

RISK TRANSFORMATION REGULATIONS 2017 (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2017

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes this instrument amending the rules, guidance and standard terms for Voluntary Jurisdiction participants as set out in Annex H to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 8 (Guidance) of Schedule 17;
 - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (4) paragraph 22 (Consultation) of Schedule 17.
- B. The making (and amendment) of the rules and standard terms for Voluntary Jurisdiction participants in Annex H by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. 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 (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 226 (Compulsory jurisdiction);
 - (5) paragraph 23 (Fees) in Part 3 (Penalty and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
 - (6) paragraph 13 (FCA’s rules) of Schedule 17.
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority approves the rules and standard terms for Voluntary Jurisdiction participants to be made (and to be amended) by the Financial Ombudsman Service Limited in Annex H to this instrument.

Commencement

- F. Save for the amendment to SYSC 1 Annex 1 3.2ER which comes into force on 3 January 2018, this instrument comes into force on 13 December 2017.

Amendments to the Handbook

- G. The modules of the FCA Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Fees manual (FEES)	Annex D
Conduct of Business sourcebook (COBS)	Annex E
Supervision manual (SUP)	Annex F
Decision Procedure and Penalties manual (DEPP)	Annex G
Dispute Resolution: Complaints sourcebook (DISP)	Annex H

Citation

- H. This instrument may be cited as the Risk Transformation Regulations 2017 (Consequential Amendments) Instrument 2017.

By order of the Board of the Financial Ombudsman Service Limited
12 December 2017

By order of the Board of the Financial Conduct Authority
7 December 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.

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

<i>cell</i>	a cell of a <i>protected cell company</i> .
<i>insurance risk transformation</i>	the <i>regulated activity</i> specified in article 13A of the <i>Regulated Activities Order</i> (Transformer vehicles: insurance risk transformation) which is, in summary, the activity of an <i>undertaking</i> ('A') assuming a risk from an <i>undertaking</i> ('B') where: <ol style="list-style-type: none">(1) B assumes a risk under a <i>contract of insurance</i> ('the underlying risk'); and(2) the assumption of risk by A has the legal or economic effect of transferring some or all of the underlying risk to A.
<i>protected cell company</i>	a company formed as a protected cell company under the <i>Risk Transformation Regulations</i> .
<i>Risk Transformation Regulations</i>	the Risk Transformation Regulations 2017 (SI 2017/ 1212).

Amend the following definitions as shown.

<i>client</i>	... (B) in the <i>FCA Handbook</i> : (1) (except in <i>PROF</i> , in relation to a <i>credit-related regulated activity</i> and <u>in relation to a home finance transaction and in relation to insurance risk transformation and activities directly arising from insurance risk transformation</u>) has the meaning given in <i>COBS</i> 3.2, that is (in summary and without prejudice to the detailed effect of <i>COBS</i> 3.2) a <i>person</i> to whom a <i>firm</i> provides, intends to provide or has provided a service in the course of carrying on a <i>regulated activity</i> , or in the case of <i>MiFID</i> or equivalent <i>third</i>
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country business, an ancillary service:

...

...

(9) (in relation to insurance risk transformation and activities directly arising from insurance risk transformation) has the meaning given in COBS 3.2 as modified by COBS 18.6A.3R(2).

*eligible
counterparty*

(1) ...

(2) (for the purposes of *PRIN*, in relation to activities other than *designated investment business*, insurance risk transformation and activities directly arising from insurance risk transformation) a *client* categorised as an *eligible counterparty* in accordance with *PRIN* 1 Annex 1.

insurer

a *firm* with *permission* to *effect or carry out contracts of insurance* ~~(other than an *ISPV*).~~

regulated activity

...

(B) in the *FCA Handbook* (in accordance with section 22 of the *Act* (Regulated activities) the activities specified in Part II of the *Regulated Activities Order* (Specified Activities) which are, in summary:

...

(ca) insurance risk transformation (article 13A)

...

UK ISPV

an *ISPV* with a *Part 4A permission* to ~~*effect or carry out contracts of insurance*~~ carry on the activity of *insurance risk transformation*.

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

EEA ISPV

an *ISPV* (including a *UK ISPV*) whose head office is in any *EEA State* and which has received authorisation pursuant to article 46 of the *Reinsurance Directive* from its *Home State Regulator*.

Annex B

Amendments to the Principles for Businesses sourcebook (PRIN)

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

1 Introduction

...

1.2 Clients and the Principles

...

