

**FOURTH MONEY LAUNDERING DIRECTIVE (ENFORCEMENT AND
CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers); and
 - (c) section 139A (Power of the FCA to give guidance); and
 - (2) the power under regulation 82 (The FCA: procedure (general)) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
- B. The rule-making powers referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- B. This instrument comes into force on 21 July 2017.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Fees manual (FEES)	Annex C
Supervision manual (SUP)	Annex D
Decision Procedure and Penalties manual (DEPP)	Annex E

Material outside the Handbook

- D. The Enforcement Guide (EG) is amended in accordance with Annex F to this instrument.

Citation

- E. This instrument may be cited as the Fourth Money Laundering Directive (Enforcement and Consequential Amendments) Instrument 2017.

By order of the Board
20 July 2017

Annex A

Amendments to the Glossary of definitions

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

Amend the following as shown.

Money Laundering Regulations the Money Laundering, ~~Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2007 (SI 2007/2157)~~ 2017 (SI 2017/692).

Delete the following definition. The text is not shown struck through.

Money Laundering Directive the Council Directive of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering (91/308/EEC) as amended by the Council Directive of 4 December 2001 (2001/97/EEC).

Annex B

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

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

1 Application and purpose

...

1 Annex Detailed application of SYSC

1

...

Part 2	Application of the common platform requirements (SYSC 4 to 10)	
	Who?	
...		
2.5A	R	The <i>common platform requirements on financial crime</i> do not apply to a <i>firm</i> for which a professional body listed in Schedule 3 <u>1</u> to the <i>Money Laundering Regulations</i> , and not the <i>FCA</i> , acts as the supervisory authority for the purposes of those regulations.
...		
2.13C	G	The <i>persons</i> to whom the <i>Money Laundering Regulations</i> apply are set out in regulation 3 <u>10</u> of the <i>Money Laundering Regulations</i> . The <i>persons</i> include <i>credit institutions</i> (for example, banks) and financial institutions (for example, <i>persons</i> who carry on <i>regulated activities</i> which consist of or include <i>entering into credit agreements as lender</i>). These expressions are defined in regulation 3 <u>10</u> of those Regulations.
...		

...

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 6	Application to a common platform firm other than to a UCITS	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised	Application to all other firms apart from insurers, managing agents, the Society and

	investment firm		AIF	full-scope UK AIFMs of unauthorised AIFs
...
SYSC 6.3.1R	Rule	Rule	Rule	Rule For <i>firms</i> carrying on a <i>credit-related regulated activity</i> , or <i>operating an electronic system in relation to lending</i> , applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i> . Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 1 to the <i>Money Laundering Regulations</i> , and not the <i>FCA</i> , acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
SYSC 6.3.2G	Guidance	Guidance	Guidance	Guidance For <i>firms</i> carrying on a <i>credit-related regulated activity</i> , or <i>operating an electronic system in relation to lending</i> , applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i> . Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule

				<p>3 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of these regulations. (FCA Handbook only)</p>
SYSC 6.3.3R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
SYSC 6.3.4G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not</p>

				apply to a <i>firm</i> for which a professional body listed in Schedule 3 1 to the <i>Money Laundering Regulations</i> , and not the <i>FCA</i> , acts as the supervisory authority for the purposes of these regulations. (FCA Handbook only)
SYSC 6.3.5G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, or operating an <i>electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>.</p> <p>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of these regulations. (FCA Handbook only)</p>
SYSC 6.3.6G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, or operating an <i>electronic system in relation to lending</i>, applies</p>

				<p>only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 <u>1</u> to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of these regulations. (FCA Handbook only)</p>
SYSC 6.3.7G	Guidance	Guidance	Guidance	<p>Guidance For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 <u>1</u> to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of these regulations. (FCA Handbook only)</p>
SYSC 6.3.8R	Rule	Rule	Rule	<p>Rule For <i>firms</i> carrying on a <i>credit-related</i></p>

				<p><i>regulated activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm with a limited permission for entering into a regulated credit agreement as lender. Rule does not apply to a firm for which a professional body listed in Schedule 3 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</i></p>
SYSC 6.3.9R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm with a limited permission for entering into a regulated credit agreement as lender. Rule does not apply to a firm</i></p>

				for which a professional body listed in Schedule 3 1 to the <i>Money Laundering Regulations</i> , and not the <i>FCA</i> , acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
SYSC 6.3.10G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>.</p> <p>Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of these regulations. (FCA Handbook only)</p>
SYSC 6.3.11G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the</p>

				<p><i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 3 <u>1</u> to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of these regulations. (FCA Handbook only)</p>
--	--	--	--	---

...

