Chapter 13A

Qualifying for authorisation under the Act
13A.1 Application and purpose

Application

13A.1.1 (1) This chapter applies to an EEA firm that wishes to exercise an entitlement to establish a branch in, or provide cross border services into, the United Kingdom under a Single Market Directive or the auction regulation. (The Act refers to such an entitlement as an EEA right and its exercise is referred to in the Handbook as "passporting"). (See ‘SUP App 3 (Guidance on passporting issues) for further guidance on passporting.)

The chapter does not, apart from in ‘SUP 13A.6G (rules which an incoming EEA firm will be subject to), and ‘SUP 13A Annex 1 and Annex 2, provide guidance in relation to an EEA firm that is a Solvency II firm or to Gibraltar firms treated as Solvency II firms. Solvency II firms and those Gibraltar firms should consult the relevant parts of the PRA Rulebook and the PRA website at: http://www.bankofengland.co.uk/pra/Pages/authorisations/passporting/notifying.aspx as the PRA is the appropriate UK regulator.

(2) This chapter also applies to:

(a) a Treaty firm that wishes to exercise rights under the Treaty in respect of regulated activities, those rights not being covered by passporting rights provided by the Single Market Directives, and qualifies for authorisation under Schedule 4 to the Act (Treaty Rights); and

(b) a UCITS qualifier, that is, an operator, trustee or depositary of a recognised collective investment scheme, constituted in another EEA State, and which qualifies for authorisation under Schedule 5 to the Act (Persons concerned in collective investment schemes).

(3) The provisions implementing the Single Market Directives are within the coordinated field (see ‘PERG 2.9.18G (1)). So, where an incoming ECA provider intends to provide electronic commerce activity that consists of activities that fall within one of the Single Market Directives, the passporting requirements on exercising an EEA right in this chapter will apply.

13A.1.2 This chapter does not apply to:

(1) an EEA firm that wishes to carry on in the United Kingdom activities which are outside the scope of its EEA right and the scope of a permission granted under Schedule 4 to the Act; in this case the EEA firm requires a “top-up permission” under Part 4A of the Act (see the appropriate UK regulator’s website.
www.fca.org.uk/firms/authorisation/apply-authorisation for the FCA
and www.bankofengland.co.uk/pra/Pages/authorisations/newfirm/default.aspx for the PRA; or

(2) [deleted]

(3) a Treaty firm that wishes to provide electronic commerce activities into the United Kingdom; or

(4) a market operator that operates a regulated market or an MTF in an EEA State other than the UK and wishes to make appropriate arrangements so as to facilitate access to and use of its system by remote users or participants in the UK. See G13A.1.3 for guidance.

13A.1.3

(1) Under the Gibraltar Order made under section 409 of the Act, a Gibraltar firm is treated as an EEA firm under Schedule 3 to the Act if it is:

(a) [deleted]

(b) authorised in Gibraltar under the CRD; or

(c) authorised in Gibraltar under the IDD; or

(d) authorised in Gibraltar under the MiFID; or

(e) authorised in Gibraltar under the UCITS Directive; or

(f) authorised in Gibraltar under AIFMD.

(g) authorised in Gibraltar under the MCD

(1A) Similarly, an EEA firm which:

(a) has satisfied the Gibraltar establishment conditions and has established a branch in the UK; or

(b) has satisfied the Gibraltar service conditions and is providing cross border services into the UK;

is treated as having satisfied the establishment conditions or service conditions (as appropriate) under Schedule 3 to the Act. Regulations 4 to 7 of the EEA Passport Rights Regulations will apply to the establishment of the branch or the provision of cross border services.

(2) Credit institutions, insurance intermediaries, investment firms, management companies, AIFMs and MCD credit intermediaries are allowed to passport their services into the United Kingdom if they comply with the relevant notification procedures. So, any references in this chapter to EEA State or EEA right include references to Gibraltar and the entitlement under the Gibraltar Order where appropriate.

(3) [deleted]
(1) This chapter explains how an EEA firm and a Treaty firm can qualify for authorisation under Schedules 3 and 4 to the Act and how a UCITS qualifier is authorised under Schedule 5 to the Act.

(2) This chapter also provides guidance on Schedule 3 to the Act for an incoming EEA firm that wishes to establish a branch in the United Kingdom instead of, or in addition to, providing cross border services into the United Kingdom or vice versa.

(1) EEA firms should note that this chapter only addresses the procedures which the appropriate UK regulator will follow under the Act. So, an EEA firm should consider this guidance in conjunction with the requirements with which it will have to comply in its Home State.

(2) The guidance in this chapter represents the appropriate UK regulator’s interpretation of the Single Market Directives, the auction regulation, the Act and the secondary legislation made under the Act. The guidance is not exhaustive and should not be seen as a substitute for a person consulting the legislation or taking legal advice.
13A.2 EEA firms and Treaty firms

13A.2.1 A person will only be an EEA firm or a Treaty firm if it has its head office in an EEA State other than the United Kingdom. EEA firms and Treaty firms are entitled to exercise both the right of establishment and the freedom to provide services under the Treaty. The difference, however, is that an EEA firm has a right to passport under a Single Market Directive or the auction regulation, whereas a Treaty firm carries on activities for which the right to carry on those activities does not fall within the scope of a Single Market Directive or the auction regulation. An EEA firm may also be a Treaty firm if it carries on such activities. A person may be a Treaty firm, where, for example, it carries on business that includes regulated activities, the right to carry on which does not fall within the scope of the Single Market Directive or the auction regulation under which it is entitled to exercise an EEA right.

(1) [deleted]

(2) [deleted]

13A.2.2 An EEA firm may passport those activities which fall within the scope of the relevant Single Market Directive or the auction regulation as long as they are included in its Home State authorisation.
13A.3 Qualifications for authorisation under the Act

EEA firms

13A.3.1 Section 31 of the Act (Authorised persons) states that an EEA firm is authorised for the purposes of the Act if it qualifies for authorisation under Schedule 3 to the Act (EEA Passport Rights). Under paragraph 12 of Part II of that Schedule, an EEA firm that is an EEA pure reinsurer, or an EEA firm that has received authorisation under article 18 of the auction regulation, qualifies for authorisation without condition. Other than those two types of EEA firm, an EEA firm qualifies for authorisation if:

(1) it is seeking to establish a branch in the United Kingdom in exercise of an EEA right and satisfies the establishment conditions (see ■ SUP 13A.4.1 G and ■ SUP 13A.4.2 G); or

(2) it is seeking to provide cross border services into the United Kingdom in exercise of an EEA right and satisfies the service conditions (see ■ SUP 13A.5.3 G).

13A.3.1A If an EEA MiFID investment firm seeks to use a tied agent established in the UK, the EEA MiFID investment firm will be treated as if it were seeking to establish a branch and must satisfy the establishment conditions (see ■ SUP 13A.4.1 G).

13A.3.1C (1) Under paragraph 15A(1) of Part II of Schedule 3 to the Act, an EEA UCITS management company intending to exercise an EEA right to provide collective portfolio management services for a UCITS scheme must, before it undertakes that activity, obtain the FCA’s approval to manage that UCITS scheme. Firms should use the application form set out in ■ SUP 13A Annex 3 R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom) for this purpose.

(1A) If the firm’s immediate group includes a PRA-authorised person, the FCA will give the PRA a copy of the application referred to in (1).

(2) If the FCA refuses the application referred to in (1), it will give a notice to the firm and the firm’s Home State regulator in accordance with paragraph 15A of Part II of Schedule 3 to the Act. Before refusing an application, the FCA will consult with the firm’s Home State regulator.
(3) Under paragraph 15B(1) of Part II of Schedule 3 to the Act, if any representations are made to the FCA by a firm to which the notice referred to in (2) has been given, the FCA is required to decide whether to withdraw that notice. If the FCA decides not to withdraw that notice it must give the firm a decision notice.

(4) [deleted]

13A.3.1D G For details of the FCA’s procedures for the giving of notices see ■ DEPP 2 (Statutory notices and allocation of decision making).

13A.3.2 G (1) On qualifying for authorisation, subject to ■ SUP 13A.3.1C G (1), an EEA firm (except for an EEA firm that has received authorisation under article 18 of the auction regulation) will have permission to carry on each permitted activity (see (3) below) which is a regulated activity.

(2) [deleted]

(3) The permitted activities of an EEA firm (except for an EEA firm that has received authorisation under article 18 of the auction regulation) are those activities identified in the consent notice, regulator’s notice or notice of intention. Those permitted activities may include activities that are within the scope of a Single Market Directive but which are unregulated activities in the United Kingdom.