Approach to client categorisation

1.2.2 G *Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers (that is, clients which are not eligible counterparties). The approach that a firm (other than for credit-related regulated activities in relation to which client categorisation does not apply) needs to take regarding categorisation of clients into customers and eligible counterparties will depend on whether the firm is carrying on designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation, or other activities, as described in PRIN 1.2.3G.*

1.2.3 G (1) *In relation to the carrying on of designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation, a firm's categorisation of a client under the COBS client categorisation chapter (COBS 3) will be applicable for the purposes of Principles 6, 7, 8 and 9.*

(1AA) In relation to the carrying on of insurance risk transformation and activities directly arising from insurance risk transformation, the COBS client categorisation chapter (COBS 3) applies as modified by COBS 18.6A.3R.

...

(3) *In relation to carrying on activities other than designated investment business, insurance risk transformation or activities directly arising from insurance risk transformation (for example, general insurance business or accepting deposits) the firm may choose to comply with Principles 6, 7, 8 and 9 as if all its clients were customers. Alternatively, it may choose to distinguish between eligible counterparties and customers in complying with those Principles. If it chooses to make such a distinction, it must comply with PRIN 1 Annex 1 in determining whether that client is an eligible counterparty (see PRIN 3.4.2R). In doing so, the requirements in SYSC will apply, including the requirement to make and retain*

adequate records.

...

3 Rules about application

...

3.2 What?

3.2.1A R *PRIN* applies with respect to the carrying on of:

- (1) *regulated activities*;
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); ~~and~~
- (3) *ancillary activities* in relation to *designated investment business*, *home finance activity*, *credit-related regulated activity*, *insurance mediation activity* and *accepting deposits*; and
- (4) activities directly arising from insurance risk transformation.

...

3.4 General

Clients and the Principles

...

3.4.3 G (1) *COBS 3* (Client categorisation) applies to a *firm* intending to conduct, or conducting, *designated investment business* (other than giving *basic advice*), ~~and~~ *ancillary activities* relating to *designated investment business* and to a firm intending to carry on, or carrying on, insurance risk transformation and activities directly arising from insurance risk transformation. Any *client* categorisation established in relation to such business will be applicable for the purposes of *Principles 6, 7, 8 and 9.*

...

Annex C

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

...

1.1A Application

...

- 1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. The detailed application is set out in SYSC 1 Annex 1 and in the text of each chapter.

Type of firm	Applicable chapters
<i>Insurer, <u>UK ISPV</u></i>	Chapters 2, 3, 12 to 18, 21, 22
<i>Managing agent</i>	Chapters 2, 3, 11, 12, 18, 21, 22
<i>Society</i>	Chapters 2, 3, 12, 18, 21, 22
Every other <i>firm</i>	Chapters 4 to 12, 18, 19D, 21, 22

Firms that SYSC 19D applies to should also refer to the Remuneration part of the ~~PRA Rulebook~~ *Rulebook*.

...

1 Annex 1 Detailed application of SYSC

Part 1	Application of SYSC 2 and SYSC 3 to an insurer, <u>a UK ISPV</u> , a managing agent and the Society	
	Who?	
1.1	R	SYSC 2 and SYSC 3 only apply to an <i>insurer</i> , <u>a UK ISPV</u> , a <i>managing agent</i> and the <i>Society</i> except that:
		...
...		
	What?	

1.3	R	SYSC 2 and SYSC 3 apply with respect to the carrying on of:	
		...	
		(2)	activities that constitute <i>dealing in investments as principal</i> , disregarding the exclusion in article 15 of the <i>Regulated Activities Order</i> (Absence of holding out etc); and
		(3)	<i>ancillary activities</i> in relation to <i>designated investment business</i> , <i>home finance activity</i> and <i>insurance mediation activity</i> ; <u>and</u>
		(4)	<u>activities directly arising from <i>insurance risk transformation</i></u> ;
		except that SYSC 3.2.6AR to SYSC 3.2.6JG do not apply as described in SYSC 1 Annex 1.1.4R.	
1.4	R	SYSC 3.2.6AR to SYSC 3.2.6JG do not apply:	
		...	
		(2)	in relation to the following <i>regulated activities</i> :
		(a)	<i>general insurance business</i> ;
		(aa)	<u><i>insurance risk transformation</i></u> ;
		...	
		(3)	to a <i>pure reinsurer</i> ; <u>or</u>
		(4)	<u>in relation to activities directly arising from <i>insurance risk transformation</i></u> .
...			
Part 2	Application of the common platform requirements (SYSC 4 to 10)		
	Who?		
2.1	R	The <i>common platform requirements</i> apply to a <i>firm</i> apart from an <i>insurer</i> , a <u>UK ISPV</u> , a <i>managing agent</i> and the <i>Society</i> unless provided otherwise in a <i>specific rule</i> .	
...			
Part 3	Tables summarising the application of the common platform requirements to different types of firm		
...			
3.3	G	For all other <i>firms</i> apart from <i>insurers</i> , <u>UK ISPVs</u> , <i>managing agents</i> , the <i>Society</i> and <i>full-scope UK AIFMs</i> of <i>unauthorised AIFs</i> , they apply in	

