from its non-*UK* business in the way described in Part 3 of *FEES* 4 Annex 1AR and Part 3 of *FEES* 4 Annex 11R are disproportionate to the difference in fees payable; and

(b) it notifies the *FCA* in writing at the same time as it provides the information concerned under *FEES* 13A.2.2R(3), or, if earlier, at the time it pays the *TPR IML levy* concerned.

(2) for a *TP person* which has not complied with *FEES* 13A.2.2R(3*)* for this period, the *TPR IML levy* is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10.

TPR IML levy commencement

13A.2.4 R The *TPR IML levy* under *FEES 13A* relate to the whole of any fee year and are due for payment from the commencement of the fee year. Any payment made under *FEES* 13A.2.1R is not refundable.

FEES 4 rules incorporated into FEES 13A by cross-reference

13A.2.5 G The Handbook provisions relating to the *TPR IML levy* in *FEES* 13A are meant to follow closely the provisions relating to the payment of the periodic fees in *FEES* 4. In the interests of brevity, not all of the provisions in *FEES 4* are set out again in *FEES* 13A. In some cases, certain *FEES* 4 rules are applied to the payment of the *TPR IML levy* by individual rules in *FEES* 13A. The rest are set out in the table in *FEES* 13A.2.7R.

13A.2.6 R The *rules* set out in the table in *FEES* 13A.2.7R and any other *rules* in *FEES* 4 included in *FEES* 13A by cross-reference apply to the *TPR IML levy* in the same way as they apply to periodic fees payable under *FEES* 4.

13A.2.7 R

Table of rules in *FEES* 4 that also apply to *FEES* 13A to the extent that in *FEES* 4 they apply to fees payable to the *FCA*	
FEES 4 rules incorporated into FEES 13A	**Description**

FEES 4.2.4R	Method of payment
FEES 4.2.10R	Extension of time
FEES 4.3.7R	Groups of firms
FEES 4.3.17R	Firms acquiring businesses from other firms

13A Annex 1R Annex 1R TPR Illegal money lending (IML) levy for 2019/20

Activity group	**Description**	**Fee (£)**
Activity group CC2. Credit-related regulated activities:	Up to £250,000 consumer credit income:	[tbc]
	Over £250,000 consumer credit income:	[tbc] + £tbc] per £1,000

Annex E

Amendments to the Client Assets sourcebook (CASS)

[*Editor's note*: the text in this Annex takes account of the changes proposed in CP18/15 'Claims management: how we propose to regulate claims management companies' (June 2018) as if they were made.]

In this Annex, underlining indicates new text and striking though indicates deleted text, unless otherwise indicated.

1 Application and general provisions

…

1.2 General application: who? what?

…

1.2.3 R *CASS* does not apply to:

(1) an *ICVC*; or

(2) ~~an *incoming EEA firm* other than an *insurer*, with respect to its *passported activities*; or~~ [deleted]

(3) a *UCITS qualifier*.

…

1.3 General application: Where?

1.3.1 G The *rules* in *CASS* 1.3 set out the maximum territorial scope of this sourcebook. Particular ~~rules~~ *rules* may have express territorial limitations.

UK establishments: general

1.3.2 R ~~Except as provided for in *CASS* 1.2.3R(2),~~ *CASS* 1 to *CASS* 13 ~~applies~~ apply to every *firm*, in relation to *regulated activities* carried on by it from an *establishment* in the *United Kingdom*.

1.3.2A G The territorial scope of *CASS* 14 is set out at *CASS* 14.1.3R.

…

After CASS 13 (Claims management: client money) insert the following new chapter, CASS 14. The text is not underlined.

14 Temporary permissions regime – client assets rules

14.1 General application

Who?

14.1.1 R This chapter only applies to a *TP firm* that has not *failed*.

What?

14.1.2 R Unless otherwise stated, the *rules* in *CASS* 14 apply:

(1) in relation to a *TP firm's* activities to which *CASS* 5, *CASS* 6 or *CASS* 7 apply as a result of *GEN* 2.2.26R; and

(2) where those activities are carried on in reliance on the *firm's temporary permission*.

Where?

14.1.3 R The *rules* in *CASS* 14 apply in relation to a *TP firm*'s activities described at *CASS* 14.1.2R wherever they are carried on.

14.1.4 G *CASS* 14.1.3R means that the rules in *CASS* 14 apply both to activities carried on from a *UK branch* and activities carried on other than from a *UK branch* into the *UK*.

