

Regulated Covered Bonds

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Chapter 1

Introduction

1.1 Introduction to sourcebook

Application

- 1.1.1 **G** This sourcebook applies to *issuers* and *owners* in relation to *regulated covered bonds*.

Purpose

- 1.1.2 **G** The general purpose of this sourcebook is to set out the guidance, directions and rules made by the *FCA* under the *RCB Regulations*. Those regulations enable bonds to be issued which comply with Article 52(4) of the *UCITS Directive*.

- 1.1.3 **G** This sourcebook should be read together with the *RCB Regulations*.

Other relevant provisions

- 1.1.4 **G** This section refers to some of the other parts of the *FCA Handbook* and *PRA Handbook* which may be relevant to *regulated covered bonds*.
- 1.1.5 **G** Investors in *regulated covered bonds* may be able to take advantage of different regulatory treatments depending on what type of investor they are.
- 1.1.6 **G** *IFPRU investment firms* which have *exposures* to *covered bonds* which meet the requirements set out in the provisions of article 129 of the *EU CRR* may benefit from reduced *risk weights* as set out in article 129 of the *EU CRR*.
- 1.1.7 **G** An *insurer* (which is not a *UK Solvency II firm*, *non-directive friendly society*, *incoming EEA firm* or an *incoming Treaty firm*) may benefit from increased counterparty limits under **INSPRU 2.1.22R (3)(b)**. An *insurer* which is a *UK Solvency II firm* is subject to the *rules* in the *PRA Rulebook* which transpose the *Solvency II Directive* and also to *Solvency II Regulation (EU) 2015/35* of 10 October 2014.
- 1.1.8 **G** *UCITS schemes* and *non-UCITS retail schemes* may benefit from less onerous spread requirements and increased investment limits under **COLL 5.2.11 R** and **COLL 5.6.7 R**.

1.1.9

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- (1) *Issuers* which are subject to an obligation to publish a prospectus under the *Prospectus Directive* are required by Article 3 of the *PD Regulation* to disclose risk factors. These requirements are set out in ■ PR 2.3.1 EU and ■ PR App 3.1.1 EU.
- (2) In complying with these obligations, *issuers* should consider disclosing the risk that actions by a regulatory authority in relation to the *issuer* may adversely affect the ability of the *issuer* to meet its obligations to investors or the ability of the *owner* to meet its guarantee obligations to investors. An example of such action may include restricting the *issuer's* ability to transfer further *assets* to the *asset pool*.

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Chapter 2

Applications for registration

2.1 Application and purpose of chapter

Application

2.1.1 **G** This chapter applies to *issuers*.

Purpose

2.1.2 **G** This chapter sets out the requirements that an *issuer* must follow to apply for registration as a *regulated covered bond issuer* and for registration of a *regulated covered bond* under Regulations 8(a) and 8(b) of the *RCB Regulations* (applications to the *FCA* for registration).



2.2 Applying for registration

Form, manner and verification of application

- 2.2.1 **D** The *issuer* must apply for registration using the form at **RCB 2 Annex 1D** (application for registration).
- 2.2.2 **G** **RCB 3.6.5 D** sets out the methods the *issuer* may use to send the form to the *FCA*.
- 2.2.3 **D** Until the application has been determined by the *FCA*, the issuer must inform the *FCA* of any significant change to the information given in the application immediately it becomes aware of that change.
- 2.2.4 **G** The form and content of the application documentation is a matter for direction by the *FCA*, which will determine what additional information and documentation may be required on a case-by-case basis.
- 2.2.5 **G** The *FCA* will not treat the application as having been received until it receives the registration fee (see **RCB 5.2.5 R**) and all relevant documentation requested by the *FCA* before its on-site review of the application.
- 2.2.6 **D** The *issuer* must ensure that a *director* or a *senior manager* of the *issuer* verifies the application by confirming on the *FCA*'s form that the *issuer* has obtained the appropriate third party advice or reports as required by **RCB 2.3.16 D** and is satisfied that:
 - (1) the information provided in the application is correct and complete; and
 - (2) the arrangements relating to the *covered bond* or *programme* will comply with the requirements in the *RCB Regulations* and in *RCB*.
- 2.2.7 **G** The *FCA* expects the *issuer* to be able to justify any reliance it places on advice or reports which are not reasonably contemporaneous with the confirmation the *senior manager* gives in relation to compliance with the requirements of the *RCB Regulations* and *RCB*.

2.2.8

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The *issuer* must ensure that the *senior manager*, who verifies the application for registration under this section, gives their consent to the *FCA* displaying their confirmation of compliance with the relevant requirements on the *FCA's* website.



2.3 Determination of registration

2.3.1 **G** To enable the *FCA* to be satisfied that the *issuer* and the proposed owner will comply with requirements imposed on the *issuer* or *owner*, as the case may be, by or under the *RCB Regulations*, the applicant should use the application form to provide relevant details of the proposed *covered bond* or *programme* and demonstrate how each of the requirements will be complied with.

- 2.3.2** **G**
- (1) The *FCA*'s application form covers both *issuer* registration and *covered bond* registration as the *FCA* will not normally consider applications for *issuer* registration in isolation from the application for registration of the *covered bond*.
 - (2) An *issuer* which has been admitted to the register of *issuers* should use the same form to apply for registration of subsequent *covered bonds* or *programmes*.
 - (3) The *issuer* does not need to apply for registration of individual issuances from a *programme* which has already been registered, but does need to notify the *FCA* of the issuance under ■ RCB 3.4.1 D.

