

OPERATIONAL RESILIENCE INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”), including as applied by paragraph 3 of Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752) (“the PSRs”) and paragraph 2A of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) (“the EMRs”):
 - (a) section 137A (The FCA’s general rule-making power);
 - (b) section 138D (Actions for damages);
 - (c) section 137T (General supplementary powers);
 - (2) the following sections of the Act:
 - (a) section 139A (Guidance);
 - (b) section 247 (Trust scheme rules);
 - (c) section 261I (Contractual scheme rules); and
 - (3) regulation 6 of the Open-Ended Investment Company Regulations 2001 (SI 2001/1228);
 - (4) regulation 120 (Guidance) of the PSRs;
 - (5) regulation 60 (Guidance) of the EMRs;
 - (6) regulation 11 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995); and
 - (7) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the 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 31 March 2022.

Amendments to the Handbook

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

| (1) | (2) |
|--|---------|
| Glossary of definitions | Annex A |
| Senior Management Arrangements, Systems and Controls sourcebook (SYSC) | Annex B |
| Supervision manual (SUP) | Annex C |
| Recognised Investment Exchanges sourcebook (REC) | Annex D |

Citation

- E. This instrument may be cited as the Operational Resilience Instrument 2021.

By order of the Board
25 March 2021

Annex A

Amendments to the Glossary of definitions

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

- important business service* means a service provided by a *firm*, or by another *person* on behalf of the *firm*, to one or more *clients* of the *firm* which, if disrupted, could:
- (1) cause intolerable levels of harm to any one or more of the *firm's clients*; or
 - (2) pose a risk to the soundness, stability or resilience of the *UK financial system* or the orderly operation of the financial markets.
- impact tolerance* means the maximum tolerable level of disruption to an *important business service*, as measured by a length of time in addition to any other relevant metrics, reflecting the point at which any further disruption to the *important business service* could cause intolerable harm to any one or more of the *firm's clients* or pose a risk to the soundness, stability or resilience of the *UK financial system* or the orderly operation of the financial markets.

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Application and purpose

1.1A Application

- 1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

| Type of firm | Applicable chapters |
|--------------------------------|---|
| <i>Insurer, UK ISPV</i> | Chapters 2, 3, 12 to 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28 |
| <i>Managing agent</i> | Chapters 2, 3, 11, 12, <u>15A</u> , 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28 |
| <i>Society</i> | Chapters 2, 3, 12, <u>15A</u> , 18, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28 |
| <i>Any other SMCR firm</i> | Chapters 4 to 12, <u>15A</u> , 18, 19D, 19F.2, 21, 22, 23, 24, 25, 26, 27, 28 |
| <i>Every other firm</i> | Chapters 4 to 12, <u>15A</u> , 18, 19D, 19F.2, 21, 22, 28 |

...

- 1.1A.1B G Chapter 15A of this sourcebook also applies to:

(1) an electronic money institution, a payment institution and a registered account information service provider;

(2) a UK RIE.

as set out in the text of that chapter.

...

- 1.4.1B G Apart from SYSC 12, SYSC 19A, SYSC 19D, SYSC 20 and SYSC 21 which are disapplied by SYSC 1.4.1AR, the other chapters of SYSC 11

to SYSC 17 ~~14~~ do not apply in relation to a *firm's* carrying on of *auction regulation bidding* because they only apply to an *insurer*. SYSC 18 provides guidance on the Public Interest Disclosure Act.

Actions for damages

- 1.4.2 R A contravention of a *rule* in SYSC 11 to SYSC 14, SYSC 18 to SYSC 21, SYSC 22.8.1R, SYSC 22.9.1R or SYSC 23 to SYSC 28 does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

Insert the following new chapter, SYSC 15A, after SYSC 14 (Risk management and associated systems and controls for insurers). The text is not underlined.

15A Operational resilience

15A.1 Application

Application

- 15A.1.1 R This chapter applies to:
- (1) a *firm* that is:
 - (a) an *enhanced scope SMCR firm*;
 - (b) a *bank*;
 - (c) a *designated investment firm*;
 - (d) a *building society*;
 - (e) a *Solvency II firm*,
 - (2) a *UK RIE*; and
 - (3) an *electronic money institution*, a *payment institution* or a *registered account information service provider*.
- 15A.1.2 R In this chapter, a reference to a *firm* includes a *UK RIE*, an *electronic money institution*, a *payment institution* and a *registered account information service provider*.
- 15A.1.3 R This chapter does not apply to a *TP firm*, a *TA PI firm*, *TA RAISP firm* or a *TA EMI firm*.
- 15A.1.4 R This chapter does not apply to a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom*.