14.2 Temporary permission CASS firm classification

14.2.1 R (1) Subject to (2), (3) and (4), this section applies only to a *TP firm* to which either or both of *CASS* 6 and *CASS* 7 apply as a result of *GEN* 2.2.26R.

(2) In relation to a *TP firm* to which both *CASS* 5 and *CASS* 7 (Client money rules) apply as a result of *GEN* 2.2.26R, this section does not apply in relation to *client money* that the *TP firm* holds in accordance with *CASS* 5 as a result of *GEN* 2.2.26R.

(3) The *rules* in this section apply to a *TP firm* even if at the date of the determination or, as the case may be, the notification required under them, either or both of *CASS* 6 and *CASS* 7 do not apply to it, provided that:

(a) either or both of those chapters applied to it as a result of *GEN* 2.2.26R during part or all of the previous calendar year; or

(b) it projects that either or both will apply to it as a result of *GEN* 2.2.26R in the current calendar year.

(4) The *rules* in this section do not apply to a *TP firm* to which, as a result of *GEN* 2.2.26R, only *CASS* 6 applies, applied or is projected to apply, merely because it is, was, or is projected to be a *firm* which *arranges safeguarding and administration of assets*.

14.2.2 G This section does not apply to a *TP firm* to which, as a result of *GEN* 2.2.26R, *CASS* 5 applies but neither *CASS* 6 nor *CASS* 7 applies.

14.2.3 G The frequency of a *TP firm's* reporting obligations under *CASS* 14.3 depends on the 'CASS firm type' within which a *TP firm* falls. The 'CASS firm types' are defined in accordance with *CASS* 14.2.8R.

14.2.4 R (1) A *TP firm* must once every year, and by the time it is required to make a notification in accordance with *CASS* 14.2.9R, determine whether it is a *CASS large TP firm*, *CASS medium TP firm* or a *CASS small TP firm* according to the amount of *client money* or *safe custody assets* which it holds, using the limits set out in the table in *CASS* 14.2.8R.

(2) For the purpose of determining its 'CASS firm type' in accordance with *CASS* 14.2.8R, a *TP firm* must:

(a) if it currently holds *client money* or *safe custody assets*, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year ending on 31 December, and use that figure to determine its 'CASS firm type';

(b) if it did not hold *client money* or *safe custody assets* in the previous calendar year but projects that it will do so in the current calendar year, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* that it projects that it will hold during that year, and use that figure to determine its 'CASS firm type'; but

(c) in either case, exclude from its calculation any *client money* held in accordance with *CASS* 5.

14.2.5 G For the purposes of *CASS* 14.2.4R a *TP firm* should only include *client money* and *safe custody assets* that it holds (or is projected to hold) in relation to the *TP firm's* activities which are carried on (or projected to

be carried on) in reliance of the *firm's temporary permission*. It should not include *client money* and *safe custody assets* that it holds in reliance of any authorisation in its *Home State*.

14.2.6 R For the purpose of calculating the value of the total amounts of *client money* and *safe custody assets* that it holds on any given day during a calendar year a *TP firm* must:

(1) in complying with *CASS* 14.2.4R(2)(a), base its calculation on the reconciliation performed in accordance with *CASS* 7.15.20R during the previous year;

(2) in relation to *client money* or *safe custody assets* denominated in a currency other than sterling, translate the value of that *money* or those *safe custody assets* into sterling at the previous day's closing spot exchange rate; and

(3) in relation to *safe custody assets* only, calculate their total value using the previous day's closing mark to market valuation, or if in relation to a particular *safe custody asset* none is available, the most recent available valuation.

14.2.7 R (1) Notwithstanding *CASS* 14.2.4R, provided that the conditions in (2) are satisfied a *TP firm* may elect to be treated:

(a) as a *CASS medium TP firm*, in the case of a *TP firm* that is classed by the application of the limits in *CASS* 14.2.8R as a *CASS small TP firm*; and

(b) as a *CASS large TP firm*, in the case of a *TP firm* that is classed by the application of the limits in *CASS* 14.2.8R as a *CASS medium TP firm*.

(2) The conditions to which (1) refers are that in either case:

(a) the election is notified to the *FCA* by email;

(b) the notification in accordance with (a) is made at least one week before the election is intended to take effect; and

(c) the *FCA* has not objected.