2.3.3 **G** In relation to registration of an *issuer of regulated covered bonds*, the *FCA* will need to be satisfied that the *issuer's* compliance with the requirements of the *regulatory system* has been adequate and does not give rise to any material cause for concern over the *issuer's* ability to issue *regulated covered bonds* in compliance with the *RCB Regulations*.

2.3.4 **G** To demonstrate that the *issuer* and the proposed owner will comply with Regulation 17, and Regulations 23 and 24 of the *RCB Regulations* (capability of the *asset pool* to cover claims), the *issuer* should set out what it considers to be the risks of the regulation not being complied with and show how those risks have been adequately mitigated by reference to the tests and provisions set out in the *covered bond* or *programme* documentation.

Asset pool of sufficient quality

2.3.5 **G** Regulations 17(2)(d) (requirements on *issuer* relating to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) require the *issuer* of a *regulated covered bond* and the *owner* of the *relevant asset pool* to make arrangements so that the *asset pool* is of sufficient quality to give investors confidence that in the event of the failure of the *issuer* there will be a low

risk of default in the timely payment by the *owner* of claims attaching to a *regulated covered bond*.

2.3.6

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The *FCA* will:

- (1) expect the *issuer* to demonstrate that it has in place appropriate systems, controls, procedures and policies, including in relation to risk management, underwriting, arrears and valuation;
- (2) expect the *issuer* to demonstrate that the cash-flows generated by the *assets* would be sufficient to meet the payments due in a timely manner including under conditions of economic stress and in the event of the failure of the *issuer*;
- (3) take account of any *over collateralisation* used to mitigate these risks to achieve the desired outcome so that, for example, potential credit losses and mismatches are offset; and
- (4) not only consider the probability of default in timely payment of claims, but also the loss in the event of a default. This will include consideration of recovery assumptions, timing and costs.

2.3.7

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The risk factors which the *FCA* will take into account in assessing the *issuer's* and *owner's* compliance with Regulations 17(2)(d) (general requirements on *issuer* in relation to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) will include credit risk of the *assets*, concentration risk, market risk and counterparty risk.

Credit risk

2.3.8

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- (1) The credit risk of an *asset* is the risk of loss if another party fails to perform its obligations or fails to perform them in a timely fashion.
- (2) Where, for example, the *asset pool* includes residential mortgages the relevant factors which the *FCA* may consider include:
 - (a) whether the *asset pool* contains (or could contain) loans made to individuals who have been made bankrupt or have had court judgments made against them;
 - (b) the extent to which the *asset pool* contains (or could contain) loans made to individuals whose earnings have been self-certified rather than independently verified;
 - (c) whether the *asset pool* contains (or could contain) loans which have a higher credit risk in terms of individuals' willingness or ability to pay (for example, because they have high loan-to-value ratios, low debt service ratios or high income multipliers);
 - (d) the quantity and duration of mortgages which are in arrears;
 - (e) the length of time the loan has been in place; and
 - (f) the purpose and terms of the mortgage (for example, owner occupied, buy-to-let, interest only, repayment, fixed rate, variable rate, off-set or endowment).

- (3) Where, for example, the *asset pool* includes commercial mortgages, the relevant factors the *FCA* may consider in addition to any of the relevant residential mortgage factors described above, include:
 - (a) the type of property to which the mortgage relates (for example whether it is office, retail, industrial);
 - (b) the terms of the loans (including size, interest rate, maturity, options, representations and warranties); and
 - (c) occupation levels, rental income and terms of rental agreements of the property secured.

Concentration risk

- 2.3.9 G Concentration risk is the risk of loss from exposures being limited in number or variety. The relevant factors the *FCA* may consider include:
- (1) the level of granularity of the *asset pool* (i.e. what is the number and size distribution of *assets* in the pool);
 - (2) whether the borrowers or collateral is unduly concentrated in a particular industry, sector, or geographical region.

Market risk

- 2.3.10 G Market risk is the risk that arises from fluctuations in the values of, or income from, *assets* or in interest or exchange rates. The relevant factors the *FCA* may consider include whether the hedging agreements (defined in Regulation 1(2) of the *RCB Regulations* as agreements entered into or *assets* held as protection against possible financial loss) adequately protect against any adverse mismatched cash-flows due to changes in market variables.

Counterparty risk

- 2.3.11 G Counterparty risk is the risk that the counterparty to a transaction could default before the final settlement of the transactions cash flows. The relevant factors the *FCA* may consider include whether the:
- (1) counterparty has an appropriate credit rating;
 - (2) counterparty can unilaterally terminate the hedging agreement, and if so under what circumstances;
 - (3) contractual arrangements contain appropriate termination procedures (for example, what provisions apply in the event of default or in respect of the calculation of termination payments); and
 - (4) contractual arrangements provide adequately for what is to happen in the event of *issuer* default.

Assessment of risk factors

- 2.3.12 G (1) The *FCA* will assess each risk factor separately and then assess any inter-dependencies and correlations to form a judgment on the quality of the *asset pool* as a whole. For example, an *asset pool* which is of high credit quality and so low risk due to a combination of

factors such as owner occupation, low income multiples, full valuation methodologies, and a strong payments track record, may permit another factor such as high loan-to-value ratios, that would otherwise be considered as inconsistent with high quality, to be included.

- (2) The more that an *asset pool* consists of loans involving risks such as high loan-to-value ratios, self-certification, borrowers with poor credit profiles, and low borrower affordability, the less likely it is, without other mitigating factors, to be of sufficiently high quality to meet the requirements in Regulations 17(2)(d) (general requirements on *issuer* in relation to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations*.