- 15A.1.5 R In this chapter, a reference to a *client* in relation to a *UK RIE* includes a *person* who is entitled, under an arrangement or agreement between them and that *UK RIE*, to use the *UK RIE's facilities*.
- 15A.1.6 R In this chapter, a reference to a *client* in relation to a *firm* carrying on the activity of *managing a UK UCITS* or *managing an AIF* includes:
- (1) a *unitholder*; and
 - (2) an investor in an *AIF*.
- 15A.1.7 R The requirements in this chapter apply with respect to:
- (1) *regulated activities*;
 - (2) activities that constitute *dealing in investments* as principal, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc.);
 - (3) *ancillary activities*;
 - (4) in relation to *MiFID* or *equivalent third country business, ancillary services*;
 - (5) *collective portfolio management*;
 - (6) the provision of *payment services* and the issuance of *electronic money*, and activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of issuing *electronic money* is specified in article 9B of the *Regulated Activities Order*); and
 - (7) any other *unregulated activities*, but only in a *prudential context*.
- 15A.1.8 R Notwithstanding SYSC 15A.1.7R, where the requirements in this chapter apply to a *firm* only as a result of SYSC 15A.1.1R(3), the requirements only apply to the provision of *payment services* and the issuance of *electronic money* by the *firm*, and activities connected to the provision of *payment services* and to the issuing of *electronic money* (whether or not the activity of issuing *electronic money* is specified in article 9B of the *Regulated Activities Order*).
- 15A.1.9 R There is no territorial limitation on the application of this chapter.

15A.2 Operational resilience requirements

Important business services

- 15A.2.1 R A *firm* must identify its *important business services*.

- 15A.2.2 R A *firm* must keep its compliance with SYSC 15A.2.1R under review and, in particular, consider its compliance in the following circumstances:
- (1) if there is a material change to the *firm's* business or the market in which it operates; and
 - (2) in any event, no later than 1 year after it last carried out the relevant assessment.
- 15A.2.3 G In the course of identifying its *important business services* under SYSC 15A.2.1R, a *firm* should treat each distinct relevant service separately, and should not identify a collection of services as a single *important business service*.
- 15A.2.4 G The factors that a *firm* should consider when identifying its *important business services* include, but are not limited to:
- (1) the nature of the *client* base, including any vulnerabilities that would make the *person* more susceptible to harm from a disruption;
 - (2) the ability of *clients* to obtain the service from other providers (substitutability, availability and accessibility);
 - (3) the time criticality for *clients* receiving the service;
 - (4) the number of *clients* to whom the service is provided;
 - (5) the sensitivity of data held;
 - (6) potential to inhibit the functioning of the *UK financial system*;
 - (7) the *firm's* potential to impact the soundness, stability or resilience of the *UK financial system*;
 - (8) the possible impact on the *firm's* financial position and potential to threaten the *firm's* viability where this could harm the *firm's clients* or pose a risk to the soundness, stability or resilience of the *UK financial system* or the orderly operation of the financial markets;
 - (9) the potential to cause reputational damage to the *firm*, where this could harm the *firm's clients* or pose a risk to the soundness, stability or resilience of the *UK financial system* or the orderly operation of the financial markets;
 - (10) whether disruption to the services could amount to a breach of a legal or regulatory obligation;
 - (11) the level of inherent conduct and market risk;

- (12) the potential to cause knock-on effects for other market participants, particularly those that provide financial market infrastructure or critical national infrastructure; and
- (13) the importance of that service to the *UK financial system*, which may include market share, *client* concentration and sensitive *clients* (for example, governments or pension funds).