14.2.8 R CASS firm types

CASS firm type	**Highest total amount of *client money* held during the *TP firm's* last calendar year or as the case may be that it**	**Highest total value of *safe custody assets* held by the *TP firm* during the *TP firm's* last calendar year or as the case**	**CASS firm type**

	projects that it will hold during the current calendar year	may be that it projects that it will hold during the current calendar year	
CASS large TP firm	more than £1 billion	more than £100 billion	*CASS large TP firm*
CASS medium TP firm	an amount equal to or greater than £1 million and less than or equal to £1 billion	an amount equal to or greater than £10 million and less than or equal to £100 billion	*CASS medium TP firm*

14.2.9 R Once every calendar year a *TP firm* must notify to the *FCA* by email the information specified in (1), (2) or (3) as applicable, and the information specified in (4), in each case no later than the day specified in (1) to (4):

(1) if it held *client money* or *safe custody assets* in the previous calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, notification of which must be made no later than the fifteenth *business day* of January;

(2) if it did not hold *client money* or *safe custody assets* in the previous calendar year but at any point up to the fifteenth *business day* of January the *TP firm* projects that it will do so in the current calendar year, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *TP firm* projects that it will hold during the current calendar year, notification of which must be made no later than the fifteenth business day of January; or

(3) in any other case, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *TP firm* projects that it will hold during the remainder of the current calendar year, notification of which must be made no later than the *business day* before the firm begins to hold *client money* or *safe custody assets*; and

(4) in every case, of its 'CASS firm type' classification, notification of which must be made at the same time the *TP firm* makes the notification under (1), (2) or (3).

14.2.10 R For the purpose of the annual notification to which *CASS* 14.2.9R refers, a *TP firm* must apply the calculation rule in *CASS* 14.2.6R.

14.2.11 R For the purpose of *CASS* 14.2.9R(1), the *FCA* will treat that obligation as satisfied if a *TP firm* submitted a *TPCAR* for each period within the previous calendar year in compliance with the *rules* in *CASS* 14.3.

14.2.12 R A *TP firm's* 'CASS firm type' and any change to it takes effect if the *TP firm*:

(1) notifies the *FCA* in accordance with *CASS* 14.2.9R(1) or *CASS* 14.2.9R(2), on 1 February following the notification; or

(2) notifies the *FCA* in accordance with *CASS* 14.2.9R(3), on the day it begins to hold *client money* or *safe custody assets*; or

(3) makes an election under *CASS* 14.2.7R(1), and provided the conditions in *CASS* 14.2.7R(2) are satisfied, on the day the notification made under *CASS* 14.2.7R(2)(a) states that the election is intended to take effect.

14.2.15 G Any written notification made to the *FCA* under this chapter should be marked for the attention of: "Client Assets TP Firm Classification".

14.3 Temporary Permission Client Assets Return

14.3.1 R (1) A *TP firm* must submit a completed *TPCAR* to the *FCA* by email for each reporting period specified in *CASS* 14.3.3R.

(2) The *TP firm* must submit the *TPCAR* to the *FCA* by the deadline specified in *CASS* 14.3.4R.

(3) A *TPCAR* must be completed using the template specified at *CASS* 14 Annex 1R.

14.3.2 G Guidance notes on completing a *TPCAR* are available at *CASS* 14 Annex 2G.

14.3.3 R The *TPCAR* reporting periods for the purposes of *CASS* 14.3.1R are:

(1) for *TP firms* to which either or both of *CASS* 6 and *CASS* 7 applies as a result of *GEN* 2.2.26R, either:

(a) for *CASS small TP firms*, the initial nine-*month* period from 1 April 2019 to 31 December 2019, and each subsequent 12-*month* period; or

(b) for *CASS medium TP firms* and *CASS large TP firms*, the initial one-*month* period from 1 April 2019 to 30 April 2019, and each subsequent one-*month* period; and

(2) for *TP firms* to whom as a result of *GEN* 2.2.26R, *CASS* 5 applies:

(a) if the *TP firm's* annual revenue from its business to which *CASS* 5 applies as a result of *GEN* 2.2.26R is £5 million or less:

(i) the shorter of:

(A) the initial period from 1 April 2019 to the *firm's accounting reference date*, and

(B) the initial period from 1 April 2019 to the last *day* of the six-*month* period after the *firm's accounting reference date*; and

(ii) each six-*month* period subsequent to the shorter of those initial periods; or

(b) if the *TP firm's* annual revenue from its business to which *CASS* 5 applies as a result of *GEN* 2.2.26R exceeds £5 million:

(i) the shorter of:

(A) the initial period from 1 April 2019 to the *firm's accounting reference date*, and

(B) the initial period from 1 April 2019 to the last *day* of the three-*month* period after the *firm's accounting reference date*; and

(ii) each three-*month* period subsequent to the shorter of those initial periods.