		accordance with Column B in the table below. For these <i>firms</i> , where a <i>rule</i> is shown modified in Column B as ‘Guidance’, it should be read as <i>guidance</i> (as if ‘should’ appeared in that rule instead of ‘must’) and should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm’s <i>firm’s</i> business.

Editor’s note: From 3 January 2018, SYSC 1 Annex 1 3.3G is amended as shown in PS17/14: Markets in Financial Instruments Directive II Implementation – Policy Statement II. Part of the amendment is shown here for information only.

3.3	G R	For all other <i>firms</i> apart from insurers, UK ISPVs managing agents, the Society and full scope UK AIFMs of unauthorised AIF, they:	
		(1)	...
		...	

Editor’s note: From 3 January 2018, SYSC 1 Annex 1 3.2ER is amended as shown below.

		Other firms	
3.2E	R	SYSC 1 Annex 1 3.3R does not apply to the following:	
		(1)	<i>insurers and UK ISPVs;</i>
		...	
...			

Amend the following as shown. These changes come into force on 13 December 2017.

Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 5	COLUMN A Application to a	COLUMN A+ Application to a	COLUMN A++ Application to a	COLUMN B Application to all

	common platform firm other than to a UCITS investment firm	UCITS management company	full-scope UK AIFM of an authorised AIF	other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 7	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 8	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 9	COLUMN A Application to a common platform	COLUMN A+ Application to a UCITS	COLUMN A++ Application to a full-scope UK	COLUMN B Application to all other firms apart

	firm other than to a UCITS investment firm	management company	AIFM of an authorised AIF	from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				
Provision SYSC 10	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, <u>UK ISPVs</u> , managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs
...				

3 Systems and Controls

...

3.2 Areas covered by systems and controls

...

The compliance function

...

3.2.8 R (1) *A firm which carries on designated investment business with or for retail clients or professional clients and a UK ISPV which carries on insurance risk transformation with respect to long-term insurance contracts must allocate to a director or senior manager the function of:*

...

...

...

12 Group risk systems and controls requirements

12.1 Application

12.1 R Subject to SYSC 12.1.2R to SYSC 12.1.4R, this section applies to each of the following which is a member of a *group*:

(1)

...

(ca) a UK ISPV;

...

...

...

14 Risk management and associated systems and controls for insurers

14.1 Application

...

14.1.2AA R This section applies to a UK ISPV.

...

Annex D

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...
<u>(zz) an applicant for registration under regulation 14 of the Risk Transformation Regulations as a protected cell company.</u>	500	<u>On or before the date the application is made.</u>
...		

...

4 Periodic fees

...

4 Annex 1AR FCA activity groups, tariff bases and valuation dates

<p>Part 1</p> <p>This table shows how the <i>FCA</i> links the <i>regulated activities</i> for which a <i>firm</i> has <i>permission</i> to activity groups (fee-blocks). A <i>firm</i> can use the table to identify which fee-blocks it falls into based on its <i>permission</i>.</p>	
Activity group	Fee payer falls in the activity group if
...	...

<p>A.3 Insurers – general and UK ISPVs</p>	<p>its <i>permission</i> includes one or more of the following:</p> <ul style="list-style-type: none">- <i>effecting contracts of insurance</i>;- <i>carrying out contracts of insurance</i>; <p>in respect of <i>specified investments</i> that are:</p> <ul style="list-style-type: none">- <i>general insurance contracts</i>; or- <i>long-term insurance contracts other than life policies</i> <p><u>OR</u></p> <p>it has <i>permission to carry on insurance risk transformation</i>.</p>
<p>...</p>	

...

Annex E

Amendments to the Conduct of Business sourcebook (COBS)

Insert the following new section after COBS 18.6 (Lloyd's). The text is not underlined.

18.6A Insurance Special Purpose Vehicles (ISPVs)

Application

18.6A.1 R This section applies to *UK ISPVs*.