(3A) An EEA firm that received authorisation under article 18 of the auction regulation has permission to carry on bidding in emissions auctions.

(4) The permission will be treated as being on terms equivalent to those appearing in the consent notice, regulator’s notice, notice of intention or (in respect of an EEA firm that has received authorisation under article 18 of the auction regulation) to those appearing in the authorisation granted to the EEA firm under article 18 of the auction regulation. For example, it will reflect any limitations or requirements which are included in the firm’s Home State authorisation.

13A.3.3 G An EEA firm which has qualified for authorisation is referred to in the Handbook as an incoming EEA firm.

Treaty firms

13A.3.4 G Under section 31 of the Act, a Treaty firm is authorised for the purposes of the Act if it qualifies for authorisation under Schedule 4 (Treaty Rights), that is:

(1) the Treaty firm is seeking to carry on a regulated activity; and

(2) the conditions set out in paragraph 3(1) of Schedule 4 to the Act are satisfied.

13A.3.5 G On qualifying for authorisation a Treaty firm will have permission to carry on each permitted activity which is a regulated activity. This permission will be
treated on the same terms as those which apply to the Treaty firm’s Home State authorisation. For example, it will reflect any limitations or requirements which are included in the firm’s Home State authorisation.

13A.3.6 The effect of paragraph 5(1) and 5(2) of Schedule 4 to the Act is that a Treaty firm which qualifies for authorisation under that Schedule must, at least seven days before it carries on any of the regulated activities covered by its permission, give the appropriate UK regulator written notice of its intention to do so. Failure to do so is a criminal offence under paragraph 6(1) of that Schedule.

13A.3.6A Where the PRA receives a notification, it will give a copy to the FCA, and where the FCA receives a notification, it will give a copy to the PRA where relevant.

13A.3.7 (1) A written notice from a Treaty firm under paragraph 5(2) of Schedule 4 to the Act must be:

(a) addressed for the attention of the authorisations team in the PRA or FCA, as appropriate; and

(b) delivered to the appropriate UK regulator by one of the methods in (2).

(2) The written notice may be delivered by:

(a) post to either of the following addresses, as appropriate:

(i) the address for notices to the FCA: The Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN; or

(ii) the address for notices to the PRA: The Prudential Regulation Authority, 20 Moorgate, London, EC2R 6DA; or

(b) leaving the application at the address in G13A.3.9 below and obtaining a time-stamped receipt; or

(c) hand delivery to a member of the authorisations team in the PRA or FCA, as appropriate.

13A.3.8 The written notice required by paragraph 5(2) of Schedule 4 to the Act should be accompanied by confirmation of the Treaty firm’s authorisation from the Home State regulator, as referred to in paragraph 3(2) of Schedule 4 to the Act.

13A.3.9 (1) For further information, a Treaty firm should contact the FCA and/or PRA authorisations teams using the details provided on that regulator’s website.

13A.3.10 (1) The guidance in PERG 2 is relevant to Treaty firms to help them determine if they require authorisation under the Act.

(2) A Treaty firm which qualifies for authorisation is referred to in the Handbook as an incoming Treaty firm.
SUP 13A : Qualifying for authorisation under the Act

Section 13A.3 : Qualifications for authorisation under the Act

**13A.3.12**
Under Schedule 5 to the Act (Persons concerned in collective investment schemes), a person who for the time being is an operator, trustee or depositary of a scheme which is a recognised scheme under section 264 of the Act is an authorised person. Such a person is referred to in the Handbook as a UCITS qualifier.

**13A.3.13**
A UCITS qualifier has permission under paragraph 2 of Schedule 5 to the Act, to carry on, as far as is appropriate to the capacity in which it acts in relation to the scheme:

1. the regulated activity of establishing, operating or winding up a collective investment scheme; and
2. any activity in connection with, or for the purposes of, the scheme (including the regulated activity of managing a UCITS).

**13A.3.14**
A UCITS qualifier should refer to COLLG or to the following sections of COLL for requirements for recognised schemes:

1. COLL 9.2.1 G for guidance on notifications;
2. COLL 9.2.1 G for guidance on information and documentation requirements; and
3. COLL 9.4 which includes rules on what facilities need to be maintained.
13A.4 EEA firms establishing a branch in the United Kingdom

The conditions for establishing a branch

13A.4.1 (1) Before an EEA firm (other than an EEA pure reinsurer or an EEA firm that has received authorisation under article 18 of the auction regulation) exercises an EEA right to establish a branch in the United Kingdom, the Act requires it to satisfy the establishment conditions, as set out in paragraph 13(1) of Part II of Schedule 3 to the Act.

(2) For the purposes of paragraph 13(1)(b)(iii) of Part II of Schedule 3 to the Act, the information to be included in the consent notice has been prescribed under regulation 2 of the EEA Passport Rights Regulations.

13A.4.1A An EEA UCITS management company may not exercise an EEA right to provide collective portfolio management services for a UCITS scheme from a branch in the United Kingdom until approved by the FCA to do so (see SUP 13A.3.1C G).

13A.4.2 [deleted]

13A.4.3 For the purposes of paragraph 13(2)(b) of Part II of Schedule 3 to the Act, the applicable provisions may include the appropriate UK regulator’s rules. The EEA firm is required to comply with relevant rules when carrying on a passported activity through a branch in the United Kingdom as well as with relevant UK legislation.

13A.4.3A Guidance on the matters that are reserved to a firm’s Home State regulator is located in SUP 13A Annex 2.

The notification procedure

13A.4.4 (1) When the appropriate regulator receives a consent notice from the EEA firm’s Home State regulator, it will, under paragraphs 13(2)(b) (c) and 13(3) of Part II of Schedule 3 to the Act, notify the applicable provisions (if any)

within two months of the notice date.

(1A) The notice date is:

(a) for a MiFID investment firm, the date on which the Home State gave the consent notice; and

(b) in any other case, the date on which the appropriate UK regulator received the consent notice.

(2) Although the appropriate UK regulator is not required to notify the applicable provisions to an EEA firm passporting under MiFID or AIFMD, these provisions are set out in SUP 13A Annex 1 (Application of the Handbook to Incoming EEA Firms).

When the FCA receives a consent notice from the EEA firm’s Home State regulator in respect of an EEA firm within paragraph 5(e) of Part I of Schedule 3 to the Act, it will, under paragraph 13(3C):

(1) acknowledge receipt; and

(2) notify the EEA firm’s Home State regulator of the applicable provisions (if any), before the end of the period of one month beginning with the day on which the appropriate UK regulator received the consent notice.

Where the PRA receives a consent notice, it will give a copy to the FCA without delay, and where the FCA receives a consent notice it will give a copy to the PRA, where relevant, without delay.

In a case where the FCA is the appropriate UK regulator, the consent of the PRA is required for any notification by the FCA which relates to:

(a) a PRA-regulated activity;

(b) a PRA-authorised person; or

(c) a person whose immediate group includes a PRA-authorised person.

An incoming EEA firm that is exercising an EEA right under the auction regulation to establish a branch in the United Kingdom must submit the
The sole purpose of the notification in SUP 13A.4.5 R is to enable the FSA to supervise the UK branch of the incoming EEA firm’s compliance with the applicable provisions on an ongoing basis. The applicable provisions that apply to that branch are set out in SUP 13A Annex 1 G (Application of the Handbook to Incoming EEA Firms).
13A.5 EEA firms providing cross border services into the United Kingdom

Is the service provided within the United Kingdom?

13A.5.1 There is guidance for UK firms in SUP Appendix 3.6 on when a service is provided cross border. EEA firms may find this of interest although they should follow the guidance of their Home State regulators.

13A.5.2 An EEA firm (other than an EEA firm that received authorisation under article 18 of the auction regulation) should note that the requirement under the Single Market Directives to give a notice of intention to provide cross border services applies whether or not:

1. it has established a branch in the United Kingdom; or
2. those cross border services are regulated activities.

The conditions for providing cross border services into the United Kingdom

13A.5.3 (1) Before an EEA firm (other than an EEA firm that has received authorisation under article 18 of the auction regulation) exercises an EEA right to provide cross border services into the United Kingdom, the Act requires it to satisfy the service conditions, as set out in paragraph 14 of Part II of Schedule 3 to the Act.

(2) For the purposes of paragraph 14(1)(b) of Part II of Schedule 3 to the Act, the information to be contained in the regulator’s notice has been prescribed under regulation 3 of the EEA Passport Rights Regulations and in the case of CRD, the information has been prescribed in the technical standards issued pursuant to and under Article 39 of the CRD.