14.3.4 R The *TPCAR* submission deadlines for the purposes of *CASS* 14.3.1R are:

(1) for *TP firms* to which either or both of *CASS* 6 and *CASS* 7 applies as a result of *GEN* 2.2.26R, either:

(a) for *CASS small TP firms* the 15th *business day* of the *month* that follows the reporting period specified in *CASS* 14.3.3R(1); or

(b) for *CASS medium TP firms* and *CASS large TP firms*, the 15th *business day* of the *month* that follows the reporting period specified in *CASS* 14.3.3R(2); and

(2) for *TP firms* to which *CASS* 5 applies as a result of *GEN* 2.2.26R, the 30th *business day* after the relevant reporting period specified in *CASS* 14.3.3R(3).

14.3.5 G (1) If both *CASS* 14.3.3R(1) and (2) apply to a *TP firm*, then it should submit a completed *TPCAR* to the *FCA* to cover each

reporting period that applies to it, by the relevant submission deadline in *CASS* 14.3.4R(1) and (2).

(2) In those cases:

(a) a *firm* should only complete Part 1 and Part 2 of any *TPCAR* that is for a reporting period specified under *CASS* 14.4.4R(1); and

(b) it should only complete Part 1 and Part 3 of any *TPCAR* that is for a reporting period specified under *CASS* 14.4.4R(2).

14.4 Temporary permission auditor's report

14.4.1 R This section does not apply in relation to a *TP firm* to which only *CASS* 5 applies as a result of *GEN* 2.2.26R.

14.4.2 R Subject to *CASS* 14.4.3R, a *TP firm* to which this section applies must ensure that the *FCA* receives any report made by its external auditors pursuant to a requirement in its *Home State* that implements Article 8 of the *MiFID Delegated Directive*, in the following circumstances:

(1) where the auditor's report confirms that the *TP firm's* arrangements referred to in Article 8 of the *MiFID Delegated Directive* are not adequate; or

(2) in response to a request made by the *FCA* to the *TP firm* in writing.

14.4.3 R (1) If the *TP firm* did not have a *temporary permission* during the entire period covered by an auditor's report, that auditor's report is excluded from the requirement under *CASS* 14.4.2R.

(2) Any auditor's report that is not in English is excluded from the requirement under *CASS* 14.4.2R, but in that case the *TP firm* must ensure that the *FCA* receives an English translation instead.

14.4.4 R (1) A *TP firm* must ensure that any auditor's report or English translation required to be provided to the *FCA* under this section is sent by email.

(2) In the case of an auditor's report, this must be sent:

(a) where *CASS* 14.4.2R(1) applies, as soon as it is made available to the relevant *Home State* regulator; and

(b) where *CASS* 14.4.2R(2) applies, immediately on the *FCA's* written request.

(3) In the case of an English translation, this must be sent:

(a) where *CASS* 14.4.2R(1) applies, within one *month* of the auditor's report being made available to the relevant *Home State* regulator; and

(b) where *CASS* 14.4.2R(2) applies, within one *month* of the *FCA's* written request.

14.4.5 R Where a *TP firm* intends to rely on another *person* to send an auditor's report to the *FCA* under this section, it must inform the *FCA* in advance of that person's identity by email.

14.4.6 R The *rules* in this section apply regardless of whether the scope of an auditor's report includes a *TP firm's* activities specified in *CASS* 14.1.2R.

14.5 Client information

14.5.1 R A *TP firm* must provide any *client* in respect of which it carries on the activities specified in *CASS* 14.1.2R with the following information (the "TP Firm CASS Disclosure") in English and in a *durable medium*:

(1) the jurisdiction under which the *TP firm's failure* would be administered; and

(2) if there is a possibility that any *client money* or *safe custody assets* belonging to that *client* will, as a result of the law of that jurisdiction, be treated differently to *money* or assets belonging to other customers of the *TP firm* in the event of the *TP firm's failure*, a statement that explains that this is the case.