Impact tolerances

- 15A.2.5 R A *firm* must, for each of its *important business services*, set an *impact tolerance*.
- 15A.2.6 R A *firm* must keep its compliance with SYSC 15A.2.5R under review and, in particular, consider its compliance in the following circumstances:
- (1) if there is a material change to the *firm's* business or the market in which it operates; and
 - (2) in any event, no later than 1 year after it last carried out the relevant assessment.
- 15A.2.7 G The factors that a *firm* should consider when setting its *impact tolerance* include, but are not limited to:
- (1) the nature of the *client* base, including any vulnerabilities that would make the *person* more susceptible to harm from a disruption;
 - (2) the number of *clients* that may be adversely impacted and the nature of the impact;
 - (3) the potential financial loss to *clients*;
 - (4) the potential financial loss to the *firm* where this could harm the *firm's clients* or pose a risk to the soundness, stability or resilience of the *UK financial system* or the orderly operation of the financial markets;
 - (5) the potential level of reputational damage to the *firm* where this could harm the *firm's clients* or pose a risk to the soundness, stability or resilience of the *UK financial system* or the orderly operation of the financial markets;
 - (6) the potential impact on market or consumer confidence;
 - (7) potential spread of risks to their other business services, other *firms* or the *UK financial system*;
 - (8) the potential loss of functionality or access for *clients*;

- (9) any potential loss of confidentiality, integrity or availability of data;
- (10) the potential aggregate impact of disruptions to multiple *important business services*, in particular where such services rely on common operational resources as identified by the *firm's* mapping exercise under SYSC 15A.4.1R.
- 15A.2.8 G When setting its *impact tolerance*, a *firm* should take account of the fluctuations in demand for its *important business service* at different times of the day and throughout the year in order to ensure that its *impact tolerance* reflects these fluctuations and is appropriate in light of the peak demand for the *important business service*.
- 15A.2.9 R A *firm* must ensure it can remain within its *impact tolerance* for each *important business service* in the event of a severe but plausible disruption to its operations.
- 15A.2.10 G While under SYSC 15A.2.9R a *firm* must ensure it is able to remain within its *impact tolerance*, it should generally not do so if this would put the *firm* in breach of another regulatory obligation, conflict with the proper exercise of a discretion granted to it under any *rule* or regulation, or result in increased risk of harm to its *clients* or the soundness, stability or resilience of the *UK financial system* or the orderly operation of the financial markets. Under certain circumstances, a *firm* may wish to resume a degraded service. This is usually only appropriate if having regard to the interest of the *firm's clients*, the soundness, stability and resilience of the *UK financial system* and the orderly operation of the financial markets, the benefits of resuming a degraded service outweigh the negatives of keeping the service unavailable until the issues have been fully remediated and the service is able to be fully restored to its pre-disruption levels.
- 15A.2.11 G Under *Principle 11* (Relations with regulators), the *FCA* expects to be notified of any failure by a *firm* to meet an *impact tolerance*.
- 15A.2.12 G When setting *impact tolerances* under SYSC 15A.2.5R a *payment services provider* should have regard to its obligations under the *EBA Guidelines* on ICT and security risk management.
- 15A.2.13 G *Payment service providers* should have regard to the *impact tolerance* set under SYSC 15A.2.5R when complying with the *EBA Guidelines* on ICT and security risk management. In particular, they should, as part of their continuity planning and testing, consider their ability to remain within their *impact tolerance* through a range of severe but plausible disruption scenarios.
- 15A.3 Strategies, processes and systems**

- 15A.3.1 R A *firm* must have in place sound, effective and comprehensive strategies, processes and systems to enable it to comply with its obligations under this chapter.
- 15A.3.2 R The strategies, processes and systems required under SYSC 15A.3.1R must be comprehensive and proportionate to the nature, scale and complexity of the *firm's* activities.

15A.4 Mapping

- 15A.4.1 R A *firm* must identify and document the people, processes, technology, facilities and information necessary to deliver each of its *important business services*. This must be sufficient to allow the *firm* to identify vulnerabilities and remedy these as appropriate.
- 15A.4.2 G Where a *firm* relies on a third party for the delivery of an *important business service*, we would expect the *firm* to have sufficient understanding of the people, processes, technology, facilities, and information that support the provision by the third party of its services to or on behalf of the *firm* so as to allow the *firm* to comply with its obligations under SYSC 15A.4.1R.
- 15A.4.3 R A *firm* must keep its compliance with SYSC 15A.4.1R under review and, in particular, review its compliance in the following circumstances:
- (1) if there is a material change to the *firm's* business, the *important business services* identified in accordance with SYSC 15A.2.1R or *impact tolerances* set in accordance with SYSC 15A.2.5R; and
 - (2) in any event, no later than 1 year after it last carried out the relevant assessment.