(3) An EEA UCITS management company may not exercise an EEA right to provide collective portfolio management services for a UCITS scheme on a cross border services basis until approved by the FCA to do so (see SUP 13A.3.1C G).

(4) An EEA firm that has received authorisation under article 18 of the auction regulation is not subject to the service conditions in its exercise of an EEA right under the auction regulation to provide services in the United Kingdom. The notification procedure in SUP 13A.5.4 G does not apply to it and it does not need to notify the FCA prior to providing services into the United Kingdom because there are presently no applicable provisions that apply in these
circumstances. Instead, its provision of these services is supervised by its Home State regulator.

The notification procedure

13A.5.4 G

(1) Unless the EEA firm (other than an EEA firm that received authorisation under article 18 of the auction regulation) is passporting under the IDD, if the appropriate UK regulator receives a regulator’s notice or, where no notice is required, is informed of the EEA firm’s intention to provide cross border services into the United Kingdom, the appropriate UK regulator will, under paragraphs 14(2) and 14(3) of Part II of Schedule 3 to the Act, notify the EEA firm of the applicable provisions (if any) within two months of the day on which the appropriate UK regulator received the regulator’s notice or was informed of the EEA firm’s intention.

(1A) When the FCA receives a regulator’s notice from the EEA firm’s Home State regulator that the EEA firm intends to exercise its EEA right to provide cross border services under the IDD, it will, under paragraph 14(3AZA) of Part II to Schedule 3 to the Act:

(a) acknowledge receipt; and

(b) notify the EEA firm’s Home State regulator of the applicable provisions (if any).

(2) Although the appropriate UK regulator is not required to notify the applicable provisions to an EEA Firm passporting under MIFID or AIFMD these provisions are set out in SUP 13A Annex 1 (Application of the Handbook to Incoming EEA Firms).

13A.5.4-A G

When the FCA receives a consent notice from the EEA firm’s Home State regulator in respect of a firm within paragraph 5(i) of Part I of Schedule 3 to the Act, it will, under paragraph 14(3ZA), use the information received from the EEA firm’s Home State regulator to enter the necessary information into the Financial Services Register.

13A.5.4A G

Where the PRA receives a notice, it will give a copy to the FCA without delay and where the FCA receives a notice, it will give a copy to the PRA without delay, where relevant.

13A.5.5 G

An EEA firm (other than an EEA UCITS management company) that has satisfied the service conditions in paragraph 14 of Part II of Schedule 3 to the Act is entitled to start providing cross border services into the United Kingdom. In the case of an EEA UCITS management company, FCA approval must first be obtained, as explained in SUP 13A.5.3 G (see also SUP 13A.3.1C G). However, an EEA firm that wishes to start providing cross border services but has not yet received notification of the applicable provisions may wish to contact the authorisations team in the FCA or PRA, as appropriate (see SUP 13A.8.1G (2)).
13A.6 Which rules will an incoming EEA firm be subject to?

13A.6.1 (1) SUP 13A Annex 1 summarises how the Handbook applies to incoming EEA firms.

(2) SUP 13A Annex 2 summarises the matters that are reserved to a firm’s Home State regulator.

13A.6.2 An incoming EEA firm (other than an EEA pure reinsurer or an EEA firm that has received authorisation under article 18 of the auction regulation and only provides services in the United Kingdom) or incoming Treaty firm carrying on business in the United Kingdom must comply with the applicable provisions (see SUP 13A.4.4 G, SUP 13A.4.4-BG, SUP 13A.4.6 G, and SUP 13A.5.4 G) and other relevant UK legislation. For example where the business includes:

(1) business covered by the Consumer Credit Act 1974, then an incoming EEA firm or incoming Treaty firm must comply with the provisions of that Act; or

(2) effecting or carrying out contracts covering motor vehicle third party liability risks as part of direct insurance business, then an incoming EEA firm or incoming Treaty firm is required to become a member of the Motor Insurers’ Bureau.

13A.6.3 (1) In particular, an EEA firm (other than an EEA pure re-insurer ) or Treaty firm must comply with the applicable provisions in SUP 10A and 10C (Approved persons). An EEA firm or Treaty firm should also refer to SUP 10A.1 and 10C.1 (Application) which sets out the territorial provisions of the approved persons regime.

(2) An EEA SMCR firm should also refer to SUP 10C (FCA senior managers regime for approved persons in SMCR firms).

13A.6.4 Under the EEA Passport Rights Regulations, references in section 60 of the Act (applications for approval for persons to perform controlled functions) to “the authorised person concerned” include:

(1) an EEA MiFID investment firm whose Home State regulator has given a consent notice under paragraph 13 of Schedule 3 to the Act (see SUP 13A.4.1G (1) and SUP 13A.4.2 G) or a regulator’s notice under paragraph 14 of that Schedule (see SUP 13A.5.3G (1)), and which will
be the **authorised person** concerned if the **EEA firm** qualifies for **authorisation** under that Schedule; and

(2) any other **EEA firm** with respect to which the **appropriate UK regulator** has received a consent notice or regulator’s notice under paragraph 13 of Schedule 3 to the **Act** (see **SUP 13A.4.1G (1)** and **SUP 13A.4.2 G**), or a regulator’s notice under paragraph 14 of that Schedule (see **SUP 13A.5.3G (1)**), and which will be the **authorised person** concerned if the **EEA firm** qualifies for **authorisation** under that Schedule.

13A.5  **G**  **SUP 13A Annex 1 does not apply to incoming ECA providers acting as such.**
13A.6A Enhanced supervision of EEA firms passporting under the IDD

(1) The split of responsibility (between Home and Host States) for ensuring compliance with IDD requirements is as follows.

(a) For incoming EEA branches:

(i) the Host State is responsible in relation to the obligations in Chapter V (Information requirements and conduct of business rules) and Chapter VI (Additional requirements in relation to insurance-based investment products) (see article 7(2) of the IDD); and

(ii) the Home State is responsible in relation to all other obligations.

(b) For EEA firms providing cross border services, the Home State is responsible in relation to all IDD obligations.

(2) However, under article 7(1) of the IDD, if an IDD insurance intermediary’s primary place of business is in a Host State, the Host and Home State regulators may agree that the Host State regulator will act as if it were the Home State regulator with regard to certain provisions. Those provisions are Chapters IV (Organisational requirements), V (Information requirements and conduct of business rules), VI (Additional requirements in relation to insurance-based investment products) and VII (Sanctions and other measures) of the IDD. This sort of Home and Host State regulator agreement is referred to as an Article 7(1) IDD Agreement.

13A.6.2 Where the FCA is a Host State regulator it may enter into an article 7(1) IDD Agreement in respect of an incoming EEA firm. The FCA is given this power by section 203A of the Act subject to the conditions set out in that section. If the FCA enters into such an agreement, the EEA firm will be subject to enhanced supervision by the FCA to the extent specified in the agreement.
13A.7 Top-up permission

13A.7.1 If a person established in the EEA:

(1) does not have an EEA right;

(2) does not have permission as a UCITS qualifier; and

(3) does not have, or does not wish to exercise, a Treaty right (see G SUP 13A.3.4 to G SUP 13A.3.11);

to carry on a particular regulated activity in the United Kingdom, it must seek Part 4A permission from the appropriate UK regulator to do so (see the appropriate UK regulator's website: www.fca.org.uk/firms/authorisation/apply-authorisation for the FCA and www.bankofengland.co.uk/pra/Pages/authorisations/newfirm/default.aspx for the PRA). This might arise if the activity itself is outside the scope of the Single Market Directives, or where the activity is included in the scope of a Single Market Directive but is not covered by the EEA firm’s Home State authorisation. If a person also qualifies for authorisation under Schedules 3, 4 or 5 to the Act as a result of its other activities, the Part 4A permission is referred to in the Handbook as a top-up permission.

13A.7.2 Where the appropriate UK regulator grants a top-up permission to an incoming EEA firm to carry on regulated activities for which it has neither an EEA right nor a Treaty right, the appropriate UK regulator is responsible for the prudential supervision of the incoming EEA firm, to the extent that the responsibility is not reserved to the incoming EEA firm’s Home State regulator.