14.5.2 R (1) A *firm* must ensure that the "TP Firm CASS Disclosure" is not obscured by or disguised within other information.

(2) Where a *firm* provides the "TP Firm CASS Disclosure" amidst or alongside other information, it must ensure that it uses a font size for the 'TP Firm CASS Disclosure' that is at least equal to the predominant font size used throughout the information provided, as well as a layout that ensures the "TP Firm CASS Disclosure" is prominent.

14.5.3 G (1) To comply with *CASS* 14.5.1R(1) it is sufficient to name the jurisdiction. For example, this may be the name of the *TP firm's Home State*, or an administrative region within it.

(2) In order to comply with *CASS* 14.5.1R(2), a *TP firm* should carefully consider the applicable law and insolvency rules in question when deciding whether or not a statement is required to be given under that provision. For example, it could obtain a

legal opinion on whether the law differentiates between the treatment of different classes of *clients*.

14.5.4 R The "TP Firm CASS Disclosure" under *CASS* 14.5.1R is not required where a *firm* complies with those requirements of *CASS* 5, *CASS* 6 or *CASS* 7 that are applied under *GEN* 2.2.26R without needing to safeguard *client money* or *safe custody assets*.

14.5.5 G Situations falling under *CASS* 14.5.4R include where, for example, the *TP firm* relies on:

(1) *CASS* 5.1.5R(1)(b) or (2);

(2) *CASS* 7.10.6R; or

(2) *GEN* 2.2.26R(3) or (4) and takes the approach set out in article 10.6.a, 10.6.b or 10.6.d of *IDD*.

14.5.6 R A *TP firm* must provide the "TP Firm CASS Disclosure" under *CASS* 14.5.1R to a *client*:

(1) where it safeguards *client money* or *safe custody assets* for the *client* on 1 April 2019, on that date; or

(2) otherwise, in good time before it safeguards *client money* or *custody assets* for the *client.*

14.6 Tied agents and appointed representatives of TP firms

14.6.1 G (1) *CASS* does not apply directly to a *TP firm's appointed representative* or *tied agent*.

(2) A *TP firm* will be responsible for the acts and omissions of its *appointed representatives* and *tied agents* in carrying on business for which the *TP firm* has accepted responsibility.

(3) In determining whether a *TP firm* has complied with any provision of *CASS*, anything done or omitted by a *TP firm's* appointed representative or tied agent (when acting as such) will be treated as having been done or omitted by the *TP firm*.

(4) *CASS* 14.6.2R further restricts the possibility of *appointed representatives* and *tied agents* of *TP firms* from receiving or holding *client money* and *safe custody assets*. But that *rule* does not apply in relation to the business of an *appointed representative* or *tied agent* of a *TP firm* in respect of which *CASS* 5 would apply to the *TP firm* as a result of *GEN* 2.2.26R.

14.6.2 R A *TP firm* must not permit an *appointed representative* or *tied agent* to receive or hold *client money* or *safe custody assets* in the course of or in

connection with any of their business in respect of which *CASS* 6 or *CASS* 7 would apply to the *TP firm* as a result of *GEN* 2.2.26R.

14 Annex 1R Temporary permissions client asset return (TPCAR)

[Note: A *firm* must answer all the questions in Part 1. A *firm* must also complete either Part 2 or Part 3, depending on the answer to question 1.1.3. Further guidance notes are available at *CASS* 14 Annex 2G.]

PART 1 - TO BE COMPLETED BY ALL TP FIRMS		
Section 1.1 - Scope of this return		
1.1.1	What is the reporting period start date for this return?	[dd/mm/yyyy]
1.1.2	What is the reporting period end date for this return?	[dd/mm/yyyy]
1.1.3	Does this return report on: - *investment services or activities*, to which *CASS* 6 or *CASS* 7 apply as a result of *GEN* 2.2.26R, or - *insurance distribution* activities, to which *CASS* 5 applies as a result of *GEN* 2.2.26R?	[Investment services or activities] [Insurance distribution activities]
Section 1.2 - Location of activities		
1.2.1	During the reporting period, did the *firm* conduct any of the activities to which this return relates from an establishment in the *UK*?	[Yes] [No]
Section 1.3 - Compliance		
1.3.1	During the reporting period, did the *firm* have any breaches of its obligations under *CASS* 14?	[Yes] [No]
1.3.2	During the reporting period, did the *firm* obtain an external auditor report on the adequacy of the *firm's* arrangements under its client assets obligations?	[Yes] [No]
Section 1.4 - Solvency		
1.4.1	During the reporting period, were there any issues with the *firm's* solvency?	[Yes] [No]
Section 1.5 - Other issues		
1.5.1	During the reporting period, were there any other issues with the *firm* in relation to its obligations under *CASS* which applied as a result of *GEN* 2.2.26R? If so, please provide a brief description.	

