

CREDIT UNIONS SOURCEBOOK (AMENDMENT NO 9) 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 137R (Financial promotion power);
 - (3) section 137T (General supplementary powers); and
 - (4) 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 3 January 2017.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Supervision manual (SUP)	Annex C
Credit Unions sourcebook (CREDS)	Annex D

Citation

- H. This instrument may be cited as the Credit Unions Sourcebook (Amendment No 9) Instrument 2016.

By order of the Board
8 December 2016

Annex A

Amendments to the Glossary of definitions

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

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

<i>credit union subordinated debt</i>	a subordinated loan to a <i>credit union</i> that meets the conditions in part 8.2(5) of the Credit Unions Rulebook Part of the <i>PRA Rulebook</i> .
<i>relevant credit union client</i>	(in <i>CREDS</i>): <ul style="list-style-type: none"> (a) an individual; (b) a <i>charity</i> which has an annual income of less than £1 million; or (c) a <i>small business</i>.

Amend the following definitions as shown.

<i>charity</i>	(in <i>BCOBS</i> ₂ and <i>BIPRU</i> and in the definition of <i>relevant credit union client</i>) includes: ...
<i>credit union</i>	a body corporate registered under the Industrial and Provident Societies Act 1965 <u>Co-operative and Community Benefit Societies Act 2014</u> as a credit union in accordance with the Credit Unions Act which is an <i>authorised person</i> or a body corporate registered under: <ul style="list-style-type: none"> (a) the Credit Unions (Northern Ireland) Order 1985 which is an <i>authorised person</i> or a body corporate registered under ; or (b) the Industrial and Provident Societies Act (Northern Ireland) 1969₂ as a credit union which is an <i>authorised person</i> .
<i>Great Britain credit union</i>	a body corporate registered under the Industrial and Provident Societies Act 1965 <u>Co-operative and Community</u>

Benefit Societies Act 2014 as a *credit union* in accordance with the Credit Unions Act which is an *authorised person*.

mutual society share

a share, excluding a deferred share issued by a credit union, which:

- (a) meets the requirements for common equity Tier 1 capital instruments under article 28 or 29; and
- (b) is issued by an institution which is of a type listed in article 27;

in each case of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

non-readily realisable security

a *security* which is not any of the following:

...

- (d) a *mutual society share*;
- (e) a deferred share issued by a credit union; or
- (f) credit union subordinated debt.

small business

(in *COMP* and in the definition of relevant credit union client) a *partnership, body corporate*, unincorporated association or mutual association with an annual turnover of less than £1 million (or its equivalent in any other currency at the relevant time).

Delete the following definitions. The text is not shown struckthrough.

version 1 credit union

a *credit union* whose *Part 4A permission* includes a *requirement* (whether for all or for particular purposes) that it must not lend more than £15,000, or such lesser amount as may be specified, in excess of a member's shareholding; in this definition a "member's shareholding" means any shares held by a member of the *credit union* in accordance with sections 5 and 7 of the Credit Unions Act 1979 or articles 14 and 23 of the Credit Unions (Northern Ireland) Order 1985 (as appropriate).

version 2 credit union

a *credit union* which is not a *version 1 credit union*.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

4.7 Direct offer financial promotions

...

Non-readily realisable securities

...

4.7.11 G COBS 4.7.7R does not apply in relation to *credit union subordinated debt* or to deferred shares issued by a *credit union*. Firms are reminded that *CREDS 3A* contains requirements regarding the retail distribution and *financial promotion* of these instruments.

...

9.3 Guidance on assessing suitability

...

Investments subject to restrictions on retail distribution

9.3.5 G (1) *Firms* should note that restrictions and specific requirements apply to the retail distribution of certain *investments*:

...

(d) *mutual society shares* are subject to specific requirements in relation to *dealing* and *arranging* activities (see *COBS 22.3*);

(e) deferred shares issued by a *credit union* are subject to specific requirements in relation to *dealing* and *arranging* activities (see *CREDS 3A.5*);

(f) *credit union subordinated debt* is subject to a restriction on *direct offer financial promotions* (see *CREDS 3A.5*).

...

...

22.2 Requirements on the retail distribution of mutual society shares

...

22.2.1A G COBS 22.2 does not apply in relation to deferred shares issued by a *credit*

union. Firms are reminded that CREDS 3A contains requirements regarding the retail distribution of these shares.

...

Annex C

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

16.1 Application

...

- 16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16, SUP 16.17 and SUP 16.22)

(1) Section (s)	(2) Categories of firm to which section applies		(3) Applicable rules and guidance
...			
SUP 16.10	All categories of <i>firm</i> except:		Entire section
	(a)	an <i>ICVC</i> ;	
	(b)	a <i>UCITS</i> qualifier; <u>and</u>	
	(c)	a <i>credit union</i>; and [deleted]	
	(d)	a <i>dormant account fund operator</i> .	
...			