13A.7.3 [deleted]

13A.7.4 For guidance on how to apply for Part 4A permission under the Act, see the appropriate UK regulator’s website: http://www.fca.org.uk/firms/about-authorisation/getting-authorised for the FCA and www.bankofengland.co.uk/pra/Pages/authorisations/newfirm/default.aspx for the PRA. If an EEA firm or Treaty firm wishes to make any subsequent changes to its top-up permission, it can make an application for variation of that permission (see G SUP 6 (Applications to vary and cancel Part 4A permission)).
13A.8 Sources of further information

For further information on UK regulation, an EEA firm, a Treaty firm or a UCITS qualifier should contact the authorisations team in the FCA or PRA, if and when appropriate. To contact the FCA and/or PRA authorisations teams, please see the details provided on that regulator's website.
Section 13A.8: Sources of further information
Application of the Handbook to Incoming EEA Firms

1. The table below summarises the application of the Handbook to an incoming EEA firm. Where the table indicates that a particular module of the Handbook may apply, its application in relation to any particular activity is dependent on the detailed application provisions in that module. The table does not apply to incoming ECA providers. These should refer to COBS 1 Annex 1 Part 3 section 7 for guidance on how COBS applies to them. The table does not apply to EEA pure reinsurers or to an EEA firm in relation to its exercise of an EEA right under the auction regulation to provide services in the United Kingdom.

2. In some cases, the application of the Handbook depends on whether responsibility for a matter is reserved under an EU instrument to the incoming EEA firm’s Home State regulator. Guidance on the reservation of responsibility is contained in SUP 13A Annex 2 (Matters reserved to a Home State regulator). Guidance on the territorial application of MiFID is contained in PERG 13.6 and PERG 13.7 and SUP 13A Annex 2.

3. For an incoming EEA firm which has permission for cross-border services only, many parts of the Handbook apply only if the firm carries on regulated activities in the United Kingdom. Those parts of the Handbook will therefore not apply if the firm confines its activities to those within the overseas persons exclusions in article 72 of the Regulated Activities Order, or which would not be regarded as carried on in the United Kingdom. Further guidance may be found in PERG 2.4 (Link between activities and the United Kingdom) and PERG 2.9.17 G to PERG 2.9.17 G (Overseas persons).

4. An EEA firm that exercises an EEA right under the auction regulation to establish a branch in the United Kingdom to provide auction regulation bidding is subject to a limited set of requirements in the Handbook that apply to that activity. These are the rules listed in paragraph 2.6A of SYSC 1 Annex 1, GEN 4 and SUP (in particular, the money laundering reporting function in SUP 10A and requirements to notify the FCA). Aside from this note, the table does not apply to those firms.

5. An EEA firm that exercises an EEA right under MiFID to carry on MiFID business bidding is subject to the applicable provisions relating to its carrying on of MiFID business and any applicable EU regulations.

<table>
<thead>
<tr>
<th>(1) Module of Handbook</th>
<th>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
<th>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRIN</td>
<td>The Principles apply only in so far as responsibility for the matter in question is not reserved by an EU instrument to the firm’s Home State regulator (PRIN 3.1.1 R (1)). For an incoming EEA firm which is a CRD credit institution without a top-up permission, Principle 4 does not apply.</td>
<td>The Principles do not apply if the firm has permission only for cross-border services and does not carry on regulated activities in the United Kingdom (PRIN 3.1.1 R (2)). The Principles have limited application for activities which are not carried on from a UK establishment (see PRIN 3.1.1 R). Otherwise, see column (2).</td>
</tr>
<tr>
<td>SYSC</td>
<td>SYSC 1 and SYSC 1 Annex 1 (Application of SYSC 2 and SYSC 3) contain application provisions only. SYSC 2 and SYSC 3 apply only to an insurer, a managing agent and the Societys set out in SYSC 1 Annex 1.1.1 R, which include the following exceptions:</td>
<td>SYSC 2 and SYSC 3 do not apply if the firm has permission only for cross-border services and does not carry on regulated activities in the United Kingdom (SYSC 1 Annex 1.1.1 R). SYSC 2 and SYSC 3 have limited application for activities which are not carried on from a UK es-</td>
</tr>
</tbody>
</table>
SUP 13A : Qualifying for authorisation under the Act

(1) SYSC 2.1.1 R (1) and SYSC 2.1.2 G do not apply;

(2) SYSC 2.1.3 R to SYSC 2.2.3 G apply, but only in relation to allocation of the function in SYSC 2.1.3 R (2) and SYSC 2.1.3AR(2) and only in so far as responsibility for the matter in question is not reserved by an EU instrument to the firm’s Home State regulator; and

(3) SYSC 3 applies, but only in so far as responsibility for the matter in question is not reserved by an EU instrument to the firm’s Home State regulator. SYSC 1 Annex 1, Part 1, 1.8 R(Where?) further restricts the territorial application of SYSC 1 to SYSC 3 for an incoming EEA firm. Further guidance is contained in SYSC 2.1.6 G, Question 12. SYSC 18 applies to the extent that the Public Interest Disclosure Act 1998 applies to the firm.

The common platform requirements in SYSC 4 - 10 apply as set out in Part 2 of SYSC 1 Annex 1 (Application of the common platform requirement).

SYSC 1 Annex 1 row 2.6F provides that the common platform requirements do not apply to an incoming EEA AIFM branch, except the AIFMD Host State requirements and certain requirements regarding financial crime.

SYSC 1 Annex 1.2.7G reminds EEA MiFID investment firms that they must comply with the common platform record-keeping requirements in relation to a branch in the United Kingdom.

SYSC 1 Annex 1, Part 2, 2.7AG provides guidance on the application of the common platform requirements to the UK branch of an EEA UCITS management company.

SYSC 9 applies to activities carried on from an establishment in the United Kingdom, unless another applicable rule which is relevant to the activity has a wider territorial scope, in which case the common platform record-keeping requirements apply with that wider scope in relation to the activity described in that rule (SYSC 1 Annex 1.2.17R).

SYSC 10A applies to an incoming EEA AIFM and an EEA MiFID investment firm.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 12</td>
<td>does not apply (SYSC 12.1.3 R).</td>
</tr>
<tr>
<td>SYSC 13</td>
<td>does not apply (SYSC 13.1.1 G).</td>
</tr>
<tr>
<td>SYSC 14</td>
<td>does not apply (SYSC 14.1.1 R).</td>
</tr>
<tr>
<td>SYSC 15</td>
<td>does not apply (SYSC 15.1.1 G).</td>
</tr>
<tr>
<td>SYSC 16</td>
<td>does not apply (SYSC 16.1.1 G).</td>
</tr>
<tr>
<td>SYSC 17</td>
<td>does not apply (SYSC 17.1.1 G).</td>
</tr>
<tr>
<td>SYSC 18</td>
<td>applies.</td>
</tr>
<tr>
<td>SYSC 19A, 19B, 19C and 19D</td>
<td>do not apply.</td>
</tr>
<tr>
<td>SYSC 19F</td>
<td>applies to a MiFID investment firm unless it is a UCITS investment firm or an AIFM investment firm.</td>
</tr>
<tr>
<td>SYSC 19F.2</td>
<td>applies to insurance distribution activities carried on from an establishment in the United Kingdom.</td>
</tr>
<tr>
<td>SYSC 28</td>
<td>does not apply.</td>
</tr>
<tr>
<td>SYSC 23 to 27</td>
<td>apply with the modifications described in those chapters.</td>
</tr>
<tr>
<td>COCON</td>
<td>COCON applies to employees of firms which are SMCR firms. See COCON 1.1 for detailed rules on the application of COCON.</td>
</tr>
<tr>
<td>COND</td>
<td>COND does not apply if the firm does not have, or apply for, a top-up permission. Otherwise, the threshold conditions apply in a limited way.</td>
</tr>
<tr>
<td></td>
<td>(1) in the case of a top-up permission under Part 4A of the Act (that is, a permission to carry on regulated activities in addition to those permitted through its authorisation under Schedule 3 to the Act (EEA Passport Rights)), and</td>
</tr>
<tr>
<td></td>
<td>(2) the exercise of the FCA’s powers under sections 55J and 55L of the Act in relation to the top-up permission. (COND 1.2.4 G)</td>
</tr>
<tr>
<td>APER</td>
<td>APER applies to approved persons of firms other than SMCR firms. See below under SUP 10A as to whether controlled functions are performed, and approval therefore required.</td>
</tr>
<tr>
<td>FIT</td>
<td>FIT applies to a firm wishing to establish a branch in the United Kingdom or to apply for a top-up permission in respect of any application that it makes for the approval of a person to perform a controlled function (FIT 1.1). See SUP 10A and SUP 10C below</td>
</tr>
</tbody>
</table>
SUP 13A : Qualifying for authorisation under the Act