Covered bonds collateralised by real estate

- 2.3.13 **G** In assessing whether the *asset pool* is of sufficient quality, the *FCA* will have regard to the requirements in relation to the collateralisation of real estate referred to in article 208 of the *EU CRR* and the valuation rules in article 229(1) of the *EU CRR*.

Rectifying non-compliance

- 2.3.14 **G** The *FCA* expects the *issuer* to demonstrate that there are provisions in the *covered bond* or *programme* that adequately deal with:
- (1) the identification and rectification of any breach of Regulations 17(2) (general requirements on *issuer* in relation to the *asset pool*) and 24 (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations*;
 - (2) the appointment of replacements for parties, for example servicers, cash managers or paying agents; and
 - (3) the orderly winding-up of the *asset pool* in the event that breaches of Regulations 17(2) and 24 are not rectified in a timely way.

Representation of bond investors' views and interests

- 2.3.15 **G** The *FCA* expects the *issuer* to demonstrate, as part of showing that Regulations 17 (general requirements on *issuer* in relation to the *asset pool*) and 24 (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations* will be complied with, that there are provisions in the *covered bond* or *programme* which enable the views and interests of investors in the *regulated covered bond* to be taken account of in an appropriate and timely way by a suitably qualified, adequately resourced, third party who acts independently, such as a bond trustee.

Third party advice and reports

- 2.3.16 **D** The *issuer* must obtain written advice and reports regarding the compliance of the *issuer* and the relevant *covered bond* or *programme* with the requirements in the *RCB Regulations* and *RCB* from suitable independent third party advisers, such as lawyers and accountants, before making an application.

Legal advice

2.3.17

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- (1) The FCA expects legal advice to deal adequately with at least the following matters in relation to the actual or proposed arrangements:
- (a) whether the transfer of the *assets* to the owner would be upheld in the event of liquidation or administration, or similar collective insolvency proceedings, of the *issuer* or the transferor (if different from the *issuer*);
 - (b) the risk of the transfer of an *asset* to the owner being re-characterised as the creation of a security interest;
 - (c) the risk of an *asset* transferred to the owner being clawed back under insolvency law provisions (such as rules against preferences, or transactions at an undervalue);
 - (d) whether the contractual arrangements limit eligible property to the items listed in Regulation 2(1) of the *RCB Regulations* (meaning of eligible property);
 - (e) whether the contractual arrangements limit the situation of eligible property to locations permitted under Regulation 2(2) of the *RCB Regulations* (situation of eligible property);
 - (f) whether the contractual arrangements limit the asset pool to items listed in Regulation 3 of the *RCB Regulations* (composition of asset pool);
 - (g) if security is granted over the *asset pool* by the *owner*, the enforceability of that security and any relevant legal limitations;
 - (h) whether the *owner* meets the requirements set out in Regulation 4 of the *RCB Regulations* (meaning of owner);
 - (i) whether the *owner* is a company or limited liability partnership which has its registered office in the *United Kingdom* and whether the contractual arrangements support an analysis that the owner's "centre of main interests" (defined in Regulation 1(2) of the *RCB Regulations* as having the same meaning as in Article 3(1) of Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings) is also situated in the *United Kingdom*;
 - (j) whether the contractual arrangements are consistent with the obligation of the *issuer* to lend sums derived from the issue of a *regulated covered bond* to the *owner* of the *relevant asset pool* under Regulation 16 of the *RCB Regulations* (sums derived from the issue of *regulated covered bonds*);
 - (k) whether the contractual arrangements provide that if the *owner* is wound up, the *asset pool* will be used to reimburse the claims of investors in *regulated covered bonds* under the priority set out in Regulation 27 of the *RCB Regulations* (priority in a winding-up of an *owner*);
 - (l) whether the contractual arrangements provide for the appointment of a person who will enable the views and interests of investors in the *regulated covered bond* to be taken account of in an appropriate and timely way as explained in ■ RCB 2.3.15 G;
 - (m) whether the contractual arrangements provide for the identification and rectification of breaches of Regulation 17 of the *RCB Regulations* (general requirements on *issuer* relating to the *asset pool*) and Regulations 23 and 24 of the *RCB Regulations* (requirements relating to the *asset pool*) and the orderly

winding-up of the *asset pool* in the event that the breaches cannot be rectified; and

(n) the enforceability of the contractual arrangements.

(2) Where *assets* are situated outside England and Wales, the *FCA* expects the *issuer* to obtain advice on whether the law of those jurisdictions impacts on the enforceability of security and the availability of those *assets*. Relevant issues to consider may include true sale, perfection of security, priority and recognition of insolvency proceedings, and foreclosure rights.

Accountancy reports

2.3.18

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- (1) The *FCA* expects the report from the accountants to address at least the following matters:
- (a) that the level of *over collateralisation* meets the limits set out in the *covered bond* arrangements which are designed to ensure compliance with the requirement that the *asset pool* is capable of covering claims attaching to the bond in Regulation 17 (requirements on *issuer* in relation to the *asset pool*) of the *RCB Regulations*; and
 - (b) that appropriate due diligence procedures (which should include an analysis of a representative statistical sample at a 99% confidence level of the *assets* in the *asset pool*) have been carried out to check whether:
 - (i) the attributes of the *asset pool* correspond accurately to supporting information obtained from other sources (for example, in the case of mortgage pools, that information such as the mortgage amount, value, term, type and location correspond to land registry records, valuation reports and loan agreements);
 - (ii) the attributes of the *asset pool* are appropriately reflected on the records which are maintained in order to comply with the requirements of Regulations 17(2)(a) and 24(1)(a)(i) of the *RCB Regulations* (requirement to keep a record of each *asset* in the *asset pool*) and on the *issuer's* systems; and
 - (iii) the *issuer's* analysis of the *assets* provided to the *FCA* is accurate.