...

16.10 Verification of standing data

Application

- 16.10.1 G The effect of SUP 16.1.1R is that this section applies to every *firm* except:

- (1) an *ICVC*; or
- (2) a *UCITS* qualifier; or
- (2A) an *AIFM* qualifier; or
- (3) ~~a *credit union*; or~~ [deleted]

- (4) a *dormant account fund operator*.

...

Requirement to check the accuracy of standing data and to report changes to the FCA

...

16.10.4A R (1) ...

- (2) A *credit union* or a *firm* with *permission* to carry on only *credit-related regulated activity* must submit any corrected *standing data* under SUP 16.10.4R(3);

- (a) to static.data@fca.org.uk or via post or hand delivery to the ~~FCA~~ FCA marked for the attention of the 'Static Data team'; or
- (b) by using the appropriate online systems available from the FCA's website.

...

Annex D

Amendments to the Credit Unions sourcebook (CREDS)

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

3A.2 Shares and deposits

...

Deposits including child trust funds

...

3A.2.4 G ...

Sale of deferred shares

3A.2.5 R *A credit union must not require any of its members to purchase deferred shares or purport to do so.*

3A.3 Borrowing

...

3A.3.2 G ...

3A.3.3 R *A credit union must not require any of its members to make a subordinated loan to the credit union or purport to do so.*

Insert the following new section after *CREDS* 3A.4 (Insurance against fraud or other dishonesty). The text is all new and is not underlined.

3A.5 Requirements on the retail distribution and financial promotion of capital instruments

Application

- 3A.5.1 R (1) The requirements in this section apply:
- (a) (excluding the requirements in *CREDS* 3A.5.6R and *CREDS* 3A.5.7R) to a *firm* when *dealing* in or *arranging* a deal in a *deferred share* with or for a *relevant credit union client* where the *relevant credit union client* is to enter into the *deal* as buyer; and

- (b) (excluding the requirements in *CREDS* 3A.5.3R to *CREDS* 3A.5.5R) to a *firm* when:
 - (i) *communicating a direct offer financial promotion relating to credit union subordinated debt to a relevant credit union client; or*
 - (ii) *approving a direct offer financial promotion relating to credit union subordinated debt for communication to a relevant credit union client.*
- (2) The requirements in this section do not apply if the *deal* relates to the trading of a *deferred share* or *credit union subordinated debt* in the secondary market.
- (3) The requirements in this section, other than *CREDS* 3A.5.8R, *CREDS* 3A.5.9R and *CREDS* 3A.5.10R, do not apply if the *firm* has taken reasonable steps to ensure that the *relevant credit union client* is a *certified high net worth investor*, a *certified sophisticated investor* or a *self-certified sophisticated investor* in accordance with *COBS* 22.2.4R, as adapted by *CREDS* 3A.5.8R for the purposes of this section.

3A.5.2 G The effect of *CREDS* 3A.5.1R(1)(a) is that the requirements of this section apply to a *credit union* where it is *dealing* in its own *deferred shares*.

Statements requirement relating to the retail distribution of deferred shares

- 3A.5.3 R (1) The *firm* must:
- (a) give the *relevant credit union client* a risk warning in the form in (2) on paper or another *durable medium*; and
 - (b) obtain confirmation in writing from the *relevant credit union client* that the *relevant credit union client* has read it,
- in good time before the *relevant credit union client* has committed to *buy* the *deferred share*.
- (2) “The investment to which this communication relates is a deferred share. Direct investment in deferred shares can be high risk and is very different to investment in deposit accounts or other savings products. In particular, you should note that:
 - (a) the entire amount you pay for the deferred share is at risk;
 - (b) the sum you pay is only repayable to you in limited circumstances, specifically if:
 - (i) the credit union has obtained specific regulatory permission to make the repayment; or

- (ii) the credit union is wound up, and there are funds remaining after all creditors, including savers and holders of subordinated debt, have been repaid;
- (c) the sum you pay for deferred shares is not covered by the Financial Services Compensation Scheme;
- (d) a deferred share may only be sold to a member of the same credit union and may be difficult to sell on; and
- (e) investing more than 10% of your savings or net investment portfolio in deferred shares issued by a credit union, credit union subordinated debt and mutual society shares is unlikely to be in your best interests.”

3A.5.4 R (1) The *firm* must:

- (a) give the *relevant credit union client* a statement in the form in (2) on paper or another *durable medium*; and
- (b) obtain confirmation in writing from the *relevant credit union client* that the *relevant credit union client* has signed it,

in good time before the *relevant credit union client* has committed to buy the *deferred share*.