PART 2 - FOR REPORTING ON INVESTMENT SERVICES OR ACTIVITIES (SEE Q 1.1.3)		
2.1.1	During the reporting period, did the firm hold *client money* and/or *safe custody assets* in relation to activities carried on in reliance of the *firm's temporary permission* to which *CASS* 6 or *CASS* 7 apply as a result of *GEN* 2.2.26R?	[Yes] [No]
	If yes, then during the reporting period:	
2.1.2	What was the highest balance of *client money* held in relation to activities carried on in reliance of the *firm's temporary permission*, in relation to which *CASS* 7 applies as a result of *GEN* 2.2.26R?	[Highest balance]
2.1.3	What was the highest amount of *safe custody assets* held in relation to activities carried on in reliance of the *firm's temporary permission,* in relation to which *CASS* 6 applies as a result of *GEN* 2.2.26R?	[Highest balance]
2.1.4	What percentage of the *client money* reported in Question 2.1.2 was deposited with a *bank* or a *qualifying money market fund* in the same *group* as the *firm* (article 4, *MiFID Delegated Directive*)?	[ ]%
2.1.5	What was the frequency of reconciliations between the *firm's* internal accounts and records and those of any third party with whom the *client money* reported in Question 2.1.2 was held (article 2(1)(c), *MiFID Delegated Directive*)?	[Daily] [Monthly] [Quarterly] [Annually] [Other]
2.1.6	What was the frequency of reconciliations between the *firm's* internal accounts and records and those of any third party with whom the *safe custody assets* reported in Question 2.1.3 were held (article 2(1)(c), *MiFID Delegated Directive*)?	[Daily] [Monthly] [Quarterly] [Annually] [Other]
2.1.7	Did the *firm* resolve all discrepancies identified by its reconciliations referred to in Questions 2.1.5 and 2.1.6 as applicable (article 2(1)(c), *MiFID Delegated Directive*)?	[Yes] [No]
2.1.8	Were there any changes to the *firm's* officer responsible for compliance with obligations relating to safeguarding of *client money* and *safe custody assets* appointed pursuant to article 7 of the *MiFID Delegated Directive*?	[Yes] [No]
2.1.9	Did the *firm* have any breaches of its obligations to segregate and/or keep records in accordance with its obligations under *CASS* 6 or 7 which applied as a result of *GEN* 2.2.26R?	[Yes] [No]

PART 3 - FOR REPORTING ON INSURANCE DISTRIBUTION ACTIVITIES (SEE Q 1.1.3)		
3.1.1	During the reporting period, did the *firm* hold *money* in relation to activities carried on in reliance of the *firm's* temporary permission to which *CASS* 5 applies as a result of GEN 2.2.26R?	[Yes] [No]
	If yes, then during the reporting period:	
3.1.2	How did the *firm* protect such *money* in accordance with article 10.6 of the *IDD*?	[Contractual risk transfer to the insurer] [Holding customers' monies in segregated customer accounts] [Holding capital on a permanent basis] [A guarantee fund]
3.1.3	What was the highest balance of *money* held by the *firm* in relation to activities carried on in reliance of the *firm's* temporary permission to which *CASS* 5 applies as a result of *GEN* 2.2.26R?	[Balance]
3.1.4	Did the *firm* have any breaches of its obligations to segregate and/or keep records in accordance with its obligations under *CASS* 5 which applied as a result of *GEN* 2.2.26R?	[Yes] [No]

14 Annex 2G Guidance notes for the TPCAR

1. This annex contains *guidance* on the *TPCAR* and is therefore only relevant to a *firm* that is subject to *CASS* 14.3.

2. Italicised terms in the *TPCAR* have the same meaning as in the *Glossary*.

3. A *firm* is reminded of its obligation to determine their "CASS firm type" categorisation in accordance with *CASS* 14.2.8R.