| GEN | GEN applies (GEN 1.1, GEN 1.2, GEN 2.1, GEN 4.1, GEN 5.1 and GEN 6.1). However, (a) GEN 4 does not apply to the extent that the firm is subject to equivalent rules imposed by its Home State (GEN 4.1.1 R (3)), and (b) GEN 6 only applies to business that can be regulated under sections 137A and 137G of the Act (The FCA’s General rules) and (The PRA’s General rules), respectively. It does not therefore apply if, or to the extent that, responsibility has been reserved to an incoming firm’s Home State regulator by an EU instrument. Only GEN 4.5 applies in relation to MiFID or equivalent third country business (see GEN 4.1.1 R). The FCA has supervisory responsibility in respect of a branch of a MiFID investment firm under article 44(8) of the MiFID Org Regulation relating to the prohibition on using the name of a competent authority to suggest its endorsement of the firm’s products or services. |
| FEES | Applies to the extent a firm is required to pay a fee in regards to carrying out any regulated activity in the UK. FEES 3.2.7R applies in relation to incoming data reporting services providers. |
| GENPRU | Does not apply. |
| BIPRU | EEA firms that are CAD investment firms are subject to the prudential standards of their home state regulator (BIPRU 1.1.7 R). However, BIPRU 12 applies to an EEA firm that is an IFPRU investment firm or BIPRU firm as respects the activities of its UK branch, but in relation to liquidity risk only. |
| IFPRU | EEA firms that are investment firms (as defined in the EU CRR) are subject to the EU CRR as implemented by their home state regulator (IFPRU 1.1.5 R). |
| MIPRU | MIPRU 1 (Application and general provisions) does not apply unless the firm has a top-up permission. |
| FEES | Does not apply in relation to regulated activity in the UK. FEES 3.2.7R applies in relation to incoming data reporting services providers. |
| GEN | GEN 4 does not apply if the firm has permission only for cross-border services and does not carry on regulated activities in the United Kingdom (see GEN 4.1.1 R). Otherwise, as column (2) except in relation to article 44(8) of the MiFID Org Regulation. |

Does not apply if the firm has permission only for cross-border services and does not carry on regulated activities in the United Kingdom.

Does not apply if the firm has permission only for cross-border services and does not carry on regulated activities in the United Kingdom.

As column (2)
**SUP 13A : Qualifying for authorisation under the Act**

- **MIPRU 2** (Responsibility for insurance distribution and MCD credit intermediation) does not apply unless the firm has a top-up permission.
- **MIPRU 3** (Requirement to hold professional indemnity insurance) does not apply unless the firm has a top-up permission.
- **MIPRU 4** (Requirement to hold capital resources) does not apply unless the firm has a top-up permission.
- **MIPRU 5** (Insurance distributors and home finance providers using insurance distribution or home finance mediation services) does not apply unless the firm has a top-up permission. See MIPRU 4.1.2 G for more detailed guidance.

<table>
<thead>
<tr>
<th><strong>INSPRU</strong></th>
<th>INSPRU does not apply.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IPRU(FSOC)</strong></td>
<td>Does not apply because an incoming EEA firm cannot be a friendly society (IPRU(FSOC) 1.1).</td>
</tr>
<tr>
<td><strong>IPRU(INV)</strong></td>
<td>IPRU(INV) does not apply unless the firm:</td>
</tr>
<tr>
<td></td>
<td>(1) has a top-up permission;</td>
</tr>
<tr>
<td></td>
<td>(2) is an authorised professional firm, investment management firm, members' adviser, personal investment firm, securities and futures firm, service company or underwriting agent; and</td>
</tr>
<tr>
<td></td>
<td>(3) is not a lead regulated firm, a media firm or a BIPRU investment firm.</td>
</tr>
</tbody>
</table>

| **COBS** | Guidance on the territorial application of COBS is contained in COBS 1 Annex 1 Part 3. |
| **ICOBS** | ICOBS applies except to the extent necessary to be compatible with European law. Guidance on the territorial application of ICOBS is contained in ICOBS 1 Annex 1 Part 4. |

| **MCOB** | Applies where the activity is carried on with or for a customer resident in the United Kingdom or another EEA State at the time that the activity is carried on, but see the territorial scope in MCOB 1.3.1AR and MCOB 1 Annex 5. |

---
<table>
<thead>
<tr>
<th><strong>CASS</strong></th>
<th>CASS does not apply with respect to the firm's passported activities unless the firm is an insurer (CASS 1.2.3 R (2)).</th>
<th>As column (2).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MAR</strong></td>
<td>[deleted]</td>
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<tr>
<td></td>
<td>[deleted]</td>
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</tr>
<tr>
<td><strong>MAR 4 (Endorsement of the Take-over Code)</strong></td>
<td>Applies to firms whose permission includes, or ought to include, any designated investment business, except as set out in MAR 4.4.1 R.</td>
<td>Does not apply (MAR 4.4.1 R (4)(b)).</td>
</tr>
<tr>
<td><strong>MAR 5 (Multilateral Trading Facilities)</strong></td>
<td>Does not apply (MAR 5.1.1 R).</td>
<td>Does not apply (MAR 5.1.1 R).</td>
</tr>
<tr>
<td><strong>MAR 8 (Benchmarks)</strong></td>
<td>Applies only to firms whose top-up permission includes providing information in relation to a regulated benchmark.</td>
<td>As column (2)</td>
</tr>
<tr>
<td><strong>MAR 10 (Commodity derivative position limits and controls, and position reporting)</strong></td>
<td>Position limits apply in relation to position limits set by the FCA in accordance with MAR 10.2.2D. Position reporting applies to a member, participant or a client of a UK trading venue in accordance with MAR 10.4.10D.</td>
<td>As column (1)</td>
</tr>
<tr>
<td><strong>TC</strong></td>
<td>TC applies, but only in so far as responsibility for any matter it covers is not reserved by an EU instrument to the firm's Home State regulator.</td>
<td>TC Appendix 1 sets out the activities to which TC applies.</td>
</tr>
<tr>
<td></td>
<td>TC Appendix 2 sets out the sourcebook’s territorial scope.</td>
<td>TC Appendix 2 sets out the sourcebook’s territorial scope.</td>
</tr>
<tr>
<td></td>
<td>TC Appendix 3 sets out the limitations on TC App 2.</td>
<td>TC Appendix 3 sets out the limitations on TC App 2.</td>
</tr>
<tr>
<td><strong>SUP</strong></td>
<td>SUP 1A (The FCA’s approach to supervision)</td>
<td>As column (2).</td>
</tr>
<tr>
<td></td>
<td>Applies, but contains only guidance.</td>
<td>SUP 1A (The FCA’s approach to supervision)</td>
</tr>
<tr>
<td></td>
<td>SUP 2 (Information gathering by the FCA or PRA on its own initiative)</td>
<td>As column (2)</td>
</tr>
<tr>
<td></td>
<td>The application of this chapter is the same as for Principle 11 (see under PRIN above).</td>
<td>SUP 2 (Information gathering by the FCA or PRA on its own initiative).</td>
</tr>
<tr>
<td></td>
<td>SUP 3 (Auditors)</td>
<td>As column (2)</td>
</tr>
<tr>
<td></td>
<td>Applies to the firm (and its auditor) only if the firm has a top-up permission.</td>
<td>SUP 3 (Auditors)</td>
</tr>
<tr>
<td></td>
<td>Does not apply.</td>
<td>Does not apply.</td>
</tr>
<tr>
<td></td>
<td>SUP 5 (Skilled persons)</td>
<td>SUP 5 (Skilled persons)</td>
</tr>
</tbody>
</table>
SUP 13A : Qualifying for authorisation under the Act

Applies only if the firm is required by the FCA or PRA to provide a report under section 166 of the Act (Reports by skilled persons).

SUP 6 (Applications to vary and cancel Part 4A permission)
Applies only if the firm has a top-up permission

SUP 7 (Individual requirements)
Applies only if the firm has a top-up permission. It contains only guidance on the exercise of the FCA’s powers under sections 55J and 55L of the Act. The FCA has similar, but more limited, powers of intervention under Part 13 of the Act in relation to the permission of the firm under Schedule 3 to the Act (see EG 8).

SUP 8 (Waiver and modification of rules)
Applies only if the firm wishes to apply for, or consent to, or has been given, a waiver of the appropriate regulator’s rules (SUP 8.1.1 R).