Providing advice and reports to the FCA

2.3.19

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The *FCA's* use of its power under Regulation 12 of the *RCB Regulations* (requirement of further information to determine application) may include requiring the *issuer* to provide copies of the advice or reports referred to in ■ RCB 2.3.16 D to the *FCA*.

Liquid assets

2.3.20

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Assets which would be eligible for inclusion in a liquidity buffer under ■ BIPRU 12.7 can be liquid assets for the purposes of limb (a) of the definition of liquid assets in Regulation 1(2) of the *RCB Regulations*. The *FCA* will also expect that liquid assets which consist of deposits should be held in the same currency or currencies as the *regulated covered bonds* issued by the *issuer*.

Application for the admission to the register of issuers and register of regulated covered bonds

This annex consists only of one or more forms. Forms are to be found through the following address:

Application for the admission to the register of issuers and register of regulated covered bonds - RCB_02_ann_01_20161104.pdf

Chapter 3

Notifications

3.1 Application and Purpose

Application

- 3.1.1 **G** This chapter applies to *issuers, asset pool monitors and owners*.

Purpose

- 3.1.2 **G** This chapter sets out the reporting and notifications requirements under Regulations 17A, 18, 20, 24 and 25 of the *RCB Regulations*.

3.2 Annual confirmations of compliance and asset pool monitor

Form of confirmation and use of third party advisers and asset pool monitor's report

- 3.2.1** **D** The *issuer* must send to the *FCA* annual written confirmation of compliance with Regulations 16 (sums derived from the issue of *regulated covered bonds*) and 17 (general requirements on the *issuer* in relation to the *asset pool*) of the *RCB Regulations* in the form set out in ■ RCB 3 Annex 1D (annual confirmation of compliance).
- 3.2.2** **D** Before providing the confirmation required by this section, the *issuer* must obtain and consider written advice or reports from suitable independent third parties such as the *asset pool monitor* and, where appropriate, lawyers.
- 3.2.3** **G** The *FCA* expects the *issuer* to be able to justify any reliance it places on advice or reports which are not reasonably contemporaneous with the confirmation.
- 3.2.4** **G** The *FCA* expects the *asset pool monitor's* report to address at least the matters to be checked and due diligence procedures set out in ■ RCB 2.3.18 G. The *FCA* may also specify additional matters that the *asset pool monitor's* report should address in relation to a particular *issuer*.
- 3.2.4A** **G** The *FCA's* use of its power under Regulation 18 of the *RCB Regulations* may include requiring the *issuer* to provide to the *FCA* copies of the advice or reports referred to in ■ RCB 3.2.2 D.
- 3.2.4B** **D** The *issuer* must provide a copy of the *asset pool monitor's* report to the *FCA* when it sends the confirmation required by this section to the *FCA*.

Timing of confirmation date

- 3.2.5** **D**
- (1) The first confirmation date in relation to the annual confirmation must be the earlier of any date the *issuer* selects, or the date 12 months from the *registration date*.
 - (2) Subsequent confirmations must be made on the anniversary of the first confirmation date.

3.2.6 **D** The *issuer* must send each confirmation to the *FCA* within one *month* after the relevant confirmation date.

Period covered by confirmation

3.2.7 **D** The first confirmation must cover compliance during the period from the *registration date* up to the confirmation date referred to in **■ RCB 3.2.5 D (1)**.

3.2.8 **D** Subsequent confirmations must cover compliance for the period from the last confirmation date to the date of the current confirmation.

Verification of confirmation

3.2.9 **D** The *issuer* must ensure that a *director* or a *senior manager* signs the annual confirmation and confirms on the *FCA*'s form that the *issuer* has obtained the appropriate third party advice or reports required by this section.

3.2.9A **G** Where possible, the *director* or *senior manager* who signs the annual confirmation should be the same *director* or *senior manager* who has verified the application for registration under **■ RCB 2.2.6 D**. If the *director* or *senior manager* is different to the *director* or *senior manager* who verified the application for registration, the *issuer* should notify the *FCA* at least one *month* before sending the confirmation to the *FCA*.

Notifications by the owner

3.2.10 **D** If the *issuer* is in insolvency, the *owner* must send the *FCA* under **■ RCB 3.2.1 D**:

- (1) a confirmation of compliance within one *month* of the date of insolvency; and
- (2) annual confirmations by the same dates as the date the confirmations under **■ RCB 3.2.5 D** are due.

3.2.11 **D**

- (1) The *owner* must ensure that a duly authorised representative signs the confirmation and confirms on the *FCA*'s form that the *owner* has obtained the appropriate third party advice or reports required by this section.
- (2) The *owner* must obtain appropriate advice in the same manner as set out in **■ RCB 3.2.2 D** and must provide a copy of the *asset pool monitor's* report to the *FCA* as set out in **■ RCB 3.2.4B D**.

Review by asset pool monitor

3.2.12 **G** In addition to requiring the *asset pool monitor* to prepare an annual report, Regulation 17A of the *RCB Regulations* requires that the *asset pool monitor* must inspect the compliance of the *issuer* or *owner* (as the case may be) with the requirements in Regulations 16, 17 or 24 of the *RCB Regulations* once every 12 months.

3.2.13 **G** The *FCA* expects the inspection by the *asset pool monitor* of the compliance of the *issuer* or *owner* (as the case may be) with the relevant requirements in the *RCB Regulations* to address at least the matters to be checked and due diligence procedures set out in **RCB 2.3.18 G**. The *FCA* expects that the inspection will be conducted on an agreed-upon-procedures basis.