...

Annex C

Amendments to the Fees manual (FEES)

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

4 Periodic fees

...

4 Annex 11R Periodic fees in respect of payment services, electronic money, and regulated covered bonds

...

Part 3	
This table indicates the tariff base for each fee-block. The tariff-base is the means by which the <i>FCA</i> measures the amount of business conducted by the <i>fee-paying payment service providers, fee-paying electronic money issuers, CBTL firms, firms registered under the Money Laundering Regulations</i> and <i>issuers of regulated covered bonds</i> .	
...	...

Annex D

Amendments to the Supervision manual (SUP)

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

15 Notifications to the FCA

...

15.8 Notification in respect of particular products and services

...

Money service business and trust or company service providers

- 15.8.4 G (1) In accordance with ~~article 31~~ regulation 23 of the *Money Laundering Regulations*, with effect from ~~15 December 2007~~ 26 June 2017, a *firm* is required to notify the *FCA*:

...

...

- 15.8.5 G A *firm* which is already operating a money service business or a trust or company service provider ~~as at 15 December 2007~~ immediately before 26 June 2017 is required by the *Money Laundering Regulations* to notify the *FCA* of the fact within 30 days and should do so in the manner specified in *SUP* 15.8.4G(2) ~~before 15 January 2008~~.

...

Annex E

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Statutory notices and the allocation of decision making

...

2 Annex Warning notices and decision notices under the Act and certain other
1 enactments

...

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2007 2017	Description	Handbook reference	Decision maker
<u>Regulations 25(6), 25(9) and 25 (10)(b)</u>	<u>when the FCA is exercising its power to give a direction</u>		<u>RDC</u>
<u>Regulation 59(3)(b)</u>	<u>when the FCA is proposing to refuse an application for registration</u>		<u>Executive procedures</u>
<u>Regulation 59(4)(b)</u>	<u>when the FCA is deciding to refuse an application for registration</u>		<u>RDC or executive procedures (Note 1)</u>
<u>Regulation 34(7) Regulations 60(8) and 60(9)</u>	where <u>when</u> the FCA is proposing or deciding to <u>suspend or cancel the registration of a relevant person registered under the Money Laundering Regulations 2007</u>		RDC
<u>Regulation 42(6) Regulations 81(2)</u>	where <u>when</u> the FCA is proposing or deciding to		RDC

and 81(6)	impose a civil penalty (Note 4) <u>under regulations 76, 77 or 78*</u>		
-----------	---	--	--

Note:

(1) ~~The *Money Laundering Regulations* do not require third party rights and access to *FCA* material when the *FCA* exercises this power. However, the *FCA* generally intends to allow for third party rights and access to material when exercising this power.~~ The *RDC* will take the decision to give the notice under regulation 59(4)(b) if representations are made in response to the notice under regulation 59(3)(b) proposing to refuse the registration application.

...

Sch 4 Powers Exercised

...

4.2G

The following additional powers and related provision have been exercised by the *FCA* to make the statements of policy in *DEPP*:

...

Regulation 37 (Application of Part 26 of the Act) of the *DRS Regulations*

Regulation 82 (The *FCA*: procedure (general)) of the *Money Laundering Regulations*

Annex F

Amendments to the Enforcement Guide (EG)

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

19 Non-FSMA powers

...

19.14 ~~Money Laundering Regulations 2007~~ The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

...

19.14.2 The *FCA* is responsible for monitoring and enforcing compliance with the ~~Regulations~~ Money Laundering Regulations not only by authorised firms who are within the *Money Laundering Regulations*' scope, but also by what the Regulations describe as "Annex I financial institutions". These are businesses which are not otherwise authorised by us but which carry out certain of the activities listed in Annex I of the Banking Consolidation Directive²⁸, now Annex I of the *CRD*. The activities include lending (e.g. forfaiters and trade financiers), financial leasing, and safe custody services. Annex I financial institutions are required to register with the *FCA*.