SUP 9 (Individual guidance)
Applies only if the firm wishes to obtain individual guidance from the FCA or if the FCA gives the firm individual guidance on its own initiative (SUP 9.1.1 G).

SUP 10A (Approved persons)
Applies to an EEA firm that is not an SMCR firm, but the applicable controlled functions are limited. See SUP 10A.1 (Application) for more detailed guidance.

SUP 10B (Approved Persons)
Does not apply

SUP 10C (FCA senior managers regime for approved persons in SMCR firms)
Applies to EEA SMCR firms, but the applicable controlled functions are limited. See SUP 10C.1 (Application) and SUP 10C Annexe 1 (What functions apply to what type of firm) for more details of what functions apply.

SUP 11 (Controllers and close links)
Does not apply (SUP 11.1.1 R (2)).

SUP 12 (Appointed representatives)
Applies only if the firm has permission to carry on designated investment business, insurance distribution activity or mortgage mediation activ-
SUP 13A: Qualifying for authorisation under the Act

SUP 13 (Exercise of passport rights by UK firms)
Does not apply.

SUP 13A (Qualifying for authorisation under the Act)
SUP 13A applies to the firm if it:
(1) is considering carrying on activities in the United Kingdom which may fall within the scope of the Act and is seeking guidance on whether it needs a top-up permission; or
(2) is, or is considering, applying to the appropriate regulator to carry on regulated activities in the United Kingdom under a top-up permission; or
(3) is, or is considering, establishing a branch or providing cross-border services into the United Kingdom using EEA rights.

SUP 14 (Incoming EEA Firms: Changing detail and cancelling qualifications for authorisation)
Applies.

SUP 15 (Notifications to the FCA or PRA)
Applies in full if the firm has a top-up permission. Otherwise, the application is modified as set out in SUP 15 Annex 1.

SUP 16 (Reporting requirements)
Parts of this chapter may apply if the firm has a top-up permission or if the firm is:
(a) a bank; or
(b) an OPS firm; or
(c) an insurer with permission to effect or carry out life policies; or
(d) an insurer with permission to effect or carry out life policies; or
(e) a firm with permission to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme; or
(f) a firm with permission to carry on MiFID business, advise on investments, arrange (bring about) deals in investments, make arrangements
SUP 13A : Qualifying for authorisation under the Act

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUP 13A</td>
<td>With a view to transactions in investments, or arrange safeguarding and administration of assets.</td>
</tr>
<tr>
<td>SUP 17</td>
<td>(Transaction reporting)</td>
</tr>
<tr>
<td>SUP 17</td>
<td>A MiFID investment firm (other than a collective portfolio management investment firm) reports transactions executed wholly or partly through its branch to the competent authority of its Home State unless otherwise agreed by that competent authority and the FCA, in which case it will report to the FCA.</td>
</tr>
<tr>
<td>SUP 18</td>
<td>(Transfers of business)</td>
</tr>
<tr>
<td>SUP 18</td>
<td>SUP 18.4 does not apply. SUP 18.1, SUP 18.2 and SUP 18.3 may be relevant if the firm proposes to transfer the whole or part of its business by an insurance business transfer scheme or to accept such a transfer or proposes to accept certain transfers of insurance business taking place outside the United Kingdom.</td>
</tr>
<tr>
<td>SUP App 2</td>
<td>(Insurers: Scheme of operations)</td>
</tr>
<tr>
<td>SUP App 2</td>
<td>Does not apply (SUP App 2.1.1 R).</td>
</tr>
<tr>
<td>PROD</td>
<td>Applies in respect of the rules which implement article 24(2) MiFID and articles 9 and 10 of the MiFID Delegated Directive in relation to the activities of a branch within the territory of the UK.</td>
</tr>
<tr>
<td>DEPP</td>
<td>DEPP applies and contains a description of the FCA’s procedures for taking statutory notice decisions, the FCA’s policy on the imposition and amount of penalties and the conduct of interviews to which a direction under section 169(7) of the Act has been given or the FCA is considering giving.</td>
</tr>
<tr>
<td>DISP</td>
<td>Generally applies (DISP 1.1.1 G).</td>
</tr>
<tr>
<td>DISP</td>
<td>In relation to MiFID business carried on from the branch of an EEA firm, the provisions in DISP relating to MiFID complaints generally apply (subject to some limitations, see DISP 1.1A.7R), as do the directly applicable</td>
</tr>
<tr>
<td>DISAB</td>
<td>Generally does not apply (DISP 1.1.1 G).</td>
</tr>
<tr>
<td>DISAB</td>
<td>However, DISP applies (subject to some limitations, see DISP 1.1A.3R and DISP 1.1A.5R) to:</td>
</tr>
<tr>
<td>DISAB</td>
<td>(a) an incoming EEA firm which is a UCITS management company managing a UCITS scheme; or</td>
</tr>
</tbody>
</table>
provisions of the MiFID Org Regulation relating to complaints handling.

For an incoming EEA AIFM branch DISP applies (subject to some limitations, see DISP 1.1.3 R), except for an incoming EEA AIFM branch of an AIF that is a body corporate (and not a collective investment scheme), including where the body corporate is an ELTIF when DISP does not apply.

COMP

Applies, except in relation to the passported activities of a MiFID investment firm, an IDD insurance intermediary, a UCITS management company carrying on non-core services under article 6.3 of the UCITS Directive, an MCD mortgage credit intermediary and an incoming AIFM carrying on either AIFM management functions for an unauthorised AIF or non-core services under article 6.4 of AIFMD (see the definition of "participant firm"). However, a firm specified above may be able to apply for top-up cover in relation to its passported activities (see COMP 14 (Participation by EEA Firms)).

COLL

A. The following provisions of COLL apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme:

(a) COLL 6.6A.2 R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its Unitholders);

(b) COLL 6.6A.4 R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);

(c) COLL 6.6A.5 R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);

(d) COLL 12.3.4 R (Provision of documentation to the FSA: EEA UCITS management companies);

(e) the fund application rules (see COLL 12.3.5 R (COLL fund rules under the management company passport: the fund application rules);

(f) COLL 12.3.6 R (Requirement to make information available to the public or the FSA);

(b) an AIFM managing an authorised AIF or a UK ELTIF other than a body corporate that is not a collective investment scheme.

Does not apply in relation to the passported activities of a MiFID investment firm, an IDD insurance intermediary, an MCD mortgage credit intermediary or a UCITS management company carrying on non-core services under article 6.3 of the UCITS Directive or an incoming EEA AIFM regarding AIFM management functions carried on for an unauthorised AIF or non-core services under article 6.4. Applies in relation to the passported activities of a UCITS management company in relation to the management of a UCITS scheme and of an AIFM in relation to the management of an authorised AIF. Otherwise, COMP may apply, but the coverage of the compensation scheme is limited for non-UK activities (see COMP 5).

For an EEA UCITS management company providing collective portfolio management services for a UCITS scheme, as column (2)A.(d), (e), (f) and (g) and the other parts of COLL specified.

For an incoming EEA AIFM, as column (2) B.
(g) COLL 12.3.7 G (EEA UCITS management companies: compliance with FSA rules); and

(h) COLL 12.3.8 G (EEA UCITS management companies: conduct of business rules).

An EEA UCITS management company providing collective portfolio management services for a UCITS scheme should be aware that it will be expected to comply with the above rules in relation to all aspects of the functioning of the relevant UCITS scheme where, for example, the firm:

(a) [deleted]

(b) wishes to apply for an authorisation order to establish an AUT, ACS or ICVCs a UCITS scheme; or

(ba) is the management company of a UCITS scheme that wishes to exercise an EEA right to market its units in another EEA State; or

(c) is the operator of a recognised scheme.