3.2.14 **G** As required under Regulation 17A of the *RCB Regulations*, if it appears to the *asset pool monitor* that the *issuer* or *owner* (as the case may be) has failed to comply with the requirements set out in Regulations 17 or 24 of the *RCB Regulations*, or has not provided all relevant information or explanations, the *asset pool monitor* must report that to the *FCA* in writing as soon as possible.

Change of asset pool monitor

3.2.15 **G** If the *asset pool monitor* is changed, the *issuer* (or *owner*, as the case may be) should notify the *FCA* when the new *asset pool monitor* is appointed, giving the name of the new *asset pool monitor* and details of the reason for the change.

3.3 Asset pool notifications

Form of notifications

- 3.3.1** **D** The *issuer* must send to the *FCA*, information relating to the *asset pool*, in the form set out in ■ RCB 3 Annex 2D (asset notification form), and information relating to the *regulated covered bonds* issued under the *programme*, in the form set out in ■ RCB 3 Annex 3 D (asset and liability profile form).
- 3.3.2** **D** The *issuer* must send the asset notification form to the *FCA* each *month* following the *registration date*, and the asset and liability profile form to the *FCA* within one *month* of the end of each quarter following the *registration date*.
- 3.3.2A** **D** The *issuer* must send to the *FCA* loan-by-loan level data relating to the *asset pool* in the form set out in ■ RCB 3 Annex 7A D within one *month* of the end of each quarter following any issuance of *regulated covered bonds* after 1 January 2013. Guidance on how to complete this form is set out in ■ RCB 3 Annex 7B G.

Notifications by the owner

- 3.3.3** **D** If the *issuer* is in insolvency, the *owner* must send to the *FCA* the notifications set out at ■ RCB 3.3.1 D and ■ RCB 3.3.2A D by the same dates as the dates the notifications under those directions are due.

Due diligence

- 3.3.4** **G** The *issuer* or the *owner*, as the case may be, should carry out, or make arrangements to carry out, appropriate due diligence to check that the analysis in the information provided to the *FCA* is correct.

Addition or removal of assets from the asset pool

- 3.3.5** **D** If the *issuer* or the *owner* (as the case may be) proposes to add or remove assets to or from the *asset pool* which change the level of *over collateralisation* by 5% or more, it must notify the *FCA* using the form set out in ■ RCB 3 Annex 2 D (asset notification form) at least 5 *business days* prior to the proposed transfer, giving expected details of the size and composition of the transfer.



3.4 Covered Bond issuance notifications

- 3.4.1** **D** The *issuer* must inform the *FCA* of the information relating to bond issuances from a *regulated covered bond* in the form set out in ■ RCB 3 Annex 4 D (indicative terms form) at least 3 business days before the date of issuance.
- 3.4.2** **D** On the date of issuance, the issuer must send to the *FCA*:
- (1) the information in the form set out in ■ RCB 3 Annex 5 D (issuance form);
 - (2) the information in the form set out in ■ RCB 3 Annex 3 D (asset and liability profile form); and
 - (3) the final terms of the *regulated covered bonds* or equivalent issuance documents setting out the terms of the *regulated covered bonds* and signed copies of swap documents.

3.5 Other notifications

Notifications of change of owner

3.5.1 **G** Regulation 25 of the *RCB Regulations* (change of owner) sets out the procedures which apply where a *regulated covered bond* has been issued and the *owner* of the *relevant asset pool* proposes to transfer ownership to another person.

3.5.2 **D** If an *owner* proposes to transfer the *asset pool* to a new *owner* it must provide the *FCA* as a minimum with the following information in writing at least three *months* before the proposed transfer date:

- (1) name, address and contact details of the proposed new *owner*;
- (2) proposed transfer date and reasons for the transfer;
- (3) an explanation of how the proposed new *owner* will comply with the requirements imposed on it by the *RCB Regulations* and *RCB*; and
- (4) confirmation that the existing *owner* and the proposed new *owner* have obtained appropriate advice in relation to the proposed transfer, and details of such advice.

Notifications of material changes

3.5.3 **G** Regulation 20 of the *RCB Regulations* (material changes to the regulated covered bond) sets out the procedures which apply where an *issuer* proposes to make a material change to the contractual terms of the bond.

3.5.4 **D** If an *issuer* proposes to make a material change to the contractual terms of a *regulated covered bond*, it must inform the *FCA* of the following information to the *FCA* at least 3 months before the proposed date of the change:

- (1) details of the proposed change including proposed date of change and the reasons for it;
- (2) an assessment of the impact of the change on the ability of the *issuer* and *owner* to continue to comply with their requirements under the *RCB Regulations* and *RCB*; and
- (3) confirmation that the *issuer* has obtained appropriate advice in relation to the proposed change and details of such advice.

- 3.5.5 **G** The *FCA* will regard as material any change that may affect the ability of the *issuer* or the *owner* to continue to comply with the requirements made on them under the *RCB Regulations* and *RCB*.

Notifications to the FCA if asset pool is not capable or not likely to be capable of covering claims and of other matters

- 3.5.6 **D** The *issuer* or the *owner*, as the case may be, must notify the *FCA* immediately, in writing by e-mail or hand-delivered letter, if Regulation 18(2), or 24(1)(c) of the *RCB Regulations* (obligation to inform *FCA* if *asset pool* not capable, or not likely to be capable of covering claims) is triggered.

- 3.5.7 **D** The *issuer* or the *owner*, as the case may be, must notify the *FCA* immediately in writing by e-mail, or hand-delivered letter, if requirements relating to the relevant *regulated covered bond* under the *RCB Regulations* or *RCB* are, or are likely to be, materially breached, or of any other matter which the *FCA* should be made aware of.