²⁸ ~~Consumer credit financial institutions and money~~ Money service businesses are also outside the definition of "Annex I financial institution", which is set out in regulation ~~22(1)~~ 55(2) of the *Money Laundering Regulations*.

19.14.2 The *FCA* is also responsible for monitoring and enforcing compliance with the
A Funds Transfer Regulation by payment service providers specified under
regulation 62(1) of the *Money Laundering Regulations*.

19.14.3 The *Money Laundering Regulations* add to the range of options available to the *FCA* for dealing with anti-money laundering and anti-terrorist financing failures. These options ~~are~~ include:

- to prosecute ~~both a relevant person, including but not limited to an authorised firms and firm, an Annex I financial institutions~~ institution or an auction platform, as well as any responsible officer;
- ~~to take regulatory action against authorised firms for failures which breach the *FCA's* rules and requirements (for example, under Principle 3 or SYSC 3.2.6R or SYSC 6.1.1R); and~~
- to ~~impose civil penalties on both~~ fine or censure a relevant person, including but not limited to an authorised firms and firm, an Annex I financial institutions institution or an auction platform, as well as any

officer knowingly concerned in the breach, under regulation 42 76 of the Money Laundering Regulations;

- to cancel, suspend or impose limitations or other restrictions on the authorisation or registration of an authorised person or payment service provider, under regulation 77 of the Money Laundering Regulations; and
- to impose a temporary or permanent prohibition on an officer knowingly concerned in a breach by a relevant person, including an authorised firm or Annex I financial institution, or a payment service provider, under regulation 78 of the Money Laundering Regulations.

In addition to the powers available under the Money Laundering Regulations, the FCA will have the power to take regulatory action against authorised firms for failures which breach the FCA's rules and requirements (for example, under Principle 3, SYSC 3.2.6R or SYSC 6.1.1R).

...

19.14.5 The *Money Laundering Regulations* also provide investigation powers that the FCA can use when investigating whether breaches of the Regulations have taken place. These powers include:

- the power to require information from, and attendance of, relevant persons, payment service providers and connected persons (regulation ~~37~~ 66); and
- powers of entry and inspection without or under warrant (regulations ~~38~~ 69 and ~~39~~ 70).

The use of these powers will be limited to those cases in which the FCA expects to take action under the Regulations is exercising functions under the Money Laundering Regulations. In addition, the FCA may use its powers to require information or attendance at the request of foreign authorities.

19.14.6 The FCA will adopt a risk-based approach to its enforcement of under the Money Laundering Regulations. Failures in anti-money laundering or counter-terrorist financing controls will not automatically result in disciplinary sanctions, although enforcement action is more likely where a firm has not taken adequate steps to identify its ~~money laundering~~ risks or put in place appropriate controls to mitigate those risks, and failed to take steps to ensure that controls are being effectively implemented.

19.14.7 However, the *Money Laundering Regulations* say little about the way in which investigation and sanctioning powers should be used, so the FCA has decided to adopt enforcement and decision making procedures which are broadly akin to those under the *Act*. Key features of the FCA's approach are described ~~below~~ in EG 19.15.

19.15 The conduct of investigations under the Money Laundering Regulations

...

