

BANKING: CONDUCT OF BUSINESS SOURCEBOOK (DISCLOSURE BY NON RING-FENCED BODIES) (AMENDMENT) INSTRUMENT 2016

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 137A (General rule-making power);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 December 2016.

Amendments to the FCA Handbook

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

Citation

- F. This instrument may be cited as the Banking: Conduct of Business Sourcebook (Disclosure by Non Ring-Fenced Bodies) (Amendment) Instrument 2016.

By order of the Board
3 November 2016

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

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

<i>confirming statement</i>	has the same meaning as in article 9(1)(b)(i) of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (2014 No. 1960) http://www.legislation.gov.uk/uksi/2014/1960/made .
<i>EEA account</i>	has the same meaning as in article 2(3) of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (2014 No. 1960) http://www.legislation.gov.uk/uksi/2014/1960/made .
<i>eligible individual</i>	has the same meaning as in article 9 of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (2014 No. 1960) http://www.legislation.gov.uk/uksi/2014/1960/made .
<i>excluded activity</i>	an activity defined as an excluded activity in section 142D of the <i>Act</i> or by an order made under that section.
<i>non ring-fenced body</i>	has the same meaning as in article 14(3) of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (2014 No. 1960) http://www.legislation.gov.uk/uksi/2014/1960/made .
<i>prohibited action</i>	an action which a <i>ring-fenced body</i> is prohibited from taking by an order made under section 142E of the <i>Act</i> .

Annex B

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

In this Annex, underlining indicates new text unless otherwise stated.

1.1 General application

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Limitations on the general application rule

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

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Insert the following new section after BCOBS 4.2 (Statements of account). The text is all new and is not underlined.

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

Application and purpose

- 4.3.1 G Article 14 of the Financial Services and Markets Act 2000 (Ring-fenced Bodies and Core Activities) Order 2014 “the Ring-fenced Bodies and Core Activities Order 2014” places a duty on the *FCA* to make *rules* specifying the information that a *non ring-fenced body* must provide to certain classes of individuals. The purpose of this section is to set out those *rules*.
- 4.3.2 R This section applies to a *firm* that is a *non ring-fenced body* or is to become a *non ring-fenced body*.
- 4.3.3 G A *non ring-fenced body* is a *firm* which has a *Part 4A permission* to carry on the *regulated activity* of *accepting deposits* and which is neither a *ring-fenced body* nor an institution which is exempt from the definition of a ring-fenced body. Section 142A(1) of the *Act* defines a ring-fenced body as a UK institution which carries out one or more core activities under section 142B of the *Act* for which it has a *Part 4A permission*. Section 142A(2) of the *Act* and the Ring-fenced Bodies and Core Activities Order 2014 provide that a *building society* and certain other classes of UK institution are exempt from this definition. Further, *firms* do not fall within the definition unless they

hold *deposits* in *EEA accounts*.

To whom must information be provided?

- 4.3.4 R (1) A *firm* that is to become a *non ring-fenced body* must provide the information specified in *BCOBS* 4.3.6R to any individual from whom the *firm* proposes to accept, or contemplates it is likely to receive, a declaration of eligibility under article 9(1)(a) of the Ring-fenced Bodies and Core Activities Order 2014 (whether accompanied by a *confirming statement* or not).
- (2) A *firm* that is a *non ring-fenced body* must provide the information specified in *BCOBS* 4.3.6R to:
- (a) any individual who has applied to open an *EEA account* for the purpose of making one or more *deposits* (including a joint account) with that *firm*; and
- (b) any individual who holds an *EEA account* for that purpose (including a joint account) with that *firm*,
- except where the *firm* has already provided that information to the individual on a previous occasion.

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

What information must be provided?

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

depend, from wholesale or investment banking activities which may involve a greater degree of risk and expose an entity undertaking those activities to financial problems arising elsewhere in the global financial system.

It should also indicate that certain *ring-fenced bodies* carrying on retail banking activities will have to comply with restrictions on the other activities they can undertake, and with rules made by the *appropriate regulator* intended to ensure that they are capable of carrying on the business of providing the core services related to the acceptance of *deposits* independently of other members in their group. They will, for example, not be able to carry on activities called ‘excluded activities’ which make them vulnerable to problems arising in the financial system or which may make it more difficult for banks to be wound down in an orderly fashion. The summary should explain that, as a *non ring-fenced body*, the *firm* is not subject to these restrictions.

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

When must the information be provided?

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

How must the information be provided?

- 4.3.10 R The information required under *BCOBS* 4.3.4R must be provided:
- (1) in writing;
- (2) in a prominent manner and in a medium that is calculated to bring

the information to the attention of the individual to whom it is addressed; and

- (3) in easily understandable language and in a clear and comprehensible form,

so that the individual can make a decision as to whether to continue to hold or to open an account with the *firm* on an informed basis.

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

Requirement to publish the information on a website

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