- 3.5.8 **G** The *issuer* or the *owner*, as the case may be, should include details of proposals to rectify the breach at the time they notify, or as soon as practicable after that time.

Notification of cancellation

- 3.5.9 **D** The *issuer* must notify the *FCA* if it proposes to cancel in full or in part a *regulated covered bond* or *programme* at least 3 *business days* before the cancellation will take effect.

- 3.5.10 **D** The *issuer* must send to the *FCA* the information in the form set out in **RCB 3 Annex 6 D** and an updated asset and liability profile form (**RCB 3 Annex 3 D**) on the date of cancellation of the *regulated covered bond* or *programme*.

Publication of asset pool information and transaction documents

- 3.5.11 **D** The *issuer* must publish the asset notification form sent to the *FCA* under **RCB 3.3.1 D**.

- 3.5.12 **D** The *issuer* must publish the information relating to the individual loan assets in the *asset pool* in the form set out in **RCB 3 Annex 7A D** (loan level disclosure) within one *month* of the end of each quarter following any issuance of *regulated covered bonds* after 1 January 2013.

- 3.5.13 **D** The *issuer* must publish the transaction documents (excluding legal opinions) relating to the *regulated covered bond* or *programme*.

- 3.5.14 **G** The publication of the information and documents required under **RCB 3.5.11 D**, **RCB 3.5.12 D** and **RCB 3.5.13 D** should be made on a subscription-only, secure, password-protected website. This website should

also contain a link to the latest published *prospectus* relating to the relevant *regulated covered bond* or *programme*.

3.5.15

G

- (1) The transaction documents published under ■ RCB 3.5.13 D should include the asset sale agreement, the servicing agreements, the administration and cash management agreements, the trust deed, the security deed, the agency agreements, the account bank agreement, the guaranteed investment contract, the master definitions agreement, intercompany loan agreements, the LLP deed, the asset monitor agreement, the swap documentation, the final terms of the *regulated covered bonds* or equivalent issuance documents setting out the terms of the *regulated covered bonds* and, if applicable, liquidity facility agreements.
- (2) Where the transaction documents contain sensitive commercial terms (such as the up-front costs associated with a swap), the *issuer* may redact these terms for the purposes of publication, provided the relevant transaction documents are non-public and the relevant redacted terms refer to sunk costs which do not impact the transaction cash flows.

3.5.16

D

If the *issuer* is in insolvency, the *owner* must publish the information set out at ■ RCB 3.5.11 D and ■ RCB 3.5.12 D in accordance with those directions.

3.6 Fees and other matters

- Administrative fee**.....
- 3.6.1 **R** If an *issuer* or *owner* does not provide the notifications to the *FCA* required by directions made under this chapter by the date specified, then that *issuer* or *owner* must pay to the *FCA* an administrative fee of £250.
- Further information and direction**.....
- 3.6.2 **G** The *FCA*'s exercise of its powers under Part 1 paragraph 3 of the Schedule to the *RCB Regulations* (power to require information) may include requesting information on the reviews undertaken or advice given by accountants and where appropriate lawyers.
- 3.6.3 **G** The form and content of the notifications in this chapter are a matter for direction by the *FCA* which will determine any additional information and documentation required on a case-by-case basis.
- Review of legal advice**.....
- 3.6.4 **G** The *issuer* or the *owner*, as the case may be, should review legal advice as necessary. For example, advice should be reviewed if a relevant statutory provision is amended or where a new decision or judgment of a court might have a bearing on the conclusions reached which is material to the *issuer's* or *owner's* compliance with the requirements of the *RCB Regulations* or the *RCB*.
- Method of sending forms and information to FCA**.....
- 3.6.5 **D** Unless otherwise stated, the *issuer* or the *owner*, as the case may be, must send the relevant forms and information to the *FCA*'s address marked for the attention of the "Covered Bonds Team, Capital Markets Sector" by any of the following methods:
- (1) post; or
 - (2) leaving it at the *FCA*'s address and obtaining a time-stamped receipt;
or
 - (3) email to rcb@fca.org.uk.

Annual confirmation of compliance with the RCB Regulations and the RCB Sourcebook

This annex consists only of one or more forms. Forms are to be found through the following address:

Annual confirmation of compliance with the RCB Regulations and the RCB Sourcebook - rcb_chapter3_annex1d_20130401.pdf

Asset pool notification form

This annex consists only of one or more forms. Forms are to be found through the following address:

Asset pool notification form - RCB_03_ann_02_20161104.xlsx

Asset and liability profile form

This annex consists only of one or more forms. Forms are to be found through the following address:

Asset and liability profile form- rcb_chapter3_annex3d

Indicative terms form

This annex consists only of one or more forms. Forms are to be found through the following address:

Indicative terms form- RCB_03_ann_04_20161104.xls

Issuance form

This annex consists only of one or more forms. Forms are to be found through the following address:

Issuance form- RCB_03_ann_05_20161104.xls

Cancellation form

This annex consists only of one or more forms. Forms are to be found through the following address:

Cancellation form- RCB_03_ann_06_20161104.xls

Loan level disclosure form

This annex consists only of one or more forms. Forms are to be found through the following address:

Loan level disclosure form- RCB_03_ann_07A_20161104.xls

Guidance on loan level disclosure form

This annex consists only of one or more forms. Forms are to be found through the following address:

Guidance on loan level disclosure form- rcb_chapter3_annex7bg_20130101.xls

Chapter 4

Enforcement powers



4.1 Application and purpose

4.1.1

G**Application**

This chapter contains guidance for *issuers*, and *owners* and other persons subject to the *RCB Regulations*.