- 19.15.2 When the *FCA* proposes or decides to censure a person, impose a penalty on a person, suspend, cancel or restrict an authorisation or registration or impose a prohibition on a person under the *Money Laundering Regulations*, it must give the person on whom the penalty is to be imposed a notice warning notice or a decision notice. ~~These notices are akin to *warning notices* and *decision notices* given under the *Act*, although Part XXVI (Notices) of the *Act* does not apply to notices given under the *Regulations*.~~
- 19.15.3 ~~The *RDC* is the *FCA*'s decision maker for contested cases in which the *FCA* decides to impose a penalty under the *Money Laundering Regulations*. This builds a layer of separation into the process to help ensure not only that decisions are fair but that they are seen to be fair. The *RDC* will make its decisions following the procedure set out in *DEPP* 3.2 or, where appropriate, *DEPP* 3.3. Where the *FCA* imposes a penalty on a person under the *Money Laundering Regulations*, that person may appeal the decision to the Tribunal. [deleted]~~
- 19.15.4 ~~Although the *Money Laundering Regulations* do not require it, the *FCA* will involve third parties and provide access to Authority material when it gives notices under the *Regulations*, in a manner consistent with the provisions of sections 393 and 394 of the *Act*. However, there is no formal mechanism under the *Money Laundering Regulations* for third parties to make representations in respect of proposed money laundering actions. If a third party asks to make representations, it will be a matter for the *FCA*'s decision makers to decide whether this is appropriate and, if so, how best to ensure that these representations are taken into consideration. In general it is expected that decision makers would agree to consider any representations made. Third parties may not refer cases to the *Tribunal* as the *Money Laundering Regulations* give the *Tribunal* no power to hear such referrals. [deleted]~~
- 19.15.5 When imposing or determining the level of a financial penalty under the *Regulations* regulation 76 of the *Money Laundering Regulations*, the *FCA*'s policy includes having regard, where relevant, to relevant factors in *DEPP* 6.2.1G and *DEPP* 6.5 to *DEPP* 6.5D. The *FCA* may not impose a penalty where there are reasonable grounds for it to be satisfied that the subject of the proposed action took all reasonable steps and exercised all due diligence to ensure that the relevant requirement of the *Money Laundering Regulations* would be met. In deciding whether a person has failed to comply with a requirement of the *Money Laundering Regulations*, the *FCA* must consider whether he or she followed any relevant guidance which was issued by a *European Supervisory Authority* in accordance with articles 17, 18.4 or 48.10 of the Fourth Money Laundering Directive, with article 25 of the Funds Transfer Regulation, or with any relevant guidance which was issued at the time by a supervisory authority or other appropriate body, ~~approved by the Treasury; and published in a manner approved by the Treasury.~~ including the *The Joint Money Laundering Steering Group Guidance* satisfies this requirement.

19.15.5 A When cancelling, suspending or restricting an authorisation or limitation under regulation 77 of the *Money Laundering Regulations* or determining the duration of any such suspension or restriction, and when imposing or determining the duration of a prohibition under regulation 78 of the *Money Laundering Regulations*, the *FCA*'s policy includes having regard, where relevant, to relevant factors in *DEPP* 6A.

19.15.6 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil breaches of the *Money Laundering Regulations* or the Funds Transfer Regulation to assist it to exercise its functions under the Regulations *Money Laundering Regulations* in the most efficient and economic way. The settlement discount scheme set out in *DEPP* 6.7 applies to penalties, suspensions, restrictions and temporary prohibitions imposed under regulations 76, 77 and 78 of the *Money Laundering Regulations*.

19.15.7 The *FCA* will apply the approach to publicity that it has outlined in *EG* 6, read in the light of applicable publicity provisions in regulation 84 of the *Money Laundering Regulations*. ~~However, as the *Money Laundering Regulations* do not require the *FCA* to issue final notices, the *FCA* will publish such information about the matter to which the decision notice relates as it considers appropriate. This will generally involve publishing the decision notice on the *FCA*'s website, with or without an accompanying press release, and updating the Public Register.~~

19.16 Transfer of Funds (Information on the Payer) Regulations 2007 (The Transfer of Funds Regulations) [deleted]

19.16.1 ~~The *FCA* is required, under EU Regulation 1781/2006 (on information on the payer accompanying transfers of funds), to monitor the compliance of payment services providers which are *authorised firms* with the requirements imposed by the Regulation. The Transfer of Funds Regulations set out the *FCA*'s powers to investigate and impose sanctions for breaches of Regulation 1781/2006. The powers are identical to those given under the *Money Laundering Regulations*. The *FCA*'s policy in respect of the use of its powers under the Regulations is the same as the policy it has adopted for the use of *Money Laundering Regulations* powers; the *FCA* will adopt enforcement procedures broadly akin to those used under the *Act*, with the modifications described in paragraphs 19.15.1 to 19.15.7 above.~~
[deleted]