COBS rules that apply to insurance risk transformation and activities directly arising from insurance risk transformation

18.6A.2 R *COBS 3* applies (subject to *COBS 18.6A.3R*) when a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*.

Definitions and modifications

18.6A.3 R When a *firm* is carrying on *insurance risk transformation* and/or activities directly arising from *insurance risk transformation*:

(1) The general definition of *client* in *COBS 3.2.1R* is modified as set out in *COBS 18.6A.3R(2)* below.

(2) Any reference to the term *client* is to be taken to include:

(a) a *person* to whom the *firm* provides, intends to provide or has provided a service in the course of carrying on activities directly arising from *insurance risk transformation* (including the offer of *investments* issued by the *firm*); or

(b) (in *DISP* only) a *person* who is holding or has held an *investment* issued by the *firm*.

(3) *COBS 3.6.1R(2)* does not apply. A client can be an *eligible counterparty* in relation to *insurance risk transformation* and activities directly arising from *insurance risk transformation*.

18.6A.4 G For the avoidance of doubt, the remainder of *COBS 3.2* and *COBS 3.6* applies.

Communications with clients

18.6A.5 R Before an *investment* issued by an *ISPV* is sold to a *client* (that is not an *eligible counterparty*), the *ISPV* must ensure that the *client* is informed that compensation will not be available from the *FSCS* if the *ISPV* cannot meet

its liabilities.

- 18.6A.6 R A statement that compensation will not be available from the *FSCS* must be included in any brochure or other written communication by which an *ISPV* offers *investments* to *clients*.
- 18.6A.7 G For the avoidance of doubt, *COBS* 18.6A.5R and *COBS* 18.6A.6R do not exhaust or restrict the scope of *Principle 7*.

Annex F

Amendments to the Supervision manual (SUP)

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

11 **Controllers and close links**

11.1 **Application**

Application to firms

11.1.1 R This chapter applies to every *firm* except:

...

(7) a UK ISPV;

as set out in the table in SUP 11.1.2R.

...

Application to controllers

11.1.4 D SUP 11.1, SUP 11.2.1G, SUP 11.3 and SUP 11.7 apply to a *controller* or a proposed *controller* of a *UK domestic firm* not listed in SUP 11.1.1R(1) to ~~SUP 11.1.1R(6)~~ SUP 11.1.1R(7).

...

Annex G

Amendments to Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

...

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

...

The Small and Medium Sized Business (Finance Platforms) Regulations 2015	Description	Handbook reference	Decision maker
...

<u>The Risk Transformation Regulations 2017</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 22</u>	when the <i>FCA</i> is <u>proposing or deciding to refuse an application to register a <i>protected cell company</i></u>	<u>Not applicable</u>	<u><i>Executive procedures</i></u>
<u>Regulation 28</u>	when the <i>FCA</i> is <u>proposing or deciding to refuse approval of a proposed amendment to a <i>protected cell company's instrument of incorporation</i></u>	<u>Not applicable</u>	<u><i>Executive procedures</i></u>

Annex H

Dispute Resolution: Complaints sourcebook (DISP)

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

2 Jurisdiction of the Financial Ombudsman Service

...

2.3 To what activities does the Compulsory Jurisdiction apply?

Activities by firms

- 2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

...

(7) offering and/or issuing of investments by ISPVs;

or any ancillary activities, including advice, carried on by the *firm* in connection with them.

...

2.5 To which activities does the Voluntary Jurisdiction apply?

- 2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

(c) activities which (at ~~1 October 2016~~ 13 December 2017) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

(1) offering and/or issuing of investments by ISPVs;

or any ancillary activities, including advice, carried on by the *VJ participant* in connection with them.

...

...

2.7 Is the complainant eligible?

...

2.7.6 R To be an *eligible complainant* a person must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

...

(16) the complainant is a *client* (where the *respondent* is an *ISPV*).

...

2 Annex 1G Regulated Activities for the Voluntary Jurisdiction at ~~1 October 2016~~ 13 December 2017

...

The activities which were covered by the *Compulsory Jurisdiction* (~~at 1 October 2016~~ 13 December 2017) were:

(1) for *firms*:

...

(j) offering and/or issuing of *investments* by *ISPVs*;

...

The activities which (at ~~1 April 2016~~ 13 December 2017) were *regulated activities* were, in accordance with *section 22* of the *Act* (The classes of activity and categories of investment), any of the following activities specified in *Part II* of the *Regulated Activities Order*:

(1) ...

...

(4) *carrying out contracts of insurance* (article 10(2));

(4A) *insurance risk transformation* (article 13A);

...