4.1.2

G**Purpose**

The purpose of this chapter is to give guidance on the *FCA's* approach to the use of its enforcement powers under the *RCB Regulations* and to set out the *FCA's* policy on the imposition and amount of financial penalties.

4.2 Enforcement powers and penalties

The FSA's enforcement powers

- 4.2.1 **G** The *FCA's* approach to the exercise of its enforcement powers will be consistent with its approach in *DEPP* and *EG* so far as appropriate.
- 4.2.2 **G** The *FCA's* exercise of its powers under the *RCB Regulations* is without prejudice to the use of its powers under the *Act* or under other legislation.
- 4.2.3 **G**
- (1) When deciding whether to take enforcement action under Part 7 of the *RCB Regulations*, and what form that enforcement action should take, the *FCA* will consider all relevant factors, including:
 - (a) the relevant factors on decisions to take action set out in **■ DEPP 6.2.1 G**;
 - (b) whether any contractual or other arrangements agreed between the parties can be used effectively to address any perceived failure under the *RCB Regulations*; and
 - (c) the interests of investors in the relevant *regulated covered bond*.
 - (2) The *FCA* does not normally expect to use its enforcement powers where the *issuer* or the *owner* are in the process of rectifying non-compliance and where they have taken account of the views and interests of investors in the *regulated covered bond*. This is without prejudice to the *FCA's* use of its enforcement powers as a result of its consideration of all relevant factors, as set out in **■ RCB 4.2.3 G (1)**.

Financial penalties

- 4.2.4 **G** The *FCA's* policy on imposing financial penalties (including the amount of any such penalties) under the *RCB Regulations* will be consistent with the policy as set out in *DEPP* and *EG* with appropriate modifications.
- 4.2.5 **G** When considering whether to impose a financial penalty, the amount of penalty, and whether to impose the penalty on the *issuer* or the *owner*, the *FCA* will have regard, where relevant, to:
- (1) the statement on determining the appropriate level of a financial penalty set out in **■ DEPP 6.5** to **■ DEPP 6.5D**;
 - (2) the particular arrangements between the *issuer* and the *owner*;

-
- (3) the likely impact of the penalty on the interests of investors in a *regulated covered bond*; and
 - (4) the conduct of the *issuer* or the *owner*.

Chapter 6

Warning and decision notices



6.1 Application and purpose

Application

- 6.1.1 **G** This chapter contains guidance for *issuers* and *owners* and other persons subject to the *RCB Regulations*.

Purpose

- 6.1.2 **G** The purpose of this chapter is to set out the *FCA's* statement of the procedure which it proposes to follow on giving *warning notices* and *decision notices* in relation to *regulated covered bonds*.



6.2 Policy on decision and warning notices

Decision and warning notices

6.2.1 **G** When making a decision on an application for registration under the *RCB Regulations*, or in relation to material changes to the contractual terms of the *regulated covered bond*, or in relation to a change of *owner*, or when seeking to use direction, revocation or penalty powers, the *RCB Regulations* require the *FCA* to give the subject of the intended action a *warning notice* and a *decision notice*. The recipient of a *warning notice* has the right to make representations to the decision maker, and may refer the decision to give a *decision notice* to the *Tribunal*.

6.2.2 **G** Regulation 44 of the *RCB Regulations* (Warning notices and decision notices) applies Part XXVI of the *Act* (Notices) in respect of notices that we give under the *RCB Regulations*. This means that the provisions of section 393 of the *Act* (Third party rights) and section 394 of the *Act* (Access to Authority material) apply to penalty procedures under the *RCB Regulations* and that, if the matter is not referred to the *Tribunal*, then upon taking the action to which a *decision notice* relates, the *FCA* will issue the subject of the decision notice a *final notice*. The *FCA* is required to publish such details about the matter to which a *final notice* relates as it considers appropriate.

FCA decision maker

6.2.3 **G** ■ DEPP 2 Annex 1 G identifies the relevant decision maker in relation to *warning notices* and *decision notices* issued by the *FCA* under the *RCB Regulations*.

6.2.4 **G** Decisions on applications for registration, in relation to material changes to contractual terms of the *regulated covered bond*, or in relation to a change of *owner*, or decisions to issue a direction under the *RCB Regulations* or to revoke an *issuer's* registration, will be taken under *executive procedures* following the process set out in ■ DEPP 4.

6.2.5 **G** Decisions to impose a financial penalty under regulation 34 of the *RCB Regulations* will be taken by the *RDC* under the procedure set out in ■ DEPP 3.2 or, where relevant, ■ DEPP 3.3.

Regulated Covered Bonds

Schedule 1 Record keeping requirements

Sch 1 G

(1) The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements in this sourcebook.

(2) Regulation 17(2)(a) (general requirements on *issuer* in relation to the *asset pool*) and Regulation 24(1)(a)(i) (requirements on *owner* in relation to the *asset pool*) require a record to be kept of each asset in the asset pool.

(3) It is not a complete statement of those requirements and should not be relied on as if it were.

(4) There are no other record-keeping requirements in *RCB*.

(5) Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
n/a	n/a	n/a	n/a	n/a

Regulated Covered Bonds

Schedule 2 Notification requirements

Sch 2 G

(1) The aim of the guidance in the following table is to give the reader a quick overall view of the relevant notification and reporting requirements

(2) It is not a complete statement of those requirements and should not be relied on as if it were.