15A.5 Scenario testing

Testing plan

- 15A.5.1 R A *firm* must develop and keep up to date a testing plan that appropriately details how it will gain assurance that it can remain within the *impact tolerances* for each of its *important business services*.
- 15A.5.2 G *Firms* should ensure that the testing plan takes account of a number of factors, including but not limited to:
- (1) the type of scenario testing undertaken. For example, whether it is paper based, simulations or through the use of live-systems;
 - (2) the scenarios which the *firm* expects to be able to remain within their *impact tolerances* and which ones they may not;
 - (3) the frequency of the testing;

- (4) the number of *important business services* tested;
- (5) the availability and integrity of supporting assets;
- (6) how the *firm* would communicate with internal and external stakeholders effectively to reduce the harm caused by operational disruptions.

Testing

- 15A.5.3 R A *firm* must carry out scenario testing, to assess its ability to remain within its *impact tolerance* for each of its *important business services* in the event of a severe but plausible disruption of its operations.
- 15A.5.4 R In carrying out the scenario testing, a *firm* must identify an appropriate range of adverse circumstances of varying nature, severity and duration relevant to its business and risk profile and consider the risks to the delivery of the *firm's important business services* in those circumstances.
- 15A.5.5 G Where a *firm* relies on a third party for the delivery of its *important business services*, we would expect the *firm* to work with the third party to ensure the validity of the *firm's* scenario testing under SYSC 15A.5.3R. To the extent that the *firm* relies on the third party to carry out testing of the services provided by the third party to or on behalf of the *firm*, the *firm* should ensure the suitability of the methodologies, scenarios and considerations adopted by the third party in carrying out testing. The *firm* is ultimately responsible for the quality and accuracy of any testing carried out, whether by the *firm* or by a third party.
- 15A.5.6 G In carrying out the scenario testing, a *firm* should, among other things, consider the following scenarios:
- (1) corruption, deletion or manipulation of data critical to the delivery of its *important business services*;
 - (2) unavailability of facilities or key people;
 - (3) unavailability of third party services, which are critical to the delivery of its *important business services*;
 - (4) disruption to other market participants, where applicable; and
 - (5) loss or reduced provision of technology underpinning the delivery of *important business services*.
- 15A.5.7 R A *firm* must carry out the scenario testing:
- (1) if there is a material change to the *firm's* business, the *important business services* identified in accordance with SYSC 15A.2.1R or *impact tolerances* set in accordance with SYSC 15A.2.5R;

- (2) following improvements made by the *firm* in response to a previous test; and
- (3) in any event, on a regular basis.

Lessons learned

- 15A.5.8 R A *firm* must, following scenario testing or, in the event of an operational disruption, after such event, conduct a lessons learned exercise that allows the *firm* to identify weaknesses and take action to improve its ability to effectively respond and recover from future disruptions.
- 15A.5.9 R Following the lessons learned exercise, a *firm* must make necessary improvements to address weaknesses identified to ensure that it can remain within its *impact tolerances* in accordance with SYSC 15A.2.9R.

15A.6 Self-assessment and lessons learned exercise documentation

- 15A.6.1 R A *firm* must make, and keep up to date, a written record of its assessment of its compliance with the requirements in this chapter, including, but not limited to, a written record of:
 - (1) *important business services* identified by the *firm* and the justification for the determination made;
 - (2) the *firm's impact tolerances* and the justification for the level at which they have been set by the *firm*;
 - (3) the *firm's* approach to mapping under SYSC 15A.4.1R, including how the *firm* has used mapping to:
 - (a) identify the people, processes, technology, facilities and information necessary to deliver each of its *important business services*;
 - (b) identify vulnerabilities; and
 - (b) support scenario testing;
 - (4) the *firm's* testing plan and a justification for the plan adopted;
 - (5) details of the scenario testing carried out as part of its obligations under SYSC 15A.5, including a description and justification of the assumptions made in relation to scenario design and any identified risks to the *firm's* ability to meet its *impact tolerances*;
 - (6) any lessons learned exercise conducted under SYSC 15A.5.8R;
 - (7) an identification of the vulnerabilities that threaten the *firm's* ability to deliver its *important business services* within the *impact*

tolerances set, including the actions taken or planned and justifications for their completion time;

- (8) its communication strategy under SYSC 15A.8.1R and an explanation of how it will enable it to reduce the anticipated harm caused by operational disruptions; and
- (9) the methodologies used to undertake the above activities.

15A.6.2 R A *firm* must retain each version of the records referred to in SYSC 15A.6.1R for at least 6 years and, on request, provide these to the *FCA*.