4. A *firm* should complete Part 1 and either Part 2 or Part 3, depending on whether it is reporting on *investment services and activities* or *insurance distribution activities*. See also the guidance at *CASS* 14.3.5G for *firms* that carry on both sorts of activities under their *temporary permission*.

5. For the purposes of the *TPCAR*, the *FCA* does not prescribe any particular methodology or frequency for valuing *safe custody assets*.

6. Guide for completing individual questions in the TPCAR:

PART 1 - TO BE COMPLETED BY ALL TP FIRMS

Section 1.1 - Scope of this return	
1.1.1	What is the reporting period start date for this return?
1.1.2	What is the reporting period end date for this return?
	The reporting period is a calendar period for which the *TPCAR* is required to be completed in accordance with *CASS* 14.3.1R, including the first *day* and the last *day* of the relevant period applicable to the *firm*. The first reporting period starts from 1 April 2019. For example: • For a *firm* conducting *investment services or activities* under their *temporary permission* which is subject to monthly reporting under *CASS* 14.3.3R, the first reporting period will be 1 April 2019 to 30 April 2019, regardless of whether or not any *day* in April is a *business day*. • For a *firm* conducting *insurance distribution* activities under their *temporary permission* which is subject to half-yearly reporting under *CASS* 14.3.3R and has an accounting reference date of 31 December, the first reporting period will be 1 April 2019 to 30 June 2019, regardless of

	whether or not any *day* in this period is a *business day*. The next reporting period for such a *firm* will be 1 July 2019 to 31 December 2019.
1.1.3	Does this return report on: - *investment services and activities*, to which *CASS* 6 or *CASS* 7 apply as a result of *GEN* 2.2.26R; or - *insurance distribution* activities, to which *CASS* 5 applies as a result of *GEN* 2.2.26R?
	A *firm* should identify the relevant activity in the course of which it holds *client money or safe custody assets* under its *temporary permission* and answer either "investment services or activities" or "insurance distribution activities". If a *firm* is conducting both activities in the course of which it holds *client money or safe custody assets* under its *temporary permission*, then it will need to complete a separate *TPCAR* for each activity.
Section 1.2 - Location of activities	
1.2.1	Did the *firm* conduct the activities to which this return relates from an establishment in the *UK*?
	A *firm* should answer either "Yes" or "No". For example, a *firm* should answer "Yes" if, during the reporting period, it conducted the above activities from a *branch* in the *UK*.
Section 1.3 - Compliance	
1.3.1	During the reporting period, did the *firm* have any breaches of its obligations under *CASS* 14?
	A *firm* should answer either "Yes" or "No".
1.3.2	During the reporting period, did the *firm* obtain an external auditor's report on the adequacy of the *firm's* arrangements under its client assets obligations?

	A *firm* should answer either "Yes" or "No".
Section 1.4 - Solvency	
1.4.1	During the reporting period, were there any issues with the *firm's* solvency?
	A *firm* should answer either "Yes" or "No".
Section 1.5 - Other issues	
1.5.1	During the reporting period, were there any other issues with the *firm* in relation to its obligations under *CASS* which applied as a result of *GEN* 2.2.26R? If so, please provide a brief description.
	A *firm* should describe any issues not covered by the *TPCAR* that may be relevant in respect of holding *client money or safe custody assets* to which *CASS* applies as a result of *GEN* 2.2.26R during the reporting period.

PART 2 - FOR REPORTING ON INVESTMENT SERVICES OR ACTIVITIES

2.1.1	During the reporting period, did the *firm* hold *client money* and/or *safe custody assets* in relation to activities carried on in reliance of the *firm's temporary permission* to which *CASS* 6 or *CASS* 7 apply as a result of *GEN* 2.2.26R?
	A *firm* should answer either "Yes" or "No".
2.1.2	What was the highest balance of *client money* held in relation to activities carried on in reliance of the *firm's temporary permission*, in relation to which *CASS* 7 applies as a result of *GEN* 2.2.26R?
	A *firm* should report the highest total amount of *client money* that it held at any point during the reporting period. A *firm* should ensure that it includes in the amount reported any *client money* that it is holding, which has or have been placed with a third party *custodian*, either by