(3) Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
RCB 3.2.1 D	Confirmation of compliance by <i>issuer</i> .	<i>Senior manager</i> to confirm compliance with Regulations 16 and 17 of the <i>RCB Regulations</i> . Use Form RCB 2 Ann 1D.	The earlier of a date which the <i>issuer</i> selects, or 12 months from the <i>registration date</i> , then annually after that.	One month after the relevant confirmation date.
RCB 3.3.1 D and RCB 3.3.3 D	Information relating to the <i>asset pool</i> and information relating to the <i>regulated covered bonds</i> issued under the <i>programme</i>	Information on various attributes of the <i>asset pool</i> and issued <i>regulated covered bonds</i> . Use Forms RCB 3 Ann 2D and RCB 3 Annex 3 D.	Monthly (in relation to the information in Form RCB 3 Annex 2 D) or quarterly (in relation to the information in Form RCB 3 Annex 3 D) following <i>registration date</i> .	One month after the end of the relevant month or quarter.
RCB 3.2.10 D	Confirmation of compliance by <i>owner</i>	<i>Owner</i> to confirm compliance with Regulations 16 and 17 of the <i>RCB Regulations</i> . Use Form RCB 2 Ann 1D.	(1) when the issuer goes into insolvency (2) the anniversary date of the date the issuer sent annual confirmations	(1) Within one month of <i>issuer's</i> insolvency. (2) One month after the relevant confirmation date.
RCB 3.3.2A D	Information about loans relating to the <i>asset pool</i>	Loan-by-loan level data relating to the <i>asset pool</i> . Use Form RCB 3 Annex 7A D.	End of each quarter following <i>registration date</i> following any issuance of <i>regulated covered bonds</i>	One month after the end of the relevant quarter.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
RCB 3.3.5 D	Addition or removal of <i>assets</i> to or from the <i>asset pool</i>	Details of the size and composition of the transfer. Use Form RCB 3 Annex 2 D.	after 1 January 2013. Addition or removal of <i>assets</i> from the <i>asset pool</i> which change the <i>over-collateralisation</i> level by 5% or more.	5 business days before the proposed transfer.
RCB 3.4.1 D	Covered bond issuance	Information on the covered bond issuance. Use Form RCB 3 Annex 4 D.	Issuance of a <i>regulated covered bond</i>	3 <i>business days</i> before date of issuance
RCB 3.4.2 D	Covered bond issuance	Information on the covered bond issuance. Use Form RCB 3 Annex 6 D, RCB 3 Annex 3 D and the final terms of the <i>regulated covered bonds</i> and signed copies of swap documents.	Issuance of a <i>regulated covered bond</i>	On date of issuance
RCB 3.5.2 D	Change of <i>owner</i>	At least: (1) name, address and contact details of proposed new <i>owner</i> . (2) proposed transfer date and reasons for transfer (3) explanation of how proposed new <i>owner</i> will comply with requirements in <i>RCB Regulations</i> and in <i>RCB</i> . (4) confirmation that existing <i>owner</i> and proposed new <i>owner</i> have obtained appropriate advice	Proposal to change <i>owner</i>	At least 3 <i>months</i> before proposed date of transfer
RCB 3.5.4 D	Material changes being any change that may affect the ability of the <i>issuer</i> or the <i>owner</i> to continue to comply with the requirements made on them under	At least: (1) details of the proposed change including proposed date of change and the reasons for it (2) an assessment of the impact of the change on the ability of the <i>issuer</i> and <i>owner</i> to continue to	Proposal to make material change	At least 3 <i>months</i> before proposed date of change

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
RCB 3.5.6 D	the <i>RCB Regulations</i> and <i>RCB</i> Capability of <i>asset pool</i> to meet bondholder claims	comply with the requirements in <i>RCB Regulations</i> and in <i>RCB</i> . (3) confirmation that <i>issuer</i> has obtained appropriate advice (1) fact that the <i>asset pool</i> is not capable or not likely to be capable of covering claims. (2) proposals to rectify the breach	(1) and (2) As soon as Regulations 18(2) or 24(1)(c) of the <i>RCB Regulations</i> is triggered	(1) Immediately (2) upon notification of breach or as soon as practicable after that time.
RCB 3.5.7 D	(1) That the requirements in the <i>RCB Regulations</i> and <i>RCB</i> are, or are likely to be materially breached, or (2) of any other matter which the FSA should be made aware of.	(1) fact of breach or likely breach (2) details of matter	Material breach, or likely material breach. As soon as <i>issuer</i> or <i>owner</i> becomes aware of matter.	Immediately
RCB 3.5.9 D	Cancellation	Notice of cancellation of a <i>regulated covered bond</i> or <i>programme</i>	Proposal to cancel a <i>regulated covered bond</i> or <i>programme</i> in part or in full.	3 <i>business days</i> before cancellation will take effect.
RCB 3.5.10 D	Cancellation	Information on the cancellation of a <i>regulated covered bond</i> or <i>programme</i> and updated asset and liability profile form. Use Forms RCB 3 Annex 6 D and RCB 3 Annex 3 D.	Cancellation of a <i>regulated covered bond</i> or <i>programme</i> .	On date of cancellation of the a <i>regulated covered bond</i> or <i>programme</i> .

Regulated Covered Bonds

Schedule 3 Fees and other requirement payments

Sch 3

The provisions relating to fees are set out in ■ FEES 3.2.7 R(zm) (application fee), ■ FEES 3.2.7 R(zn) (material change fee) and in ■ RCB 3.6.1 R (administrative fee).

Regulated Covered Bonds

Schedule 4 Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

Sch 4.3 G
[deleted]

Regulated Covered Bonds

Schedule 5 Rights of action for damages

Sch 5 G
Not applicable

Regulated Covered Bonds

Schedule 6 Rules that can be waived

Sch 6 G
Not applicable