B. Subject to FUND 1.1.2 R, COLL applies to an incoming EEA AIFM as relevant.

<table>
<thead>
<tr>
<th>FUND</th>
<th>FUND 3.8 (Prime brokerage firms) applies to an incoming EEA AIFM branch.</th>
<th>Does not apply, except FUND 10 (Operating on a cross border basis) which provides guidance for an EEA AIFM managing an AIF on a services basis or marketing an AIF using the marketing passport under AIFMD.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CREDS</td>
<td>Does not apply.</td>
<td>Does not apply.</td>
</tr>
<tr>
<td>PROF</td>
<td>PROF applies only if the firm is an authorised professional firm.</td>
<td>As column (2).</td>
</tr>
<tr>
<td>REC</td>
<td>Does not apply.</td>
<td>Does not apply.</td>
</tr>
<tr>
<td>CONC</td>
<td>CONC applies except to the extent necessary to be compatible with European law.</td>
<td>As column (2).</td>
</tr>
<tr>
<td>[FCA]</td>
<td>Provisions on the territorial application of CONC are contained in CONC 1.2.5 R and CONC 1.2.6 R.</td>
<td></td>
</tr>
<tr>
<td>LR</td>
<td>LR (Listing Rules) May apply if the firm is applying for listing in the United Kingdom, is a listed issuer in the United Kingdom, is a sponsor or is applying for approval as a sponsor.</td>
<td>LR (Listing Rules) As column (2).</td>
</tr>
<tr>
<td>PR</td>
<td>PR (Prospectus Rules) May apply if the firm makes an offer of transferable securities to the public in the United Kingdom or is seek-</td>
<td>PR (Prospectus Rules) As column (2).</td>
</tr>
</tbody>
</table>
### Notes to Annex 1

**Note 1:**

*PRA-authorised persons* should also refer to the relevant parts of the *PRA Rulebook*.

**Note 2:** The effect of article 35(1) and 35(8) of *MiFID* (when read with article 1(3) of *MiFID*) is that if an *EEA MiFID investment firm* establishes a *branch* in the *UK* exercising an *EEA right* under *MiFID* or *CRD*, the *FCA* has supervisory responsibility for the services and activities provided or performed by the *branch* within the *UK* in relation to the *rules* implementing articles 24, 25, 27 and 28 of *MiFID*. 

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<table>
<thead>
<tr>
<th>DTR</th>
<th>DTR (Disclosure Guidance and Transparency Rules)</th>
</tr>
</thead>
<tbody>
<tr>
<td>May apply if the <em>firm</em> is an <em>issuer</em>, any class of whose <em>financial instruments</em> have been <em>admitted to trading</em> on a <em>regulated market</em>, or are the subject of an application for <em>admission to trading</em> on a <em>regulated market</em>, other than <em>issuers</em> who have not requested or approved admission of their <em>financial instruments</em> to trading on a <em>regulated market</em>.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EG</th>
<th>EG (Enforcement Guide) As column (2).</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>EG</em> describes the *FCA’s approach to exercising the main enforcement powers given to it by <em>FSMA</em> and by other legislation. <em>EG</em> is a <em>Regulatory Guide</em> and as such does not form part of the Handbook.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONRED</th>
<th>Does not apply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applies to a <em>firm</em> which made a <em>personal recommendation</em> in relation to an Arch cru fund, after which a <em>consumer</em> made an investment in the Arch cru fund, and to which the suitability requirements (specified at paragraph 5.1R of the instructions in CONRED 2 Annex 13 ) applied (CONRED 2.1.1R).</td>
<td></td>
</tr>
</tbody>
</table>
Matters reserved to a Home State regulator

Introduction
1. The application of certain provisions in the Handbook to an incoming EEA firm or incoming Treaty firm depends on whether responsibility for the matter in question is reserved to the firm’s Home State regulator. This annex contains guidance designed to assist such firms in understanding the application of those provisions. This annex is not concerned with the FCA or the PRA’s rights to take enforcement action against an incoming EEA firm or an incoming Treaty firm, which, in the case of the FCA, are covered in the Enforcement Guide (EG), or with the position of a firm with a top-up permission.

Requirements in the interest of the general good
2. The Single Market Directives, and the Treaty (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the Home State regulator. To summarise, the FCA or PRA, as Host State regulator, is entitled to impose requirements with respect to activities carried on within the United Kingdom if these can be justified in the interests of the “general good” and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the Single Market Directives:
   (1) the Single Market Directives expressly reserve responsibility for the prudential supervision of a MiFID investment firm, CRD credit institution, UCITS management company AIFM or passporting Solvency II firm to the Firm’s Home State regulator in respect of prudential matters within the scope of the respective Single Market Directives. The IDD and the MCD reach the same position without expressly referring to the concept of prudential supervision. Accordingly, the FCA, as Host State regulator, is entitled to regulate only the conduct of the firm’s business (in the case of the IDD, business conducted through a branch) within the United Kingdom;
   (2) there is no explicit “general good” provision in MiFID or AIFMD. Rather, the responsibilities for a Host State regulator under MiFID are contained in paragraphs 8 to 10 and under AIFMD are contained in paragraphs 11G to 11J;
   (3) [deleted]
   (4) for a MiFID investment firm including a CRD credit institution which is a MiFID investment firm, the protection of clients’ money and clients’ assets is reserved to the Home State regulator under MiFID; and
   (5) responsibility for participation in compensation schemes for CRD credit institutions and MiFID investment firm is reserved in most cases to the Home State regulator under the Deposit Guarantee Directive and the Investor Compensation Directive.

3. It is necessary to refer to the case law of the European Court of Justice to interpret the concept of the “general good”. To summarise, to satisfy the general good test, Host State rules must come within a field which has not been harmonised at EU level, satisfy the general requirements that they pursue an objective of the general good, be non-discriminatory, be objectively necessary, be proportionate to the objective pursued and not already be safeguarded by rules to which the firm is subject in its Home State.

Application of SYSC 2 and SYSC 3
4. SYSC 2 and SYSC 3 only apply to an insurer, a managing agent and the Society. See paragraph 8 below for a discussion of how the common platform requirements apply. SYSC 2.1.1 R and SYSC 2.1.2 G do not apply for a relevant incoming Treaty firm. The FCA considers that it is entitled, in the interests of the general good, to impose the requirements in SYSC 2.1.3 R to SYSC 2.2.3 G (in relation to the allocation of the function in SYSC 2.1.3 R (2)) and...
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SYSC 3 on an incoming EEA firm and an incoming Treaty firm; but only in so far as they relate to those categories of matter responsibility for which is not reserved to the firm’s Home State regulator.

5. Should the FCA or PRA become aware of anything relating to an incoming EEA firm or incoming Treaty firm (whether or not not relevant to a matter for which responsibility is reserved to the Home State regulator), the PRA or FCA may disclose it to the Home State regulator in accordance with any directive and the applicable restrictions in Part 23 of the Act (Public Record, Disclosure of Information and Co-operation).

6. This Annex represents the FCA’s views, but a firm is also advised to consult the relevant EU instrument and, where necessary, seek legal advice. The views of the European Commission in the banking and insurance sectors are contained in two Commission Interpretative Communications (Nos. 97/C209/04 and C(1999)5046).

7. [deleted]

Application of the common platform requirements in SYSC to EEA MiFID investment firms

8. Whilst the common platform requirements (located in SYSC 4 - SYSC 10) do not generally apply to incoming EEA firms (but for EEA UCITS management companies, see 8A below), EEA MiFID investment firms must comply with the common platform record-keeping requirements in relation to a branch in the United Kingdom and SYSC 10A (Recording telephone communications and electronic communications).

Application of SYSC to EEA UCITS management companies

8A. SYSC 1 Annex 1 (Detailed application of SYSC), Part 2, 2.7AG provides guidance on the application of the common platform requirements to the UK branch of an EEA UCITS management company.

Requirements under MiFID

9. Article 34(1) of MiFID prohibits Member States from imposing additional requirements on a MiFID investment firm in relation to matters covered by MiFID if the firm is providing services on a cross-border basis. Such firms will be supervised by their Home State regulator.

10. Article 35(8) of MiFID requires the FCA as the Host State regulator to apply certain obligations to an incoming EEA firm with an establishment in the UK. In summary, these are articles:

   (1) 24 of MiFID (General principles and information to clients);
   (1A) 25 of MiFID (Assessment of suitability and appropriateness and reporting to clients);
   (2) 27 of MiFID (execution of orders on terms most favourable to the client);
   (3) 28 of MiFID (client order handling rules);

   ; and

   In addition, the FCA assumes responsibility for supervision of articles 14 to 26 of MiFIR although article 14 of RTS 22 permits a firm to report transactions executed wholly or partly through its branch to the competent authority of its Home State unless otherwise agreed by that competent authority and the FCA. The remaining obligations under MiFID and MiFIR are reserved to the Home State regulator other than requirements in MAR 10.2 in relation to commodity derivative position limits.

11. [FCA/PRA] MiFID is more highly harmonising than other Single Market Directives. Article 4 of Directive 2006/73 permitted Member States to impose additional requirements only where certain tests were met. The FSA made certain requirements that fell within the scope of Article 4, some of which have been retained by the FCA, for example in COBS. MiFID retains an ability for Member States to impose additional requirements in the areas of client assets and investor protection. The FCA has made some further requirements which fall within the scope of these provisions. These requirements apply to an EEA MiFID investment firm with an establishment in the United Kingdom as they apply to a UK MiFID investment firm, in the circumstances contemplated by article 35(8) MiFID.