- (2) “I make this statement in connection with my proposed investment in deferred shares issued by a credit union. I have been made aware that investing more than 10% of my net assets in deferred shares issued by a credit union, credit union subordinated debt and mutual society shares is unlikely to be in my best interests. I declare that the proposed investment would not result in more than 10% of my net assets being invested in deferred shares issued by a credit union, credit union subordinated debt and mutual society shares. Net assets for these purposes mean my financial assets after deduction of any debts I have. My debts for these purposes do not include the outstanding balance of any mortgage I have on my home, unless this is more than the current value of my home, in which case the debts include the amount above the current value. My financial assets for these purposes do not include:
 - (a) the property which is my primary residence or any money raised through a loan secured on that property;
 - (b) any rights of mine under a contract of insurance; or
 - (c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are) or may be entitled.

I accept that the investment to which this statement relates will expose me to a significant risk of losing all the money invested.

Signature:

Date: ”

- (3) The requirement in (1) to give a *relevant credit union client* the statement, and to obtain written confirmation that the statement has been signed, applies only where the *relevant credit union client*:
- (a) is an individual; and
 - (b) is not receiving advice that constitutes a *regulated activity* on the *deferred share*.

Assessing the appropriateness of an investment in deferred shares

- 3A.5.5 R If the *relevant credit union client* is not receiving advice that constitutes a *regulated activity* on the *deferred share*, the *firm* must assess whether investment in the *deferred share* is appropriate for the *relevant credit union client*, complying with the requirements in *COBS 10* as if the *firm* were providing non-advised *investment services* in the course of *MiFID* or *equivalent third country business*.

Statements requirement in the case of a direct offer financial promotion relating to subordinated debt

- 3A.5.6 R (1) The *firm* must:
- (a) include a risk warning in the form in (2) for any *direct offer financial promotion* to a *relevant credit union client* relating to *credit union subordinated debt*; and
 - (b) obtain confirmation in writing from the *relevant credit union client* that the *relevant credit union client* has read the risk warning,
- in good time before the *relevant credit union client* makes the subordinated loan to the *credit union*.
- (2) “The investment to which this financial promotion relates is credit union subordinated debt. Making a subordinated loan to a credit union can be high risk and is very different to investment in deposit accounts or other savings products. In particular you should note that:
- (a) the entire amount you lend is at risk;
 - (b) the loan will not be repaid to you until at least five years from the date on which you lend the amount to the credit union;

- (c) if the credit union is wound up the sum you lend is only repayable to you if there are funds remaining after all creditors (excluding holders of deferred shares) have been repaid;
- (d) the entire amount you lend is not covered by the Financial Services Compensation Scheme;
- (e) to the fullest extent possible, you will be required to waive any right to set off any amount you owe to the credit union against any amount the credit union owes to you under the subordinated loan; and
- (f) investing more than 10% of your savings or net investment portfolio in credit union subordinated debt, deferred shares issued by a credit union and mutual society shares is unlikely to be in your best interests.”

3A.5.7 R (1) The *firm* must:

- (a) include a statement in the form in (2) in any *direct offer financial promotion* to a *relevant credit union client* relating to *credit union subordinated debt*; and
- (b) obtain confirmation in writing from the *relevant credit union client* that the *relevant credit union client* has signed the statement,

in good time before the *relevant credit union client* makes the subordinated loan to the *credit union*.

- (2) “I make this statement in connection with my proposed making of a subordinated loan to a credit union. I have been made aware that investing more than 10% of my net assets in credit union subordinated debt, deferred shares issued by a credit union and mutual society shares is unlikely to be in my best interests. I declare that the proposed investment would not result in more than 10% of my net assets being invested in credit union subordinated debt, deferred shares issued by a credit union and mutual society shares. Net assets for these purposes mean my financial assets after deduction of any debts I have. My debts for these purposes do not include the outstanding balance of any mortgage I have on my home, unless this is more than the current value of my home, in which case the debts include the amount above the current value. My financial assets for these purposes do not include:
 - (a) the property which is my primary residence or any money raised through a loan secured on that property;
 - (b) any rights of mine under a contract of insurance; or
 - (c) any benefits (in the form of pensions or otherwise) which are

payable on the termination of my service or on my death or retirement and to which I am (or my dependants are) or may be entitled.

I accept that the investment to which this statement relates will expose me to a significant risk of losing all the money invested.

Signature:

Date: ”

- (3) The requirement in (1) to include the statement in a *direct offer financial promotion*, and to obtain written confirmation that the statement has been signed, applies only where the *relevant credit union client*:
- (a) is an individual; and
 - (b) is not receiving advice that constitutes a *regulated activity* on the *credit union subordinated debt*.