15A.7 Governance

15A.7.1 R A *firm* must ensure that its *governing body* approves and regularly reviews the written records required under SYSC 15A.6 (Self-assessment and lessons learned exercise documentation).

15A.8 Communications

15A.8.1 R A *firm* must maintain an internal and external communication strategy to act quickly and effectively to reduce the anticipated harm caused by operational disruptions.

15A.8.2 G As part of a *firm's* communications strategy, the *FCA* expects the *firm* to:

- (1) consider, in advance of a disruption, how it would provide important warnings or advice quickly to *clients* and other stakeholders, including where there is no direct line of communication;
- (2) use effective communication to gather information about the cause, extent, and impact of operational incidents; and
- (3) ensure that their choice of communication method takes account of the circumstances, needs and vulnerabilities of their *clients* and other stakeholders.

15A.8.3 R A *firm* must provide clear, timely and relevant communications to stakeholders in the event of an operational disruption.

15A.9 Supervisory review and feedback

15A.9.1 G The *FCA* may provide individual *guidance* as to whether a *firm's* compliance with this chapter is adequate and, if necessary, require a *firm* to take the necessary actions or steps to address any failure to meet the requirements in this chapter.

15A.9.2 G A *firm* should have regard to the views provided by the *FCA* in relation to the *firm's* compliance. If a *firm* considers that any individual *guidance* given to it is inappropriate to its circumstances it should, consistent with *Principle 11* (Relations with regulators), inform the *FCA* that it disagrees

with that *guidance*. The *FCA* may reissue the individual *guidance* if, after discussion with the *firm*, the *FCA* concludes that the appropriate actions or steps a *firm* should take is different from that initially suggested by the *FCA*.

- 15A.9.3 G If, after discussion, the *FCA* and a *firm* still do not agree, the *FCA* may consider other tools available to it, including its powers under sections 55J and 55L of the *Act* on its own initiative to require the *firm* to take specific steps in line with the *FCA*'s view to comply with the requirements in this chapter.

Insert the following new transitional provision, SYSC TP 10, after SYSC TP 9 (Updates to reflect CRD V). The text is not underlined.

TP 10 Operational resilience

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provisions: dates in force |
|------|--|-----|--|--|---|
| 10.1 | SYSC 15A.2.9 | R | The provision in column (2) does not apply. However, a <i>firm</i> must ensure that, as soon as reasonably practicable after 31 March 2022, and in any event no later than 31 March 2025, it can remain within its <i>impact tolerance</i> for each <i>important business service</i> in the event of a severe but plausible disruption to its operations. | From 31 March 2022 to 31 March 2025 | 31 March 2022 |
| 10.2 | SYSC 15A.4.1 and 15A.5.3 | R | A <i>firm</i> is not required to have performed the mapping and testing exercises as required by the | From 31 March 2022 to 31 March 2025 | 31 March 2022 |

| | | | | |
|--|--|--|--|--|
| | | <p>provisions in column (2) to the full extent of sophistication by 31 March 2022. A <i>firm</i> is required to have carried out the mapping and testing exercises as required by the provisions in column (2) by 31 March 2022 to the extent necessary to identify important business services, set impact tolerances and to identify any vulnerabilities in its operational resilience. After that date, a <i>firm</i> must continue the mapping and testing exercises so that it is able to remain within its <i>impact tolerance</i> for each <i>important business service</i> as soon as reasonably practicable, and in any event no later than 31 March 2025.</p> | | |
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Annex C**Amendments to the Supervision manual (SUP)**

In this Annex, underlining indicates new text.

16 Reporting requirements

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16.13 Reporting under the Payment Services Regulations

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16.13.17A G SYSC 15A (Operational resilience) sets out further provisions which are relevant to a *payment service provider's* Operational and Security Risk assessment.

Annex D

Amendments to the Recognised Investment Exchanges sourcebook (REC)

In this Annex, underlining indicates new text.

2 Recognition requirements

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2.5 Systems and controls, algorithmic trading and conflicts

2.5.1 UK Schedule to the Recognition Requirements Regulations, paragraphs 3 – 3H

| | |
|--|--|
| Paragraph 3 – Systems and controls | |
| (1) | The [<i>UK RIE</i>] must ensure that the systems and controls, including procedures and arrangements, used in the performance of its functions and the functions of the trading venues it operates are adequate, effective and appropriate for the scale and nature of its business. |
| <u>[Note: SYSC 15A contains requirements relating to the operational resilience of <i>UK RIEs</i>]</u> | |
| ... | |

...