Requirements under the UCITS Directive

11A Article 19(8) of the UCITS Directive prohibits an EEA State from imposing additional re
requirements on a management company providing collective portfolio management services for a UCITS in its territory on a cross-border basis by establishing a branch or under the freedom to provide cross border services in respect of the subject matter of the UCITS Directive, except in the cases expressly permitted (see 11C below).

11B A management company which provides collective portfolio management services on a cross-border basis by establishing a branch in another EEA State or under the freedom to provide services must comply with the rules of the UCITS Home State which relate to the constitution and functioning of the UCITS. Where the UCITS Home State is the United Kingdom, the applicable rules that the EEA UCITS management company must comply with are as follows:

1. COLL 12.3.4 R (Provision of documentation to the FCA: EEA UCITS management companies);
2. the fund application rules (see COLL 12.3.5 R (COLL fund rules under the management company passport: the fund application rules)); and
3. COLL 12.3.6 R (Requirement to make information available to the public or the FCA).

11C A management company, however, which provides collective portfolio management services from a branch in another EEA State, is obliged under article 17(4) to comply with the applicable rules of the Host State regulator drawn up under article 14(1) that require a management company to:

1. act honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;
2. act with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;
3. have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;
4. try to avoid conflicts of interests and, when they cannot be avoided, to ensure that the UCITS it manages is fairly treated; and
5. comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

11D The rules implementing the requirements set out in paragraph 11C (1) to (5) are as follows:

1. SYSC, to the extent indicated in column A+ (Application to management company) of Part 3 of SYSC 1 Annex 1 (Detailed application of SYSC); and
2. COBS, to the extent indicated at paragraph 9.1 of Part 3 of COBS 1 Annex 1 (Application).
3. COLL 6.6A.2 R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its Unitholders) (branch only);
4. COLL 6.6A.4 R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes) (branch only); and
5. COLL 6.6A.5 R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company) (branch only).

Territorial application of the Handbook

The auction regulation

11E[FCAPRA] Where an incoming EEA firm exercises an EEA right under the auction regulation to provide services or establish a branch in the United Kingdom, it is carrying on auction regulation bidding. Authorisation and supervision of a firm under the auction regulation are almost exclusively matters reserved to the Home State regulator. The only requirements which the FCA has applied as Host State regulator under the auction regulation in respect of auction regulation bidding is on a UK branch in relation to safeguards against money laundering and financial crime as well as a statutory status disclosure obligation and requirements to notify the FCA (see Note 4 of SUP 13A Annex 1 G).
11F An incoming EEA firm that carries on MiFID business bidding is exercising an EEA right under MiFID and is subject to the applicable provisions relating to its carrying on of MiFID business. The respective responsibilities of the Home State regulator and Host State regulator are the same as under MiFID.

Requirements under AIFMD

11G Article 33(5) of AIFMD prohibits Host States from imposing additional requirements on an AIFM to matters covered by AIFMD if the firm is managing an AIF on a cross-border basis by establishing a branch or providing cross-border services to manage an AIF in that EEA State, except as expressly permitted (see 11H below).

11H Under article 45(2) (Responsibility of competent authorities in Member States) of AIFMD the supervision of an AIFM’s compliance with articles 12 (General principles) and 14 (Conflicts of interest) are the responsibility of the Host State of the AIFM where the AIFM manages and/or markets an AIF through a branch in that EEA State.

11I As a result, an incoming EEA AIFM branch is required to comply with the AIFMD Host State requirements (as set out below):

(a) FUND 3.8;
(b) SYSC 4.1.2C R;
(c) SYSC 10.1.22 R to SYSC 10.1.26 R; and
(d) COBS 2.1.4 R.

11J Under article 32(5) of AIFMD, arrangements in point (h) of Annex IV of AIFMD for the marketing of AIFs is subject to the laws and supervision of the Host State of the AIFM.

11K A full-scope EEA AIFM that is marketing an AIF in the UK using the marketing passport should have regard to the financial promotions regime, as explained in PERG 8.37.5G (2) (Communications with investors in relation to draft documentation).

Requirements under the MCD

11L Under article 34(2) of the MCD, ensuring compliance with the obligations in articles 7(1), 8, 9, 10, 11, 13, 14, 15, 16, 17, 20, 22 and 39 of the MCD by incoming EEA branches is the responsibility of the Home State. Responsibilities for ensuring compliance with all other obligations are the responsibility of the Home State.

11M Ensuring compliance with the obligations in the MCD by EEA firms providing cross border services is the responsibility of the Home State.

Requirements under the IDD

11N Under article 7(2) of the IDD, ensuring compliance with the obligations in Chapter V (articles 17 – 25) and Chapter VI (articles 27 – 30) of the IDD by incoming EEA branches is the responsibility of the Host State. Subject to article 7(1) (see 11P below), ensuring compliance with all other obligations is the responsibility of the Home State.

11O Subject to article 7(1) (see 11P below), ensuring compliance with the obligations in the IDD by EEA firms providing cross border services is the responsibility of the Home State.

11P Under article 7(1) of the IDD, if an IDD insurance intermediary’s primary place of business is in a Host State, the Home and Host State regulators may agree that the Host State regulator will act as if it were the Home State regulator. This is only with regard to the provisions of Chapters IV, V, VI and VII of the IDD (see guidance in SUP 13A.6A).

12. [deleted]

13. Examples of how SYSC 3 and/or the common platform provisions apply in practice.

1. The Prudential Standards part of the Handbook do not apply to an insurer which is an incoming EEA firm. Similarly, SYSC 3 does not require such a firm:

(a) to establish systems and controls in relation to financial resources (SYSC 3.1.1 R); or

(b) to establish systems and controls for compliance with that Prudential Standards part of the Handbook (SYSC 3.2.6 R); or
(c) to make and retain records in relation to financial resources (SYSC 3.2.20 R and SYSC 9.1.1 R to 9.1.4 G).

(2) The Conduct of Business sourcebook (COBS) applies to an incoming EEA firm. Similarly, SYSC 3 and SYSC 4-10 do require such a firm, to the extent provided by SYSC 1 Annex 1:

(a) to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of COBS (SYSC 3.1.1 R and SYSC 4.1.1 R);

(b) to establish systems and controls for compliance with the applicable sections of COBS (SYSC 3.2.6 R and SYSC 6.1.1 R); and

(c) to make and retain records in relation to those aspects of the conduct of its business (SYSC 3.2.20 R and SYSC 9.1.1 R to 9.1.4 G).

See also Question 12 in SYSC 2.1.6 G for guidance on the application of SYSC 2.1.3 R (2)
Under paragraph 15A(1) of Part II of Schedule 3 to the Act, an EEA UCITS management company intending to exercise an EEA right to provide collective portfolio management services for a UCITS scheme must, before it undertakes that activity, obtain the FCA's approval to manage that UCITS scheme. Firms should use the application form below for this purpose. Firms may cross refer to other sources where the information has already been provided to the FCA.

### Application by an EEA UCITS management company to manage one or more UCITS schemes established in the United Kingdom (paragraph 15A(1) of Part II of Schedule 3 to the Financial Services and Markets Act 2000).

| Name and registered address of management company: |  |
| Contact details for the person submitting the application (including telephone number and email address): |  |
| EEA State in which management company is authorised: |  |
| Details of competent authority providing authorisation of the management company: |  |
| Set out details of the scope of authorisation of the management company including the type of funds for which authorisation to manage has been obtained and any limitations that apply to the authorisation: |  |
| Name of each UCITS scheme to which this application for approval relates: |  |
| Is the management company authorised to manage the type of UCITS scheme to which this approval relates? If not provide details: |  |
| Has the management company submitted the information required by COLL.12.3.4 R (Provision of documentation to the FCA: EEA UCITS management companies), including the depositary agreements and information on delegation arrangements? Provide details: |  |

Signed by:

Title:

Dated:

When completed send this form to:

Investment Funds Team
The Financial Conduct Authority
12 Endeavour Square
London
E20 1JN.

Or electronically to: recognisedcis@fca.org.uk
Passporting: Emissions Trading. Notice of intention to exercise the right of establishment in the United Kingdom

This annex consists of only one or more forms. Forms can be completed online now by visiting www.fca.org.uk

The forms are also to be found through the following address: Passporting: Emissions Trading. Notice of intention to exercise the right of establishment in the United Kingdom - SUP 13A Annex 4 R