Application of exemptions in COBS 22.2.4R

- 3A.5.8 R (1) Where a *firm* applies any exemption set out in *COBS 22.2.4R* under *CREDS 3A.5.1R(3)(a)*, any reference in *COBS 22.2.4R* to *mutual society share* must be read as though it includes a *deferred share* or *credit union subordinated debt*, as applicable.
- (2) For the purposes of any assessments or certifications required by the exemptions in *COBS 22.2.4R*, as applied for the purposes of this section under *CREDS 3A.5.1R(3)(a)*, any reference in *COBS 4.12* provisions to *non-mainstream pooled investments* must be read as though it is a reference to *deferred shares* or *credit union subordinated debt*, as applicable.
- (3) If the *firm* is relying on the exemptions for *certified high net worth investors*, *certified sophisticated investors* or *self-certified sophisticated investors* to comply with this section, the statement the investor must sign should have any reference to *non-mainstream pooled investments* replaced with a reference to *deferred shares* or *credit union subordinated debt*, as applicable.
- (4) The *firm* must give the *relevant credit union client* a written copy of any risk warning or statement that the *relevant credit union client* has been asked to sign for the purposes of compliance with this section.
- 3A.5.9 G *COBS 22.2.4R* contains the requirements that must be met before an individual can be exempted from the requirements of this section as a *certified high net worth investor*, a *certificated sophisticated investor*, or a *self-certified sophisticated investor*.

Record keeping

- 3A.5.10 R A *firm* which carries on an activity which is subject to this section must comply with the following record-keeping and disclosure requirements:
- (1) the *firm* must make a record at or near the time of the activity certifying it complies with the requirements set out in this section;
 - (2) the record in (1) must include information and evidence demonstrating compliance with each of the requirements in this section, as applicable;
 - (3) if the requirements of this section did not apply because the *firm* relied on one of the exemptions, the record in (1) must include which exemption was relied on, together with the reason why the *firm* is satisfied that exemption applies;
 - (4) where the *firm* relies on the *certified high net worth investor*, the *certified sophisticated investor* or the *self-certified sophisticated investor* exemption, the record required in (1) must include a copy of the certificate or investor statement (as signed by the investor) and of the warnings or indications required by the exemption; and
 - (5) the *firm* must retain the record required in (1) for three years.

Electronic documents

- 3A.5.11 G In this section:
- (1) any requirement that a document is signed may be satisfied by an electronic signature or electronic evidence of assent; and
 - (2) any references to writing should be construed in accordance with *GEN 2.2.14R* and its related *guidance* provisions.

Responsibility of the credit union

- 3A.5.12 R Where the requirements of this section apply to a *firm* other than the *credit union* that issues the *deferred shares* or receives the *credit union subordinated debt*, the *credit union* must ensure that the *firm* complies with the requirements of this section.

Amend the following as shown.

9.2 Reporting

...

- 9.2.12 R ~~For the purpose of inclusion in the public record maintained by the FCA, a credit union must provide the FCA, at the time of its authorisation, with~~

details of a single contact within the *credit union* for complainants, and must promptly submit a notification of any subsequent change to static.data@fca.org.uk or via post or hand delivery to the *FCA* marked for the attention of the ‘Static Data team’. [deleted]

9.2.12A G SUP 16.10.4R requires *credit unions* to check the accuracy of *standing data* and to report changes, including any change to the complaints contact or complaints officer, to the *FCA*.

9.2.13 G The contact point in *CREDS 9.2.1R* and ~~*CREDS 9.2.12R*~~ can be by name or job title and may include, for example, a telephone number.

...

10 Application of other parts of the Handbook to Credit unions

10.1 Application and purpose

...

Application of other parts of the Handbook and of Regulatory Guides to Credit Unions

10.1.3 G

Module	Relevance to Credit Unions
...	
Conduct of Business sourcebook (<i>COBS</i>)	<p><i>A credit union</i> which acts as a <i>CTF provider</i> or provides a <i>cash-deposit ISA</i> will need to be aware of the relevant requirements in <i>COBS</i>. <i>COBS 4.6</i> (Past, simulated past and future performance), <i>COBS 4.7.1R</i> (Direct offer financial promotions), <i>COBS 4.10</i> (Systems and controls and approving and communicating financial promotions), <i>COBS 13</i> (Preparing product information) and <i>COBS 14</i> (Providing product information to clients) apply with respect to <i>accepting deposits</i> as set out in those provisions, <i>COBS 4.1</i> and <i>BCOBS</i>. <u><i>A credit union that communicates with clients, including in a financial promotion, in relation to the promotion of deferred shares and credit union subordinated debt</i> will need to be aware of the requirements of <i>COBS 4.2</i> (Fair, clear and not misleading communications) and <i>COBS 4.5</i> (Communicating with retail clients).</u></p>
...	

...

Sch 1 Record keeping requirements

Sch 1.1G ~~There are no requirements relating to record keeping in *CREDS*. *CREDS*~~
3A.5.10R contains record keeping requirements relating to the retail distribution and *financial promotion* of capital instruments.