	a *custodian* with which that *firm* has deposited those *client money*, or by that *firm* if it is a *custodian*. A *firm* should determine the highest figures by reference to the data that it has recorded from its reconciliations required under Article 2(1)(c) of the *MiFID Delegated Directive* that relate to the reporting period in question.
2.1.3	What was the highest amount of *safe custody assets* held in relation to activities carried on in reliance of the *firm's temporary permission*, in relation to which *CASS* 6 applies as a result of *GEN* 2.2.26R?
	A *firm* should report the highest total amount of *safe custody assets* that it held at any point during the reporting period. A *firm* should ensure that it includes in the amount reported any *safe custody assets* that it is holding, which has or have been placed with a third party *custodian*, either by a *custodian* with which that *firm* has deposited those safe custody assets, or by that *firm* if it is a *custodian*. A *firm* should determine the highest figures by reference to the data that it has recorded from its reconciliations required under Article 2(1)(c) of the *MiFID Delegated Directive* that relate to the reporting period in question.
2.1.4	What percentage of the *client money* reported in Question 2.1.2 was deposited with a *bank* or a *qualifying money market fund* in the same *group* as the *firm* (Article 4, *MiFID Delegated Directive*)?
	A *firm* should state what percentage of *client money* are held with a *credit institution, bank or qualifying money market fund* of the same *group* as the *firm*.
2.1.5	What was the frequency of reconciliations between the *firm's* internal accounts and records and those of any third party with whom the *client money* reported in Question 3 was held (Article 2(1)(c), *MiFID Delegated Directive*)?

	A firm should identify the frequency of its reconciliations in respect of *client money* required by Article 2(1)(c) of *MiFID Delegated Directive* and answer either "Daily", "Quarterly", "Monthly", "Annually" or "Other".
2.1.6	What was the frequency of reconciliations between the *firm's* internal accounts and records and those of any third party with whom the *safe custody assets* reported in Question 2.1.2 were held (Article 2(1)(c), *MiFID Delegated Directive*)?
	A *firm* should identify the frequency of its reconciliations in respect of *safe custody assets* required by Article 2(1)(c) of *MiFID Delegated Directive* and answer either "Daily", "Quarterly", "Monthly", "Annually" or "Other".
2.1.7	Did the *firm* resolve all discrepancies identified by its reconciliations referred to in Questions 7 and 8 as applicable (Article 2(1)(c), *MiFID Delegated Directive*)?
	A *firm* should answer either "Yes" or "No".
2.1.8	Were there any changes to the *firm's* officer responsible for compliance with obligations relating to safeguarding of client assets appointed pursuant to Article 7 of the *MiFID Delegated Directive*?
	A *firm* should answer either "Yes" or "No".
2.1.9	Did the *firm* have any breaches of its obligations to segregate and/or keep records in accordance with its obligations under *CASS* 6 or 7 which applied as a result of *GEN* 2.2.26R?
	A *firm* should answer either "Yes" or "No".

PART 3 - FOR REPORTING ON INSURANCE DISTRIBUTION ACTIVITIES

3.1.1	During the reporting period, did the *firm* hold *money* in relation to activities carried on in reliance of the *firm's temporary permission* to which *CASS* 5 applies as a result of *GEN* 2.2.26R?
	A *firm* should answer either "Yes" or "No".
3.1.2	How did the *firm* protect such *money* in accordance with Article 10.6 of the *IDD*?
	This question should only be answered if a *firm* answered "Yes" in Question 3.1.1. A *firm* should answer "Contractual risk transfer to the insurer", "Holding customers' monies in segregated customer accounts", "Holding capital on a permanent basis" or "A guarantee fund". A *firm's* answer may depend on which of these methods are permitted by its *Home State's* implementation of the *IDD*. More than one answer may be given if the *firm* protects *money* using more than one of these methods.
3.1.3	What was the highest balance of *money* held by the *firm* in relation to activities carried on in reliance of the *firm's temporary permission* to which *CASS* 5 applies as a result of *GEN* 2.2.26R?
	This question should only be answered if a *firm* answered "Yes" in Question 11. A *firm* should take into account the amount recorded in the *firm's* records that relate to the reporting period in question. A *firm* should also take into account *money* held in all the possible methods of holding such *money* under *IDD*.
3.1.4	Did the *firm* have any breaches of its obligations to segregate and/or keep records in accordance with its obligations under *CASS* 5 which applied as a result of *GEN* 2.2.26R?

	A *firm* should answer either “Yes” or “No”.

Pub ref: 005672

12 Endeavour Square London E20 1JN
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk