Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of:

(1) regulation 3 of The Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;

(2) the following powers and related provisions in or under the Financial Services and Markets Act 2000:

   (a) section 139A (Power of the FCA to give guidance);
   (b) section 395 (The [FCA’s and PRA’s] Procedures); and

(3) regulation 120 (guidance) of the Payment Services Regulations 2017.

Commencement

B. This instrument comes into force on exit day as defined in the European Union (Withdrawal) Act 2018.

Amendments to the Handbook

C. The Supervision manual (SUP) is amended in accordance with Annex A to this instrument.

D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.

Notes

E. In this instrument, notes shown as “Note:” are intended for the convenience of the reader but do not form part of the legislative text.

Citation

F. This instrument may be cited as the Exiting the European Union: Regulatory Processes Sourcebooks (Amendments) Instrument 2019.

By order of the Board
28 March 2019
Annex A

Amendments to the Supervision manual (SUP)

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

1A The FCA’s approach to supervision

1A.1 Application and purpose

... Purpose

1A.1.2 The Act (section 1L) requires the FCA to “maintain arrangements for supervising authorised persons”. Section 1K of the Act also requires the FCA to provide general guidance about how it intends to advance its operational objectives in discharging its general functions in relation to different categories of authorised person or regulated activity. One purpose of this guidance is to discharge the duties of the FCA set out in sections 1L and 1K of the Act. The FCA’s approach to supervision is also designed to enable it to meet its supervisory obligations in accordance with EU legislation, where applicable, including in relation to requirements arising otherwise than under the Act (for example, directly applicable EU regulations onshored regulations).

... 1A.2 Introduction

... 1A.2.2 For a firm which undertakes business internationally (or is part of a group which does), the FCA will have regard to the context in which it operates, including the nature and scope of the regulation to which it is subject in jurisdictions other than the United Kingdom. For a firm with its head office outside the United Kingdom, the regulation in the jurisdiction where the head office is located will be particularly relevant. As part of its supervision of such a firm, the FCA will usually seek to cooperate with relevant overseas regulators, including exchanging information on the firm. Different arrangements apply for an incoming EEA firm, an incoming Treaty firm and a UCITS qualifier. The arrangements applying for an incoming EEA firm and an incoming Treaty firm are addressed in SYSC Appendix 1. For UCITS qualifiers see also COLLG.

... 3 Auditors
3.1 Application

Incoming firms

3.1.3 R This chapter applies to an incoming EEA firm (and the auditor of such a firm) only if it has a top-up permission. [deleted]

3.1.4 G The application of SUP 3.10 to the auditor of an incoming EEA firm with a top-up permission is qualified in SUP 3.10.3R. [deleted]

3.1.5 R This chapter does not apply to an incoming Treaty firm, which:

(1) does not have a top-up permission; and

(2) is not required to comply with the client asset rules. [deleted]

3.1.6 G The application of SUP 3.7 to an incoming Treaty firm or an auditor of such a firm is further qualified in SUP 3.7.1G. [deleted]

3.7 Notification of matters raised by auditor

Application

3.7.1 G SUP 3.7 does not apply to an incoming Treaty firm which does not have a top-up permission. [deleted]

3.10 Duties of auditors: notification and report on client assets

3.10.3 R SUP 3.10.5R(3) does not apply to an auditor of a lead regulated firm or an incoming EEA firm. [deleted]

4 Actuaries

4.1 Application

4.1.3 R Applicable sections

<table>
<thead>
<tr>
<th>(1)</th>
<th>Category of firm</th>
<th>(2) Applicable sections or rules</th>
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(1) A long-term insurer, other than: SUP 4.1, SUP 4.2, SUP 4.3 and SUP 4.5

<p>| | |</p>
<table>
<thead>
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<td>(a)</td>
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<td>(b)</td>
<td>an incorporated friendly society that is a flat rate benefits business friendly society; and</td>
</tr>
<tr>
<td>(c)</td>
<td>an incoming EEA firm; and [deleted]</td>
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<tr>
<td>(d)</td>
<td>…</td>
</tr>
</tbody>
</table>

... Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

6.1 Application, interpretation and purpose

... 

6.1.3 G This chapter applies to an incoming firm or a UCITS qualifier only in respect of a top-up permission. An incoming firm or a UCITS qualifier should refer to SUP 14 (Variation of passport rights by incoming EEA firms and ending authorisation) for the procedures for changes to permission granted under Schedules 3, 4 or 5 of the Act. [deleted]

... 

6.2 Introduction

... 

UK firms exercising EEA or Treaty rights

6.2.12 G A UK firm should assess the effect of any change to its Part 4A permission, or any requirements, on its ability to continue to exercise any EEA right or Treaty right and discuss any concerns with its appropriate supervisory contact(s). This may also change the applicable provisions with which it is required to comply by a Host State. [deleted]

6.2.13 G A UK firm which, as well as applying to vary or cancel its Part 4A permission, wishes to vary or terminate any business which it is carrying on in another EEA State under one of the Single Market Directives, should follow the procedures in SUP 13 (Exercise of passport rights by UK firms) on varying or terminating its branch or cross border services business. [deleted]
6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

6.3.3 G In applying for a variation of Part 4A permission, a branch of a firm from outside the EEA UK should be mindful of any continuing requirements referred to in the rest of the Handbook.

6.3.6 G If a firm is seeking a variation of Part 4A permission to add categories of regulated activities, it should be mindful of the directive requirements referred to at SUP 6.3.42G relating to the need to commence new activities within 12 months.

7 Individual requirements

7.1 Application and purpose

Application

7.1.2 R The application of this chapter to an incoming EEA firm, incoming Treaty firm or UCITS qualifier with a Part 4A permission (a "top-up permission") is limited as explained in SUP 7.2.4G. [deleted]

7.2 The FCA’s powers to set individual requirements and limitations on its own initiative

7.2.4 G The FCA may use its own-initiative powers only in respect of a firm’s Part 4A permission; that is, a permission granted to a firm under sections 55E or 55F of the Act (Giving permission) or having effect as if so given. In respect of an incoming EEA firm, an incoming Treaty firm, or a UCITS qualifier, this power applies only in relation to any top-up permission that it has. There are similar but more limited powers under Part XIII of the Act in relation to the permission of an incoming EEA firm or incoming Treaty firm under Schedules 3 or 4 to the Act (see EG 8.26 to EG 8.27).

11 Controllers and close links
11.1 Application

Application to firms

11.1.1 R This chapter applies to every firm except:

(1) an ICVC;
(2) an incoming EEA firm; [deleted]
(3) an incoming Treaty firm; [deleted]
(4) a sole trader;
(5) a UCITS qualifier; [deleted]
(6) a UK ISPV;
(7) a firm which only has permission for administering a benchmark,
as set out in the table in SUP 11.1.2R.

11.2 Purpose

...

11.2.7 G The requirements in SUP 11 implement certain provisions relating to changes in control and close links which were required under the Single Market Directives.

...

11.3 Requirements on controllers or proposed controllers under the Act

...

11.3.14 G Pursuant to section 188 of the Act (Assessment: consultation with EC competent authorities), the appropriate regulator is obliged to consult any appropriate Home State regulator before making a determination under section 185 of the Act (Assessment: general). [deleted]

...

11.5 Notifications by firms

...

11.5.4 G Firms are reminded that a change in control may give rise to a change in the group companies to which the appropriate regulator’s consolidated financial supervision requirements apply. Also, the firm may for the first time become subject to the appropriate regulator’s requirements on
consolidated financial supervision (or equivalent requirements imposed by another EEA State). This may apply, for example, if the controller is itself an authorised undertaking. The appropriate regulator may therefore request such a firm, controller or proposed controller to provide evidence that, following the change in control, the firm will meet the requirements of these rules, if appropriate.

...  

11.7 Acquisition or increase of control: assessment process and criteria  

...  

11.7.13 G Before making a determination under section 185 or giving a warning notice under section 191A, the appropriate regulator must comply with the requirements as to consultation with EC competent authorities set out in section 188 of the Act and with the other regulator set out in sections 187A, 187B and 191A of the Act, as applicable.

...  

11.8 Changes in the circumstances of existing controllers  

11.8.1 R A firm must notify the appropriate regulator immediately it becomes aware of any of the following matters in respect of one or more of its controllers:

...  

(3) if a corporate controller undergoes a substantial changes or series of changes in its governing body;

(4) if a controller, who is authorised in another EEA State as a MiFID investment firm, CRD credit institution or UCITS management company or under the Solvency II Directive or the IDD, ceases to be so authorised (registered in the case of an IDD insurance intermediary). [deleted]

...  

12 Appointed representatives  

12.1 Application and purpose  

General application  

12.1.1 R ...  

(1A) This chapter applies to a UK MiFID investment firm MiFID investment firm which is considering appointing, has decided to appoint or has appointed an EEA tied agent FCA registered tied agent.
This chapter does not apply to a UCITS qualifier. [deleted]

This chapter does not apply in relation to a tied agent acting on behalf of an EEA MiFID investment firm unless that tied agent is established in the UK. [deleted]

Territorial application: compatibility with EU law

12.1.1A R (1) The territorial scope of SUP 12 is modified to the extent necessary to be compatible with EU law (see SUP 12.1.1BG and 12.1.1CG for guidance on this). [deleted]

(2) This rule overrides every other rule in this chapter. [deleted]

12.1.1B G For a UK MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply to its MiFID business carried on from an establishment in the United Kingdom or another EEA State. [deleted]

[Note: articles 34(1) and 35(1) and (8) of MiFID]

12.1.1C G For an EEA MiFID investment firm, in our view, rules in this chapter that are within the scope of MiFID apply only to its MiFID business to the extent they relate to the knowledge and competence of one or more of its UK tied agents. An EEA MiFID investment firm should complete the Appointed representative appointment form in SUP 12 Annex 3R when appointing a UK-tied agent to carry on MiFID business on its behalf. [deleted]

[Note: article 29(3) of MiFID]

Interaction of SUP 12 and other modules in relation to MiFID business

12.1.1D G In addition to those rules in SUP 12 relating to the MiFID business of appointed representatives and tied agents, there are other MiFID obligations derived from MiFID in the Handbook relevant to the knowledge and competence of tied agents and related compliance obligations (see SYSC 5.1, TC and FIT (in respect of appointed representatives that are approved persons)). These provisions are subject to the territorial application requirements in their respective chapters.

This chapter also sets out:

(1) guidance about section 39A of the Act, which is relevant to a UK MiFID investment firm MiFID investment firm that is considering appointing an FCA registered tied agent; and

(2) the FCA’s rules, and guidance on those rules, in relation to the appointment of:
(a) an EEA tied agent FCA registered tied agent by a UK MiFID investment firm MiFID investment firm;

... 12.2 Introduction

... Business for which an appointed representative is exempt

12.2.7 G (1) The Appointed Representatives Regulations are made by the Treasury under sections 39(1), (1C) and (1E) of the Act. These regulations describe, among other things, the business for which an appointed representative may be exempt or to which sections 20(1) and (1A) and 23(1A) of the Act may not apply, which is business which comprises any of:

... (aa) bidding in emissions auctions (article 24A of the Regulated Activities Order) where that activity does not consist either of dealing on own account or the execution of orders on behalf of clients; [deleted]

... What is a tied agent?

12.2.16 G ...

(3) This chapter sets out the provisions which apply to tied agents:

(a) established in the UK; or

(b) established in another EEA State and appointed by a UK MiFID investment firm MiFID investment firm.

(4) A tied agent appointed by a firm to carry on investment services and activities or ancillary services on its behalf may not provide cross border services or establish a branch in another EEA State in its own right. This is because tied agents do not have passporting rights. The tied agent of a MiFID investment firm may, however, provide cross border services or establish a branch in another EEA State by availing itself of the appointing firm’s passport. MiFID investment firms may also appoint tied agents established in different EEA States. [deleted]
(5) A tied agent will not be an appointed representative if it does not and is not likely to conduct any business as a tied agent in the UK. If such a tied agent is appointed by a UK MiFID investment firm it will be an EEA tied agent. EEA tied agents are either FCA registered tied agents or EEA registered tied agents.

... 

(7) Under MiFID, a tied agent must be registered with the competent authority of the EEA State in which it is established. A UK MiFID investment firm may appoint a tied agent established in the UK but that does not, and is not likely to, conduct any business as a tied agent in the UK. That tied agent must be registered with the FCA. Such an EEA tied agent is referred to in the Handbook as an FCA registered tied agent.

(8) If a UK MiFID investment firm appoints a tied agent established in an EEA State other than the UK, the tied agent must be registered with the competent authority of the EEA State in which it is established. Such an EEA tied agent is referred to in the Handbook as an EEA registered tied agent. [deleted]

What is a MiFID optional exemption appointed representative?

12.2.17 G ... 

(3) The rules in this chapter which apply with respect to UK tied agents appointed by UK firms also apply to a firm that appoints a MiFID optional exemption appointed representative.

What is a structured deposit appointed representative?

12.2.18 G (1) If a MiFID investment firm or a third country investment firm appoints a person to act under its full and unconditional responsibility but only for the purpose of selling, or advising clients in relation to, structured deposits (and not any of the activities within article 4(1)(29) of MiFID section 39(7) of the Act), that person will not be a tied agent in respect of that activity.

... 

(3) The rules in this chapter which apply with respect to UK tied agents appointed by UK firms also apply to a firm that appoints a structured deposit appointed representative.

12.3 What responsibility does a firm have for its appointed representatives or EEA FCA registered tied agents?

Responsibility for appointed representatives...
12.3.1 G In determining whether a firm has complied with:

... 

(3) any qualifying EU provision specified, or of a description specified, for the purpose of section 39(4) of the Act by the Treasury by order, anything that an appointed representative has done or omitted to do as respects the business for which the firm has accepted responsibility will be treated as having been done or omitted to be done by the firm (section 39(4) of the Act and article 17 of the MCD Order).

... 

Responsibility for EEA FCA registered tied agents

12.3.5 R A UK MiFID investment firm must not appoint an EEA registered tied agent or allow such an agent to continue to act for it unless it accepts or has accepted responsibility in writing for the agent’s activities in acting as its EEA registered tied agent. [deleted]

[Note: paragraph 1 of article 29(2) of MiFID]

12.3.6 G The effect of section 39A(6)(b) of the Act is to prohibit a UK MiFID investment firm from appointing an FCA registered tied agent unless it has accepted responsibility in writing for the agent’s activities in acting as a tied agent.

12.4 What must a firm do when it appoints an appointed representative or an EEA FCA registered tied agent?

...

Appointment of an FCA registered tied agent

12.4.11 R If a UK MiFID investment firm appoints an FCA registered tied agent, SUP 12.4.2R and SUP 12.4.2AR apply to that firm as though the FCA registered tied agent were an appointed representative.

[Note: paragraphs 2 and 3 of article 29(3) of MiFID]

Tied agents

12.4.12 G (1) A tied agent that is an appointed representative may not start to act as a tied agent until it is included on the applicable register (section 39(1A) of the Act). If the tied agent is established in the UK, the register maintained by the FCA is the applicable register for these purposes. If the tied agent is established in another EEA State, the applicable register is that maintained by the competent authority in the EEA State in which the tied agent is established.
(2) A UK MiFID investment firm that appoints an FCA registered tied agent who is not registered with the FCA will, subject to certain conditions, be taken to have contravened a requirement imposed on it by or under the Act (see section 39A(6)(c) and (d) of the Act).

(3) A UK MiFID investment firm that appoints an EEA registered tied agent will be required to register that agent with the competent authority of the EEA State in which it is established. This requirement will be imposed by the rules of that EEA State. [deleted]

(4) If the tied agent is not established in the UK and is appointed by an EEA MiFID investment firm, it cannot commence acting as a tied agent until it is included on the public register of tied agents in the EEA State in which it is established. [deleted]

12.5 Contracts: required terms

12.5.2 G ... (1A) The requirement described in paragraph (1) does not apply if the firm is an EEA MiFID investment firm. [deleted]

12.5.2A G If:

(1) a UK MiFID investment firm or a third country investment firm appoints an appointed representative that is a tied agent or a MiFID optional exemption appointed representative, regulation 3(6) of the Appointed Representatives Regulations requires the contract between the firm and the appointed representative to contain a provision that the representative is only permitted to provide the services and carry on the activities referred to in article 4(1)(29) of MiFID section 39(7) of the Act while entered on the Register.

Required contract terms for EEA FCA registered tied agents

12.5.8 R If a UK MiFID investment firm appoints an EEA tied agent FCA registered tied agent, SUP 12.5.6AR(1A) applies to that firm as though the EEA tied agent FCA registered tied agent were an appointed
representative.

[Note: articles 4(1)(29) and 29(1) of MiFID]

Required contract terms for FCA registered tied agents

12.5.9 G Under section 39A(6)(a) of the Act a UK MiFID investment firm must ensure that the contract it uses to appoint an FCA registered tied agent complies with the requirements that would apply under the Appointed Representatives Regulations if it were appointing an appointed representative.

12.6 Continuing obligations of firms with appointed representatives or EEA FCA registered tied agents

12.6.1A R A firm that is a principal of a tied agent that is an appointed representative must monitor the activities of that tied agent so as to ensure the firm complies with obligations imposed under derived from MiFID (or equivalent obligations relating to the equivalent business of a third country investment firm) when acting through that tied agent.

[Note: paragraph 3 of article 29(2) of MiFID]

12.6.1B R A firm that is a principal of an appointed representative that carries on MCD credit intermediation activity must monitor the activities of that appointed representative to ensure compliance with obligations imposed under derived from the MCD (including those in MCOB and TC).

[Note: article 31(3) of the MCD]

Continuing obligations of firms with EEA FCA registered tied agents

12.6.15 R If a UK MiFID investment firm appoints an EEA tied agent, SUP 12.6.1R, SUP 12.6.1AR, SUP 12.6.5R and SUP 12.6.11AR apply to that firm as though the EEA tied agent were an appointed representative.

Continuing obligations of firms with MiFID optional exemption appointed representatives or structured deposit appointed representatives

12.6.15 R If a firm appoints a MiFID optional exemption appointed representative or a structured deposit appointed representative, that firm must:

(1) monitor the activities of the appointed representative to ensure that the firm complies with those obligations which implement provisions of MiFID and to which it is subject when
acting through its appointed representative;

12.6.15 In SUP 12.6.15AR(1), the obligations which implement relevant provisions of MiFID to which a firm is subject include:

(1) in the case of a MiFID optional exemption firm appointing a MiFID optional exemption appointed representative, those conduct requirements which are imposed pursuant to article 3(2) of MiFID; and

(2) in the case of a firm appointing a structured deposit appointed representative, those requirements which are imposed pursuant to article 1(4) of MiFID.

12.7 Notification requirements

Notifications relating to EEA FCA registered tied agents

12.7.9 If a UK MiFID investment firm appoints an EEA tied agent FCA registered tied agent this section applies to that firm as though the EEA tied agent FCA registered tied agent were an appointed representative.

12.8 Termination of a relationship with an appointed representative or EEA FCA registered tied agent

Termination of a UK MiFID investment firm’s relationship with an EEA FCA registered tied agent

12.8.6 If a UK MiFID investment firm has appointed an EEA tied agent FCA registered tied agent this section applies to that firm as though the EEA tied agent FCA registered tied agent were an appointed representative.

12.9 Record keeping

Record keeping in relation to EEA FCA registered tied agents

12.9.5 If a UK MiFID investment firm appoints an EEA tied agent FCA registered tied agent this section applies to that firm as though
the EEA tied agent FCA registered tied agent were an appointed representative.

... 

SUP 13 and the Annexes to SUP 13 are deleted in their entirety. The deleted text is not shown but is marked deleted as shown below.

13 Exercise of passport rights by UK firms [deleted]

SUP 13A and the Annexes to SUP 13A are deleted in their entirety. The deleted text is not shown but the chapter is marked deleted as shown below.

13A Qualifying for authorisation under the Act [deleted]

SUP 14 is deleted in its entirety. The deleted text is not shown but the chapter is marked deleted as shown below.

14 Incoming EEA firms changing details, and cancelling qualification for authorisation [deleted]

Amend the following as shown.

15 Notifications to the FCA

15.1 Application

Who?

15.1.1 G This chapter applies to every firm except that:

(1) only SUP 15.10 applies to an ICVC or a UCITS qualifier; and

... 

15.1.2 R The application of this chapter to an incoming EEA firm or an incoming Treaty firm is set out in SUP 15 Annex 1. [deleted]

... 

15.1.6 R This chapter does not apply to an incoming ECA provider acting as such. [deleted]

... 

15.3 General notification requirements
15.3.8 G Compliance with Principle 11 includes, but is not limited to, giving the FCA notice of:

(1) any proposed restructuring, reorganisation or business expansion which could have a significant impact on the firm’s risk profile or resources, including, but not limited to:

... 

(f) a substantial change or a series of changes in the governing body of an overseas firm (other than an incoming firm); or 

...

Breaches of rules and other requirements in or under the Act or the CCA

15.3.11 R (1) A firm must notify the FCA of:

...

(d) a breach of a directly applicable provision imposed by MiFIR or any onshored regulations which were previously EU regulation regulations adopted under MiFID or MiFIR; or

(da) a breach of a directly applicable provision in the EU CRR UK CRR or any directly applicable regulations onshored regulations which were previously EU Regulations made adopted under CRD or the EU CRR; or

...

(ea) a breach of a directly applicable provision in the auction regulation; or [deleted]

...

(h) a breach of any directly applicable onshored regulations which were previously EU regulation regulations made adopted under AIFMD; or

(ha) a breach of the benchmarks regulation (apart from Annex II to that regulation) or of any directly applicable regulations onshored regulations or requirements which were previously EU regulations made or imposed under the EU benchmarks regulation; or
(i) a breach of any directly applicable onshored regulations which were previously EU regulations made EU regulations adopted under the IDD;

...

15.3.29 R ...

(2) ...

(b) the AIF is a EuSEF SEF or EuVECA RVECA (see SUP 15.3.31G).

15.3.30 D (1) ...

(b) ...

(ii) the AIF is a EuSEF SEF or EuVECA RVECA (see SUP 15.3.31G);

15.3.31 G A EuSEF SEF manager or a EuVECA RVECA manager should notify the FCA of the following changes in the following manner:

...

for changes to the jurisdiction in which its EuSEF SEF or EuVECA RVECA is marketed or to market a new EuSEF SEF or EuVECA RVECA, by using the form in SUP 15 Annex 6FG

...

15.3.35 G ...

(2) Notification under SUP 15.3.32R is not sufficient to constitute an application for leniency or immunity from penalty in any subsequent investigation under Chapter 1 of the Competition Act 1998 or article 101 of the Treaty.

15.4 Notified persons

15.4.1 R (1) An overseas firm, which is not an incoming firm, must notify the FCA within 30 business days of any person taking up or ceasing to hold the following positions:

...
15.6 Inaccurate, false or misleading information

...  

15.6.1A R  SUP 15.6.1R also applies to all information given, or to be given, by a firm in accordance with any of the following:

(1) a directly an applicable provision imposed by MiFIR or any onshored regulations which were previously or any EU regulation regulations adopted under MiFID or MiFIR; or

...  

...  

15.9 Notifications by members of financial conglomerates  

...  

15.9.4 R A firm does not have to give notice to the FCA under SUP 15.9.1R if it or another member of the consolidation group has already given notice of the relevant fact to:

...  

...  

(3) (in the case of a financial conglomerate that does not yet have a co-ordinator) the competent authority who would be co-ordinator under Article 10(2) of the Financial Groups Directive (Competent authority responsible for exercising supplementary supervision (the co-ordinator)) Regulation 1(2) of the Financial Groups Directive Regulations.

15.9.5 R (1) A firm must, at the level of the EEA financial conglomerate in the United Kingdom, regularly provide the FCA with details on the financial conglomerate’s legal structure and governance and organisational structure, including all regulated entities, and non-regulated subsidiaries, and significant branches.

(2) A firm must disclose publicly, at the level of the EEA financial conglomerate in the United Kingdom, on an annual basis, either in full or by way of references to equivalent information, a description of the financial conglomerate’s legal structure and governance and organisational structure.

(3) For the purposes of (1) and (2), where a firm is a member of an EEA a financial conglomerate in the United Kingdom which is part of a wider UK regulated EEA financial conglomerate, reporting applies only at the level of the EEA parent mixed financial holding company or ultimate EEA mixed financial holding company.

...
15.14 Notifications under the Payment Services Regulations

...  

15.14.20 D Payment service providers must comply with the EBA’s Guidelines on incident reporting under the Payment Services Directive as issued on 27 July 2017 (EBA/GL/2017/10) where they are addressed to payment service providers.

15.14.21 D ...  

(1) within the timescales and at the frequencies specified in the EBA’s Guidelines on incident reporting under the Payment Services Directive (EBA/GL/2017/10);  

...  

15.14.22 Payment service providers should note that article 16(3) of Regulation (EU) No 1093/2010 also requires them to make every effort to comply with the EBA’s Guidelines on incident reporting under the Payment Services Directive. [deleted]

SUP 15 Annex 1R is deleted in its entirety. The deleted text is not shown but the annex is marked deleted as shown below.

15 Application of SUP 15 to incoming EEA firms, incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions [deleted]

Amend the following as shown.

15A Applications and notifications under EMIR

15A.1 Application and notifications under EMIR

...  

15A.1.3 G Where a person intends to rely on article 11(6), (7), (8), or (9) or (10) for an exemption from the obligation to implement risk management procedures set out in article 11(3) of EMIR, the person should make their application or notification to the FCA in accordance with EMIR requirements, including (where relevant) those set out in the EMIR technical standards on OTC derivatives and Part 5 (Transitional Provisions: Intragroup Transactions) of the Trade Repositories (EU Exit) Regulations.
Applications and notifications under the benchmarks regulation and powers over Miscellaneous BM persons

Applications to endorse a third country benchmark

15B.3.1 G (1) Article 33 of the benchmarks regulation provides that a supervised entity may apply to the FCA to endorse a benchmark or a family of benchmarks provided in a third country for their use in the EU UK.

Applications for recognition of third country administrators

15B.4.1 G (1) Article 32 of the benchmarks regulation provides that a benchmark administrator located in a third country may apply to a competent authority the FCA for prior recognition.

Reporting requirements

16.1 Application

16.1.2 G The only categories of firm to which no section of this chapter applies are is:

(1) an ICVC

(2) an incoming EEA firm or incoming Treaty firm, unless it is:

(a) a firm of a type listed in SUP 16.1.3 R as a type of firm to which SUP 16.6, SUP 16.7A, SUP 16.9, SUP 16.12, SUP 16.14, or SUP 16.23A applies; or

(b) an insurer with permission to effect or carry out life policies; or

(c) a firm with permission to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme; or

(d) a payment service provider to which SUP 16.22 applies [deleted]

(3) a UCITS qualifier. [deleted]
### Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16 and SUP 16.17) and SUP 16.22

<table>
<thead>
<tr>
<th>(1) Section(s)</th>
<th>(2) Categories of firm to which section applies</th>
<th>(3) Applicable rules and guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SUP 16.1, SUP 16.2 and SUP 16.3</strong></td>
<td>All categories of <em>firm</em> except: Entire sections</td>
<td></td>
</tr>
<tr>
<td><em>(b)</em></td>
<td>an incoming EEA firm or incoming Treaty firm, which is not: [deleted]</td>
<td></td>
</tr>
<tr>
<td><em>(i)</em></td>
<td>a firm of a type to which SUP 16.6 or SUP 16.12 applies; or</td>
<td></td>
</tr>
<tr>
<td><em>(ii)</em></td>
<td>an insurer with permission to effect or carry out life policies; or</td>
<td></td>
</tr>
<tr>
<td><em>(iii)</em></td>
<td>a firm with permission to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme; or</td>
<td></td>
</tr>
<tr>
<td><em>(iv)</em></td>
<td>a payment service provider to which SUP 16.22 applies</td>
<td></td>
</tr>
<tr>
<td><em>(c)</em></td>
<td>a UCITS qualifier. [deleted]</td>
<td></td>
</tr>
<tr>
<td><strong>SUP 16.4 and SUP 16.5</strong></td>
<td>All categories of <em>firm</em> except: Entire sections</td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td>an incoming EEA firm; [deleted]</td>
<td></td>
</tr>
<tr>
<td>(c)</td>
<td>an incoming Treaty firm; [deleted]</td>
<td></td>
</tr>
<tr>
<td>(h)</td>
<td>a UCITS qualifier [deleted]</td>
<td></td>
</tr>
</tbody>
</table>

**SUP 16.10** All categories of firm except: Entire section

| (a) | an ICVC; and |
| (b) | a UCITS qualifier; and [deleted] |

**SUP 16.23A** A firm undertaking the regulated activities in SUP 16.23A.1R, including all incoming EEA firms or incoming Treaty firms (including those providing cross-border services and undertaking the same activities) Entire section

16.1.4 G …

(3) Requirements for individual firms reflect:

... 

(c) whether a firm has its registered office (or if it does not have a registered office, its head office) in the United Kingdom; and

(d) whether a firm is an incoming EEA firm or incoming Treaty
16.3 General provisions on reporting

Application

16.3.1 G …

(1) an ICVC;

(2) an incoming EEA firm or incoming Treaty firm, which is not [deleted]

(a) a firm of a type listed in SUP 16.1.3R as a firm to which section SUP 16.6 or SUP 16.12 applies;

(b) an insurer with permission to effect or carry out life policies;

(3) a UCITS qualifier. [deleted]

16.5 Annual Close Links Reports

…

Purpose

16.5.2 G …

(3) if the person is subject to the laws, regulations or administrative provisions of a territory which is not an EEA State the United Kingdom, whether those foreign provisions, or any deficiency in their enforcement, would prevent the appropriate regulator’s effective supervision of the firm.

16.7A Annual report and accounts

Application

16.7A.1 R This section applies to every firm in the regulatory activity group (RAG) set out in column (1), which is a type of firm in column (2), of the tables in SUP 16.7A.3R and SUP 16.7A.5R, except:

(1) an incoming EEA firm with permission for cross border services only; [deleted]

(2) an incoming EEA firm in relation to its carrying on of bidding in
emissions auctions; [deleted]

...

Requirement to submit annual report and accounts

16.7A.3 R A firm in the RAG in column (1) and which is a type of firm in column (2) must submit its annual report and accounts to the FCA annually on a single entity basis.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>RAG</td>
<td>Firm type</td>
</tr>
<tr>
<td>1</td>
<td>…</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>…</td>
<td>Non-EEA bank non-UK bank</td>
</tr>
<tr>
<td>…</td>
<td></td>
</tr>
</tbody>
</table>

Time period for firms submitting their annual report and accounts

16.7A.8 R Firms must submit their annual report and accounts in accordance with SUP 16.7A.3R within the following deadlines:

(1) for a non-EEA bank non-UK bank, within 7 months of the accounting reference date;

...

16.12 Integrated Regulatory Reporting

Application

16.12.1 G The effect of SUP 16.1.1R is that this section applies to every firm carrying on business set out in column (1) of SUP 16.12.4R except:

(1) an incoming EEA firm with permission for cross border services only; [deleted]

(1A) an incoming EEA firm in relation to its carrying on of bidding in emissions auctions; [deleted]
16.12.4 R Table of applicable rules containing data items, frequency and submission periods

<table>
<thead>
<tr>
<th>RAG number</th>
<th>Regulated Activities</th>
<th>Provisions containing:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>applicable data items</td>
<td>reporting frequency/period</td>
</tr>
</tbody>
</table>

16.12.11 R The applicable data items referred to in SUP 16.12.4R are set out according to firm type in the table below:

<table>
<thead>
<tr>
<th>Description of data item</th>
<th>Firms’ prudential category and applicable data items (note 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-EEA sub-group</td>
<td></td>
</tr>
<tr>
<td>Non-UK sub-group</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Note 1</td>
<td>All firms, except IFPRU investment firms in relation to data items reported under the EU CRR UK CRR, when submitting the completed data item required, a firm must use the format of the data item set out in SUP 16 Annex 24. Guidance notes for completion of the data items are contained in SUP 16 Annex 25.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 16.12.15

<table>
<thead>
<tr>
<th>Description of data item</th>
<th>Firms’ prudential category and applicable data items (note 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td>Non-EEA subgroup</td>
<td></td>
</tr>
<tr>
<td>Non-UK sub-group</td>
<td></td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
</tbody>
</table>

Note 34 Requirements under COREP and FINREP should be determined with reference to the **EU CRR UK CRR** and applicable technical standards.

### 16.12.22

<table>
<thead>
<tr>
<th>Description of Data item</th>
<th>Firms’ prudential category and applicable data item (note 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td>Non-EEA sub-group</td>
<td></td>
</tr>
<tr>
<td>Non-UK sub-group</td>
<td></td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
</tbody>
</table>

Note 29 Requirements under COREP and FINREP should be determined with reference to the **EU CRR UK CRR** and applicable technical standards.

### 16.12.25

<table>
<thead>
<tr>
<th>Description of data item</th>
<th>Firms’ prudential category and applicable data item (note 1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
</tbody>
</table>
Note 30 Requirements under COREP and FINREP should be determined with reference to the EU CRR UK CRR and applicable technical standards.

Regulated Activity Group 11

16.12.29 R A firm must submit the form contained in SUP 16 Annex 32R (Bidding in emissions auctions return) annually within 30 business days from its accounting reference date unless the firm did not carry on any auction regulation bidding during the year to which that form relates. [deleted]

Financial conglomerates

16.12.32 R ...

(a) it is at the head of a UK regulated EEA financial conglomerate; or

16.13 Reporting under the Payment Services Regulations

Purpose

16.3.2 G ...

(4) give directions to EEA authorised payment institutions under regulation 30(4) of the Payment Services Regulations in relation to:

(a) the information that they must provide to the FCA in respect of the payment services they carry on in the United Kingdom in exercise of passport rights; and

(b) the time at which and the form in which they must provide that information and the manner in which it must be verified. [deleted]
Reporting requirement

16.13.3 D (1) An authorised payment institution, a small payment institution, an EEA authorised payment institution or a registered account information service provider must submit to the FCA the duly completed return applicable to it as set out in column (2) of the table in SUP 16.13.4D.

... 

16.13.3 D SUP 16.3.11R (Complete reporting) and SUP 16.3.13R (Timely reporting) also apply to authorised payment institutions, small payment institutions, EEA authorised payment institutions and registered account information service providers as if a reference to firm in these rules were a reference to these categories of payment service provider.

... 

16.13.4 D The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to authorised payment institutions, small payment institutions, EEA authorised payment institutions and registered account information service providers.

... 

16.13.11 G The EBA issued Guidelines on 12 December 2017 on the security measures for operational and security risks of payment services under the Payment Services Directive (EBA/GL/2017/17). The Guidelines specify requirements for the establishment, implementation and monitoring of the security measures that payment service providers must take to manage operational and security risks relating to the payment services they provide.


16.13.12 D Payment service providers must comply with the EBA’s Guidelines on the security measures for operational and security risks of payment services (EBA/GL/2017/17) as issued on 12 December 2017 where they are addressed to payment service providers.

... 

16.13.17 G Payment service providers should note that article 16(3) of Regulation (EU) No. 1093/2010 also requires them to make every effort to comply with the EBA’s Guidelines on security measures for operational and security risks of payment services: [deleted]
16.15 Reporting under the Electronic Money Regulations

... 

16.15.8 D The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to electronic money issuers that are not credit institutions.

<table>
<thead>
<tr>
<th>(1) Type of electronic money issuer</th>
<th>(2) Return</th>
<th>(3) Format</th>
<th>(4) Reporting Frequency</th>
<th>(5) Due date (Note 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the Post Office Limited</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) the Bank of England, the ECB</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>and the national central banks of</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EEA States other than the United</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kingdom</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Government departments and</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>local authorities</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) credit unions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) municipal banks</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(f) the National Savings Bank</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average outstanding electronic</td>
<td></td>
<td>No standard</td>
<td>Annual (Note 6)</td>
<td>30 business days</td>
</tr>
<tr>
<td>money</td>
<td></td>
<td>format</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

... 

16.17 Remuneration reporting

... 

Interpretation

16.17.2 R In this section “UK lead regulated group” means an FCA consolidation group that is headed by an EEA parent institution, an EEA parent financial holding company, a UK parent financial holding company or an EEA parent mixed financial holding company. 

...
16.17.3 R …

(5) The firm must complete the Remuneration Benchmarking Information Report using accounting year-end amounts in euros determined, if necessary, by reference to the exchange rate used by the European Commission for financial programming and the budget for December of the reported year.

(6) This rule applies to:

(a) an IFPRU investment firm; and

(b) an overseas firm that:

(i) is not an EEA firm; [deleted]

(ii) has its head office outside the EEA; and [deleted]

(iii) would be an IFPRU investment firm, if it had been a UK domestic firm, had carried on all of its business in the United Kingdom and had obtained whatever authorisations for doing so as are required under the Act; that:

(c) is not, and does not have, an EEA a UK parent institution, an EEA a UK parent financial holding company or an EEA a UK parent mixed financial holding company, and that had total assets equal to or greater than £50 billion on an unconsolidated basis on the accounting reference date immediately prior to the firm’s last complete financial year.

(7) This rule also applies to:

(a) an IFPRU investment firm; and

(b) an overseas firm that

(i) is not an EEA firm; [deleted]

(ii) has its head office outside the EEA; and [deleted]

(iii) would be an IFPRU investment firm, if it had been a UK domestic firm, had carried on all of its business in the United Kingdom and had obtained whatever authorisations for doing so as are required under the Act; that:

(c) is part of a UK lead regulated group, and that had total assets equal to or greater than £50 billion on an unconsolidated basis on the accounting reference date immediately prior to the firm’s
last complete financial year.

(8) In this rule “total assets” means:

(a) in relation to an IFPRU investment firm, its total assets as set out in its balance sheet on the relevant accounting reference date; and

(b) in relation to an overseas firm in (76)(b) and (87)(b), the total assets of the overseas firm as set out in its balance sheet on the relevant accounting reference date that cover the activities of the branch operation in the United Kingdom.

High Earners Reporting Requirements

16.17.4 R (1) A firm to which this rule applies must submit a High Earners Report to the FCA annually.

(2) The firm must submit that report to the FCA within four months of the end of the firm’s accounting reference date.

(3) A firm that is not part of a UK lead regulated group must complete that report on an unconsolidated basis in respect of remuneration awarded in the last completed financial year to all high earners of the firm who mainly undertook their professional activities within the EEA United Kingdom.

(4) A firm that is part of a UK lead regulated group must not complete that report on either a solo consolidation basis or an unconsolidated basis. The firm must complete that report on a consolidated basis in respect of remuneration awarded in the last completed financial year to all high earners who mainly undertook their professional activities within the EEA United Kingdom at:

(a) the EEA parent institution, EEA parent financial holding company or EEA parent mixed financial holding company, UK parent institution, UK parent financial holding company or UK parent mixed financial holding company of the UK lead regulated group;

(b) each subsidiary of the UK lead regulated group that has its registered office (or, if it has no registered office, its head office) in an EEA State the United Kingdom; and

(c) each branch of the UK lead regulated group that is established or operating in an EEA State the United Kingdom.

(5) (a) The firm must complete a separate template, in the format set out in SUP 16 Annex 34A, for each EEA State in which there is a high earner, and for each payment bracket of EUR 1
million. Those templates together form the High Earners Report.

(b) The number of high earners must be reported as the number of natural persons, independent of the number of working hours on which their contract is based.

(9) The information in the High Earners Report must be denominated in Euros determined, if necessary, by reference to the exchange rate used by the European Commission for financial programming and the budget for December of the reported year.

(10) This rule applies to an IFPRU investment firm that is not, and does not have, an EEA parent institution, an EEA parent financial holding company or an EEA parent mixed financial holding company, a UK parent institution, a UK parent financial holding company or a UK parent mixed financial holding company.

(11) This rule also applies to an IFPRU investment firm that is part of a UK lead regulated group.

(12) This rule also applies to a BIPRU firm, an exempt CAD firm, a local firm, or any other firm that is not a bank, a building society or an IFPRU investment firm:

(a) that is part of a UK lead regulated group; and

(b) where that UK lead regulated group contains either:

(i) a bank, building society or an IFPRU investment firm; or

(ii) an overseas firm that;

(A) is not an EEA firm; [deleted]

(B) has its head office outside the EEA; and [deleted]

(C) would be a bank, building society or an IFPRU investment firm, if it had been a UK domestic firm, had carried on all of its business in the UK and had obtained whatever authorisations for doing so as are required under the Act.

(13) This rule also applies to an overseas firm that:

(a) is not an EEA firm; [deleted]

(b) has its head office outside the EEA; [deleted]

(c) would be an IFPRU investment firm, if it had been a UK domestic firm, had carried on all of its business in the UK and had obtained whatever authorisations for doing so as are
required under the Act;

and either:

(d) is not, and does not have, an EEA parent institution, an EEA parent financial holding company or an EEA parent mixed financial holding company, a UK parent institution, a UK parent financial holding company or a UK parent mixed financial holding company; or

(e) is part of a UK lead regulated group.

16.18 AIFMD reporting

Application

16.18.1 This section applies to the following types of AIFM in line with SUP 16.18.2:

(1) a full-scope UK AIFM;

(2) a small authorised UK AIFM;

(3) a small registered UK AIFM;

(4) an above-threshold non-EEA AIFM above-threshold non-UK AIFM marketing in the UK; and

(5) a small non-EEA AIFM small non-UK AIFM marketing in the UK.

16.18.2 G Type of AIFM | Rules | Directions | Guidance | AIFMD level 2 regulation
--- | --- | --- | --- | ---
full-scope UK AIFM | FUND 3.4 (Reporting obligation to the FCA) and SUP 16.18.5R |  |  | Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4EU 16.18.4UK)
small authorised UK AIFM | SUP 16.18.6R |  |  | Article 110 (Reporting to competent authorities) (as replicated in SUP 16.18.4EU 16.18.4UK)
small | SUP |  |  | Article 110
Purpose

16.18.3 G This section specifies the end dates for reporting periods for AIFMs and the reporting period for small AIFMs for the types of AIFM to whom this section applies. Although article 110 of the AIFMD level 2 regulations (Reporting to competent authorities) (as replicated in SUP 16.18.4EU 16.18.4UK) applies certain reporting requirements directly to AIFMs, it does not specify the end dates for reporting periods for an AIFM and, for small AIFMs, it does not specify the reporting period. Therefore, competent authorities are required to specify these requirements.

Article 110 of the AIFMD level 2 regulation

16.18.4 EU UK Reporting to competent authorities the FCA

1. In order to comply with the requirements of the second subparagraph of Article 24(1) and of point (d) of Article 3(3) of Directive 2011/61/EU [FUND 3.4.2R] and directions given by the FCA under regulation 21(2) of the AIFM Regulations 2013, an AIFM shall provide the following information when reporting to competent authorities the FCA:

(a) the main instruments in which it is trading, including a break-down of financial instruments and other assets, including the
AIF’s investment strategies and their geographical and sectoral investment focus;

(b) the markets of which it is a member or where it actively trades;

(c) the diversification of the AIF’s portfolio, including, but not limited to, its principal exposures and most important concentrations.

The information shall be provided as soon as possible and not later than one month after the end of the period referred to in paragraph 3. Where the AIF is a fund of funds this period may be extended by the AIFM by 15 days.

2. For each of the EU AIFs they manage and for each of the AIFs they market in the United Kingdom or the Union, AIFMs shall provide to the competent authorities of their home Member State the following information in accordance with Article 24(2) of Directive 2011/61/EU [FUND 3.4.3R]:

(a) the percentage of the AIF’s assets which are subject to special arrangements as defined in Article 1(5) of this Regulation arising from their illiquid nature as referred to in point (a) of Article 23(4) of Directive 2011/61/EU [FUND 3.2.5R(1)];

(b) any new arrangements for managing the liquidity of the AIF;

(c) the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;

(d) the current risk profile of the AIF, including:

(i) the market risk profile of the investments of the AIF, including the expected return and volatility of the AIF in normal market conditions;

(ii) the liquidity profile of the investments of the AIF, including the liquidity profile of the AIF’s assets, the profile of redemption terms and the terms of financing provided by counterparties to the AIF;

(e) information on the main categories of assets in which the AIF invested including the corresponding short market value and long market value, the turnover and performance during the reporting period; and

(f) the results of periodic stress tests, under normal and exceptional circumstances, performed in accordance with point (b) of Article 15(3) and the second subparagraph of Article 16(1) of Directive 2011/61/EU [FUND 3.6.3R(2) and 3.7.5R(2)(b)].
3. The information referred to in paragraphs 1 and 2 shall be reported as follows:

(a) on a half-yearly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed the threshold of either EUR 100 million or EUR 500 million laid down in points (a) and (b) respectively of Article 3(2) of Directive 2011/61/EU sub-paragraphs (b) and (a) respectively of regulation 9(1) of the AIFM Regulations 2013 but do not exceed EUR 1 billion, for each of the UK and EU AIFs they manage and for each of the AIFs they market in the United Kingdom or the Union;

(b) on a quarterly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed EUR 1 billion, for each of the UK and EU AIFs they manage, and for each of the AIFs they market in the United Kingdom or in the Union;

(c) on a quarterly basis by AIFMs which are subject to the requirements referred to in point (a) of this paragraph, for each AIF whose assets under management, including any assets acquired through use of leverage, in total exceed EUR 500 million, in respect of that AIF;

(d) on an annual basis by AIFMs in respect of each unleveraged AIF under their management which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control.

4. By way of derogation from paragraph 3, the competent authority of the home Member State of the AIFM FCA may deem it appropriate and necessary for the exercise of its function to require all or part of the information to be reported on a more frequent basis.

5. AIFMs managing one or more AIFs which they have assessed to be employing leverage on a substantial basis in accordance with Article 111 of this Regulation shall provide the information required under Article 24(4) of Directive 2011/61/EU [FUND 3.4.5R] at the same time as that required under paragraph 2 of this Article.

6. AIFMs shall provide the information specified under paragraphs 1, 2 and 5 in accordance with the pro-forma reporting template set out in the Annex IV.

7. In accordance with point (a) of Article 42(1) of Directive 2011/61/EU, for non-EU AIFMs, any reference to the competent authorities of the home Member State shall mean the competent authority of the Member State of reference. [deleted]
[Note: Article 110 of the AIFMD level 2 regulation]

Guidelines

16.18.11 G ESMA’s guidelines on reporting obligations under articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD (http://www.esma.europa.eu/system/files/2013-1339_final_report_on_esma_guidelines_on_aifmd_reporting_for_publication_revised.pdf), 8 August 2014 (ESMA/2014/869EN), provide further details in relation to the requirements in this section.

16.23 Annual Financial Crime Report

16.23.2 R Unless a firm is listed in the table below, this section does not apply to it where both of the following conditions are satisfied:

Table: Firms to which the exclusion in SUP 16.23.2R does not apply

<table>
<thead>
<tr>
<th>Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>a UK bank</td>
</tr>
<tr>
<td>a building society</td>
</tr>
<tr>
<td>a EEA bank</td>
</tr>
<tr>
<td>a non-EEA bank</td>
</tr>
<tr>
<td>a non-UK bank</td>
</tr>
<tr>
<td>a mortgage lender</td>
</tr>
<tr>
<td>a mortgage administrator; or</td>
</tr>
<tr>
<td>a firm offering life and annuity insurance products.</td>
</tr>
</tbody>
</table>

16.23A Employers’ Liability Register compliance reporting

Application

16.23A.1 R (1) This section applies to any firm required to produce an employers’ liability register in compliance with the requirements in ICOBS 8.4.4R, which is: a firm carrying out contracts of insurance, or a managing agent managing insurance business, including in either case business accepted under reinsurance to close, which includes UK
commercial lines employers’ liability insurance.

(a) a firm carrying out contracts of insurance, or a managing agent managing insurance business, including in either case business accepted under reinsurance to close, which includes United Kingdom commercial lines employers’ liability insurance; and

(b) an incoming EEA firm or incoming Treaty firm falling within (a), including those providing cross border services.

...

16.24 Retirement income data reporting

Application

16.24.1 R This section applies to:

(1) (a) a firm with permission to establish, operate or wind up a personal pension scheme or a stakeholder pension scheme; and

(b) a firm with permission to effect or carry out contracts of insurance in relation to life and annuity contracts of insurance.

(2) This rule does not apply to an incoming firm:

(a) in respect of that part of its business that was carried on as an electronic commerce activity; or

(b) if the customer is habitually resident in (and, if applicable, the State of the risk is) an EEA State other than the United Kingdom, to the extent that the EEA State in question imposes measures of like effect. [deleted]

...

SUP 16 Annex 32R is deleted in its entirety. The deleted text is not shown but the annex is marked deleted as shown below.

16 Bidding in emissions auctions return [deleted]

Annex 32R

Amend the following as shown.

18 Transfers of business

...
18.2 Insurance business transfers

Consultation with EEA regulators and/or other foreign regulators

18.2.23 A Under the terms of the Memorandum of Understanding, the PRA will lead when carrying out consultation with EEA regulators and/or other foreign regulators.

18.2.24 G The guidance set out in SUP 18.2.25G to SUP 18.2.30G derives from the requirements of the Solvency II Directive and the associated agreements between EEA regulators. Schedule 12 of the Act implements some of these requirements. [deleted]

18.2.25 G (1) If the transferee is (or will be) an EEA firm (authorised in its Home State to carry on insurance business under the Solvency II Directive) or a Swiss general insurance company, then the appropriate regulator has to consult the transferee’s Home State regulator, who has 3 months to respond. It will be necessary for the appropriate regulator to obtain from the transferee’s Home State regulator a certificate confirming that the transferee will meet the Home State’s solvency margin requirements (if any) after the transfer. [deleted]

(1A) If the transferee is (or will be) an EEA firm (authorised in its Home State to carry on insurance business under the Reinsurance Directive) it will be necessary for the appropriate regulator to obtain from the transferee’s Home State regulator a certificate confirming that the transferee will meet the Home State’s solvency margin requirements (if any) after the transfer. [deleted]

(2) If the transferee is authorised in the United Kingdom, the The appropriate regulator will need to certify that the transferee will meet its solvency margin requirements after the transfer. If the appropriate regulator has required of a UK firm a “recovery plan” of the kind mentioned in the PRA Rulebook: Solvency II firms: Undertakings in Difficulty, the appropriate regulator will not issue a certificate for so long as it considers that policyholders’ rights are threatened within the meaning of these paragraphs.

18.2.26 G The transferor will need to provide the appropriate regulator with the information that the Home State regulator requires from the appropriate regulator. This information includes:

(1) the transfer agreement or a draft, with:

(a) the names and addresses of the transferor and transferee; and

(b) the classes of insurance business and details of the nature of the risks or commitments to be transferred;
(2) for the business to be transferred (both before and after reinsurance):

   (a) the amount of technical provisions;

   (b) the amount of premiums (in the most recent financial period); and

   (c) for general insurance business, the claims incurred (in the most recent financial period);

(3) details of assets to be transferred;

(4) details of any guarantees (including reinsurance arrangements), whether provided by the transferor or a third party, to protect the provisions for the business transferred against deterioration; and

(5) the states of the risks or the states of the commitments of the business being transferred. [deleted]

18.2.27 G If the transferee is not (and will not be) authorised and will not be neither an EEA firm nor a Swiss general insurance company, then the appropriate regulator will need to consult the transferee's insurance supervisor in the place where the business is to be transferred. The appropriate regulator will need confirmation from this supervisor that the transferee will meet his solvency margin requirements there (if any) after the transfer.

18.2.28 G If the transferor is a UK insurer (other than a pure reinsurer) and the business to be transferred includes business carried on from a branch in another EEA State, then the appropriate regulator has to consult the Host State regulator, who has 3 months to respond. The appropriate regulator will need to be given the information that the Host State regulator requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information, and describe arrangements for settling claims if the branch is to be closed. [deleted]

18.2.29 G If the transferor is a UK insurer and the business to be transferred includes a long-term insurance contract (other than reinsurance) for which the state of the commitment is an EEA state other than the United Kingdom, then the appropriate regulator has to consult the Host State regulator. If the transferor is a UK insurer and the business to be transferred includes a general insurance contract (other than reinsurance) for which the state of the risk is an EEA state other than the United Kingdom, then the appropriate regulator must consult the Host State regulator. The appropriate regulator will need to be given the information that the Host State regulator requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information. It would be helpful (especially for long-term insurance business) if a draft of the scheme report was also available. The appropriate regulator will also need to have sufficient information about the business proposed to be transferred
to be satisfied that the applicants have undertaken sufficient steps to identify the state of the risk or the state of the commitment, as the case may be. The consent of the Host State regulator to the transfer is required, unless he does not respond within 3 months. [deleted]

18.2.30 G Where the transferor is a UK deposit insurer and, following the transfer, it will no longer be carrying on insurance business in the United Kingdom, the appropriate regulator will need to collaborate with regulatory bodies in the other EEA States in which it is carrying on business to ensure that effective supervision of the business carried on in the EEA continues. The transferor should cooperate with the appropriate regulator and the other regulatory bodies in this process and demonstrate that it will meet the requirements of its regulators following the transfer. [deleted]

…

18.2.47 G As the consent (or presumed consent) of the Host State is required for a transfer covering contracts for which another EEA State is the state of the risk (for general insurance business) or the state of the commitment (for long-term insurance business), it is advisable to obtain the consent of regulatory body in the Host State to any waiver of publication in that state. The approval of the court will still be required. [deleted]

…

Post-transfer advertising

18.2.61 G Under section 114 of the Act the court must direct that notice of the transfer be published by the transferee in any EEA State other than the United Kingdom which is the state of the commitment or the state of the risk as regards any policy included in the transfer which evidences a contract of insurance (other than a contract of reinsurance). The regulators would expect the transferee to publish notice in at least one national newspaper in each relevant EEA State. Such publication should include the notification of the transfer to the policyholders in the state of the commitment or the state of the risk. The parties should also be mindful of relevant provisions of the national laws of the relevant state of the commitment or the state of the risk. [deleted]

18.2.62 G Under section 114A of the Act the court may direct that notice of a transfer be published by the transferee in any EEA State which is the state of the commitment or the state of the risk as regards any policy included in the transfer which evidences a contract of reinsurance. [deleted]

…

18.3 Insurance business transfers outside the United Kingdom

Purpose

18.3.1 G Under section 115 of the Act, the appropriate regulator has the power to give a certificate confirming that a firm possesses any necessary margin of
solvenacy, to facilitate an insurance business transfer to the firm under overseas legislation from a firm authorised in another EEA State or from a Swiss general insurance company. This section provides guidance on how the appropriate regulator would exercise this power and on related matters.

18.3.2 G Under cooperation agreements between EEA regulators, if it has serious concerns about the proposed transferee, the appropriate regulator should inform the regulatory body of the transferor within 3 months of the original request from that regulatory body. The appropriate regulator is not obliged to reply, but if it does not, its opinion is taken to be favourable. Although the protocol does not apply to Switzerland, the appropriate regulator is required to cooperate with the Swiss regulatory body and would apply similar principles. If it has serious concerns about a proposed transfer from a Swiss general insurance company, the appropriate regulator should inform the Swiss regulatory body.

18.4 Friendly Society transfers and amalgamations

18.4.2 G Friendly societies are encouraged to discuss a proposed transfer or amalgamation with the appropriate authority, at an early stage to help ensure that a workable timetable is developed. This is particularly important where there are notification requirements for supervisory authorities in EEA States other than the United Kingdom, or for an amalgamation where additional procedures are required.

18.4.9 G For an amalgamation the successor society, and for a transfer the transferee, may need to apply for permission, or to vary its permission, under Part 4A of the Act. The regulators will need sufficient time before a transfer is confirmed to consider whether any necessary permission or variation should be given. If the transferee is an EEA firm or a Swiss general insurance company, then confirmation will be needed from its Home State regulator that it meets the Home State’s relevant solvency margin requirements (see SUP 18.4.25G(3)).

18.4.24 G For a directive friendly society, if the transfer or amalgamation includes policies where the state of the risk or the state of the commitment is an EEA State other than the United Kingdom, consultation with the Host State regulator is required and SUP 18.2.25G to SUP 18.2.29G apply (for an amalgamation they apply as if the business of the amalgamating societies is to be transferred to the successor society). Paragraph 6(1) of Schedule 15 to the Friendly Societies Act 1992 requires publication of the application to
the appropriate authority for confirmation of an amalgamation or transfer and the appropriate authority may require the notice of the application to be published in two national newspapers in the Host State. [deleted]

18.4.25 G The criteria that the appropriate authority must use in determining whether to confirm a proposed amalgamation or transfer are set out in schedule 15 to the Friendly Societies Act 1992. These criteria include that:

... 

(2) the appropriate authority must be satisfied that:

... 

(c) for a directive friendly society where a transfer includes policies where the state of the risk or the state of the commitment is an EEA State other than the United Kingdom, the Host State regulator has been notified of the transfer and has consented or has not refused consent to the transfer; and [deleted]

(3) for a transfer, the transferee possesses the necessary margin of solvency after taking the proposed transfer into account or, where it is not required to maintain a necessary margin of solvency, possesses an excess of assets over liabilities (for a transferee that is a Swiss general insurance company or an EEA firm, this is evidenced by a certificate from its home state regulator regulator).

... 

App 2 Insurers: Regulatory intervention points and run-off plans

App 2.1 Application

2.1.1 R Subject to SUP App 2.1.6R, SUP App 2.1 to 2.15 apply to an insurer, unless it is:

(1) a Swiss general insurer; or

(2) an EEA deposit insurer; or

(3) an incoming EEA firm; or

(4) an incoming Treaty firm.

... 

App Grant or variation of permission

2.10

2.10.1 The PRA will ask Solvency II firms seeking a grant or variation of permission to provide a scheme of operations as part of the application process (see the UK provisions which implemented article 18 of the Solvency II Directive). It may make
a similar request to other firms (see SUP 6.3.25G). Firms which have submitted such a scheme of operations are not required to submit to the PRA a further scheme of operations under this appendix unless SUP App 2.8 or the relevant parts of PRA Rulebook: Non-Solvency II firms: Run Off Operations or PRA Rulebook: Solvency II firms: Run Off Operations apply. SUP 6 Annex 4 does, however, apply to such a firm.

App 2.15 Run-off plans for closed with-profits funds

2.15.8B Delegated acts or implementing technical standards may be adopted under the UK provisions which implemented article 35(6) and (7) of the Solvency II Directive in relation, among other things, to run-off plans. In that event Solvency II firms should comply with those acts and standards to the extent that they supersede SUP App 2.15.8A G.

SUP Appendix 3 is deleted in its entirety. The deleted text is not shown but the appendix is marked deleted as shown below.

App 3 Guidance on passporting issues [deleted]

Amend the following as shown.

TP 10 Benchmarks Regulation Transitional Provisions

10.2 Overview

10.2.1 G (1) The EU benchmarks regulation applied from 1 January 2018. The benchmarks regulation is the UK version of, and replacement for, this EU regulation and applies from 1 January 2018 exit day.

Insert the following new TP 12 after SUP TP 11 (Bank of England and Financial Services Act 2016: Approved persons in insurers). The text is not underlined.

TP 12 Transitional provisions relating to tied agents

<p>| | | | | | |</p>
<table>
<thead>
<tr>
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<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
</tr>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provision: coming into force</td>
<td></td>
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<td>-----------------------------------------------------</td>
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<tr>
<td>12.1 <em>SUP 12</em></td>
<td>R</td>
<td>Three years starting with the first day after <em>exit day</em></td>
<td><em>exit day</em></td>
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</tr>
<tr>
<td><strong>12.1</strong></td>
<td><strong>R</strong></td>
<td><strong>Three years starting with the first day after <em>exit day</em></strong></td>
<td><strong>exit day</strong></td>
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<tr>
<td><em>SUP 12.5.8R, SUP 12.6.15R, SUP 12.7.9R, SUP 12.8.6R and SUP 12.9.5R</em></td>
<td>(1) This rule applies to a MiFID investment firm in respect of a tied agent that is not an appointed representative and is not an FCA registered tied agent because it is established in an EEA State. (2) A MiFID investment firm must not appoint a tied agent referred to in (1), or allow such an agent to continue to act for it, unless it accepts, or has accepted, responsibility in writing for the agent’s activities in acting as its tied agent.</td>
<td>Three years starting with the first day after <em>exit day</em></td>
<td><em>exit day</em></td>
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</tbody>
</table>
that is not an appointed representative and is not an FCA registered tied agent because it is established in an EEA State.

(2) The rules in column (2) apply to the appointment referred to in (1) as if the reference in those rules to an FCA registered tied agent included reference to a tied agent of the type referred to in (1).

| 12.3 | SUP 12 | G | The transitional provisions in (1) and (2) above reflect the three-year transitional period provided by Regulation 13(8) - (10) of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019. Three years starting with the first day after exit day | exit day |
### Sch 1 Record keeping requirements

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>SUP 12.9.5R</strong></td>
<td><strong>EEA tied agents FCA registered tied agents</strong></td>
<td>If a <strong>UK MiFID investment firm</strong> MiFID investment firm appoints an <strong>EEA tied agent FCA registered tied agent</strong> the record keeping requirements in <strong>SUP 12.9</strong> applies to that firm as though the <strong>EEA tied agent FCA registered tied agent</strong> were an appointed representative.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SUP 13.11</strong></td>
<td><strong>UK firm exercising EEA right</strong></td>
<td>(a) the services or activities it carries on from a branch in, or provide cross border services into, another EEA State under that EEA right; and the requisite details or relevant details relating to those services or activities (if applicable)</td>
<td>Not specified</td>
<td>Three years from the earlier of the date on which: (a) it was superseded by a more up-to-date record; or</td>
</tr>
</tbody>
</table>

(a) the **UK firm** ceased to have a branch in, or
### SUP 13.11.1R

| **Exercise of passport rights by UK firms** | **(1) Services or activities carried on from a branch in, or provided cross-border into, another EEA State under an EEA right.**

(2) The details relating to those services or activities (as set out in SUP 13.6 and SUP 13.7). | **Not specified** | **Five years (for firms passporting under MiFID) or three years (for other firms) from earlier of:**

(1) record being superseded;

(2) firm ceasing to have any EEA branches or cross-border services. |

---

### Sch 4 Powers exercised

#### Sch 4.1G

The following powers and related provisions in or under the Act have been exercised by the FCA to make the rules in SUP:

| **...** |

| **Paragraphs 19 (Establishment) and 20 (Services) of Schedule 3 (EEA Passport Rights)** |

| **...** |

#### Sch 4.3G

The following powers and related provisions in the Act have been exercised by the FCA in SUP to direct, require or specify:

<p>| <strong>...</strong> |</p>
<table>
<thead>
<tr>
<th>Paragraph 5(4) (Notice to UK Regulator) of Schedule 4 (Treaty Rights)</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
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</tbody>
</table>
Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

1 Application and Purpose

1.1 Application and Purpose

Application

1.1.1 G This manual (DEPP) is relevant to firms, approved persons and other persons, whether or not they are regulated by the FCA. It sets out:

... (3) the FCA’s policy with respect to the conduct of interviews by investigators appointed in response to a request from an overseas regulator or an EEA regulator (DEPP 7);

...

2 Statutory notices and the allocation of decision making

...

2.5 Provision for certain categories of decision

...

Decisions relating to applications for FCA authorisation or approval

2.5.3 G FCA staff under executive procedures will take the decision to give a warning notice if the FCA proposes to:

...

(6) refuse an application for variation or rescission of a requirement imposed on an incoming EEA firm. [deleted]

...

2.5.16 G A notice under paragraph 15A(4) of Schedule 3 to the Act relating to the application by an EEA firm for approval to manage a UCITS scheme is not a warning notice, but the FCA will operate a procedure for this notice which will be similar to the procedure for a warning notice. [deleted]

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

Note: Third party rights and access to FCA material apply to the powers listed in this Annex where indicated by an asterisk * (see DEPP 2.4)

<table>
<thead>
<tr>
<th>Section of the Act</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
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</tr>
<tr>
<td>192L(1) 192L(4)</td>
<td>when the FCA is proposing or deciding to take action against a qualifying parent undertaking by exercising the disciplinary powers conferred by section 192K*</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>200(4)/(5)</td>
<td>when the FCA is proposing or deciding to refuse an application for variation or rescission of a requirement imposed on an EEA incoming firm [deleted]</td>
<td>RDC or executive procedures See DEPP 2.5.6G</td>
<td></td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>269(1)/(2)</td>
<td>when the FCA, on an application under section 267(4) or (5) by an operator of a section 264 recognised scheme to revoke or vary a direction that the promotion of the scheme be suspended, proposes or decides to refuse the application or to vary the direction otherwise than in accordance with the application [deleted]</td>
<td>RDC</td>
<td></td>
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<td>…</td>
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<tr>
<td>Paragraph 15A(4) of</td>
<td>when the FCA is notifying an EEA firm wishing to</td>
<td>SUP 13A See DEPP</td>
<td>Executive procedures</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Schedule 3</th>
<th>manage a <strong>UCITS</strong> scheme and its <strong>Home State regulator</strong> that the <strong>EEA firm</strong> does not comply with the <strong>fund application rules</strong>, or is not authorised by its <strong>Home State regulator</strong> to manage the type of collective investment scheme for which authorisation is required, or has not provided the documentation required under article 20(1) of the <strong>UCITS Directive</strong> [deleted]</th>
<th>2.5.16G</th>
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</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Paragraph 15B(2)(a) of Schedule 3</td>
<td>when the <strong>FCA</strong> is deciding not to withdraw a notice issued to an <strong>EEA firm</strong> wishing to manage a <strong>UCITS</strong> scheme and to its <strong>Home State regulator</strong> that the <strong>EEA firm</strong> does not comply with the <strong>fund application rules</strong>, or is not authorised by its <strong>Home State regulator</strong> to manage the type of collective investment scheme for which authorisation is required, or has not provided the documentation required under article 20(1) of the <strong>UCITS Directive</strong> [deleted]</td>
<td><strong>SUP 13A</strong></td>
</tr>
<tr>
<td>Paragraph 19(8)/(12) of Schedule 3</td>
<td>when the <strong>FCA</strong> is proposing or deciding to refuse to give a consent notice to a <strong>UK firm</strong> wishing to establish a <strong>branch</strong> under an <strong>EEA right</strong> [deleted]</td>
<td><strong>SUP 13</strong></td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Payment Services Regulations</td>
<td>Description</td>
<td>Handbook reference</td>
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<td>...</td>
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<tr>
<td>Regulations 10(2), 10(3)(a), 15 and 19</td>
<td>when the FCA is proposing or deciding to either cancel an authorised payment institution's authorisation, or to cancel a small payment institution or account information service provider’s registration, otherwise than at that institution's own request*</td>
<td></td>
</tr>
<tr>
<td>Regulations 28(1) and 26</td>
<td>when the FCA is proposing to refuse to register an EEA branch or an EEA registered account information service provider [deleted]</td>
<td></td>
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<tr>
<td>Regulations 28(2)(a) and 26</td>
<td>when the FCA is deciding to refuse to register an EEA branch or an EEA registered account information service provider [deleted]</td>
<td></td>
</tr>
<tr>
<td>Regulations 28(1), 28(2)(a) and 26</td>
<td>when the FCA is proposing or deciding to cancel the registration of an EEA branch* or an EEA registered account information service provider [deleted]</td>
<td></td>
</tr>
<tr>
<td>Cross-Border Payments in Euro Regulations 2010 [deleted]</td>
<td>Description</td>
<td>Handbook reference</td>
</tr>
<tr>
<td>---------------------------------------------------------</td>
<td>-------------</td>
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</tr>
<tr>
<td>Regulations 7(1) and 7(3)</td>
<td>when the FCA is proposing or deciding to impose a financial penalty*</td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 7(1) and 7(3)</td>
<td>when the FCA is proposing or deciding to publish a statement that a payment service provider has contravened the EU Cross-Border Regulation*</td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 10(1) and 10(3)</td>
<td>when the FCA is proposing or deciding to exercise its powers to require restitution*</td>
<td>RDC</td>
</tr>
<tr>
<td>Schedule paragraph 1</td>
<td>when the FCA is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the EU Cross-Border Regulation (Note 1)</td>
<td>RDC</td>
</tr>
<tr>
<td>Schedule paragraph 1</td>
<td>when the FCA is proposing or deciding to impose a financial penalty against a relevant person (Note 1)</td>
<td>RDC</td>
</tr>
</tbody>
</table>

Note:

(1) The Cross-Border Payments in Euro Regulations do not require third party
However, the FCA generally intends to allow for third party rights and access to material when exercising this power.

<table>
<thead>
<tr>
<th>Electronic Money Regulations</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulations 11(6), 11(9), 11(10)(b) and 15</td>
<td>when the FCA is exercising its powers to vary an electronic money institution’s authorisation or vary a small electronic money institution’s registration on its own initiative</td>
<td>RDC or Executive procedures (Note 1)</td>
<td></td>
</tr>
<tr>
<td>Regulation 29(2)</td>
<td>when the FCA is proposing to refuse to register an EEA branch of an authorised electronic money institution [deleted]</td>
<td>Executive procedures</td>
<td></td>
</tr>
<tr>
<td>Regulation 29(3)(a)</td>
<td>when the FCA is deciding to refuse to register an EEA branch of an authorised electronic money institution [deleted]</td>
<td>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</td>
<td></td>
</tr>
<tr>
<td>Regulation 29(2) and Regulation 29(3)(a)</td>
<td>when the FCA is proposing or deciding to cancel the registration of an EEA branch of an authorised electronic money institution</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td><strong>Recognised Auction Platforms Regulations 2011</strong> [deleted]</td>
<td><strong>Description</strong></td>
<td><strong>Handbook reference</strong></td>
<td><strong>Decision-maker</strong></td>
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<tr>
<td>Regulation 5A</td>
<td>where the FCA is proposing or deciding to publish a statement censuring an RAP, or to impose a financial penalty on an RAP</td>
<td><strong>REC 2A.4</strong></td>
<td><strong>RDC</strong></td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th><strong>Alternative Investment Fund Managers Regulations 2013</strong></th>
<th><strong>Description</strong></th>
<th><strong>Handbook reference</strong></th>
<th><strong>Decision maker</strong></th>
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<tr>
<td>Regulation 13(2)(a), article 14b of the <em>EuVECA regulation</em> and article 15b of the <em>EuSEF regulation</em></td>
<td>where the FCA decides to refuse an application for entry on the register of small registered UK AIFMs</td>
<td>Executive procedures where no representations are made in response to a warning notice otherwise by the RDC</td>
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<td>Regulation 18(1)</td>
<td>where the FCA proposes to revoke the registration of a small registered UK AIFM including, where applicable, its ...</td>
<td><strong>RDC</strong></td>
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<td>Regulation</td>
<td>Description</td>
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<tr>
<td>Regulation 18(2)(a)</td>
<td>where the FCA decides to revoke the registration of a small registered UK AIFM including where applicable its registration as a EuSEF manager or EuVECA manager SEF manager or RVECA manager</td>
<td>RDC</td>
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<tr>
<td>Regulation 23B(1)</td>
<td>where the FCA proposes to refuse an application made by a UK AIF for authorisation as a UK ELTIF UK LTIF</td>
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<tr>
<td>Regulation 23B(2)(a)</td>
<td>where the FCA decides to refuse an application made by a UK AIF for authorisation as a UK ELTIF UK LTIF where no representations are made in response to a warning notice otherwise by the RDC</td>
<td>Executive procedures</td>
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<tr>
<td>Regulation 23C(1)</td>
<td>where the FCA proposes to revoke the authorisation of a UK ELTIF UK LTIF</td>
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<tr>
<td>Regulation 23C(2)(a)</td>
<td>where the FCA decides to revoke the authorisation of a UK ELTIF UK LTIF</td>
<td>RDC</td>
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<td>...</td>
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</table>
Regulation 71(1)(e) | where the FCA is proposing or deciding to publish a statement that an *unauthorised AIFM* has contravened the regulations or directly applicable *EuSEF regulation* or *EuVECA regulation* or *SEF regulation* or *RVECA regulation* | RDC
---|---|---
Regulation 71(1)(f) | where the FCA is proposing or deciding to impose a financial penalty on an *unauthorised AIFM* that has contravened the regulations or directly applicable *EuSEF regulation* or *EuVECA regulation* or *SEF regulation* or *RVECA regulation* | RDC

...  

2 Annex 2 Supervisory notices

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<th>Section of the Act</th>
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<td>191B(1)</td>
<td>when the FCA gives a <em>restriction notice</em> under section 191B</td>
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<td>197(3)/(6)/(7)(b)</td>
<td>when the FCA is exercising its power of intervention in respect of an</td>
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<td>RDC or executive procedures</td>
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See DEPP
<table>
<thead>
<tr>
<th>Alternative Investment Fund Managers Regulations 2013</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
</table>
| Regulation 22(4)                                     | where the FCA is exercising its power on its own initiative to give or vary a direction under regulation 22(1) to a small registered UK AIFM, a EuSEF manager or EuVECA manager SEF manager or RVECA manager |                    | RDC or executive procedures  
See DEPP 2.5.7G to DEPP 2.5.8G |
| Regulation 22(4)                                     | where the FCA is exercising its power on its own initiative to give or vary a direction under regulation 22(2) to a small registered UK AIFM with its registered office in an EEA State other than the UK in accordance with article 19.3 of the EuSEF regulation or article 18.3 of the EuVECA regulation [deleted] |                    | RDC or executive procedures  
See DEPP 2.5.7G to DEPP 2.5.8G |
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<td>Article 3(6)</td>
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<td>Regulations 10(2) and Regulation 12(2)</td>
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<td>RDC or executive procedures (see DEPP 2.5.7G and DEPP 2.5.7AG)</td>
</tr>
</tbody>
</table>

... 

6A The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition

6A.1 Introduction

... 

6A.1.2 G (1) For the purposes of DEPP 6A, “suspension” refers to the suspension of:
(a) any permission which an authorised person has to carry on a regulated activity (under sections 123B or 206A of the Act),

(b) any approval of the performance by an approved person of any function to which the approval relates (under section 66 of the Act),

(c) a sponsor’s approval (under section 88A(2)(b) of the Act),

(d) and a primary information provider’s approval (under section 89Q(2)(b) of the Act);

(2) “restriction” refers to limitations or other restrictions in relation to:

(a) the carrying on of a regulated activity by an authorised person (under sections 123B or 206A of the Act),

(b) [deleted]

(c) the performance of services to which a sponsor’s approval relates (under section 88A(2)(c) of the Act), and

(d) the dissemination of regulated information by a primary information provider (under section 89Q(2)(c) of the Act);

(3) “condition” refers to a condition imposed in relation to any approval of the performance by an approved person of any function to which the approval relates (under section 66 of the Act);

(4) “limitation” refers, apart from in DEPP 6A.1.2G(2), to a limitation of the period for which any approval of the performance by an approved person of any function to which the approval relates is to have effect (under section 66 of the Act); and

(5) “disciplinary prohibition” refers to a temporary or permanent prohibition on an individual holding an office or position involving responsibility for taking decisions about the management of a MiFID investment firm (under section 123A(2)(a) and (3) of the Act) or a temporary prohibition on an individual directly or indirectly acquiring or disposing of financial instruments (or emission products) on his or her own account or the account of a third party, (under section 123A(2)(b) of the Act), or a temporary prohibition on an individual directly or indirectly making a bid at an auction conducted by a recognised auction platform, on his or her own
account or the account of a third party (under section 123A(2)(c) of the Act).

[Note: see Regulation 6 and Schedule 1 to the RAP Regulations for application of the powers to contraventions of the auction regulation]

...  

7 Statement of policy on interviews conducted on behalf of overseas and EEA regulators

7.1 Application and purpose

Application

7.1.1 G DEPP 7 applies when the FCA:

(1) has appointed an investigator at the request of an overseas regulator, under section 169(1)(b) (Assistance to overseas regulators) or an EEA regulator under section 131FA of the Act; and

(2) has directed, or is considering directing, the investigator, under section 169(7) or section 131FA of the Act, to permit a representative of the overseas regulator or of the EEA regulator to attend, and take part in, any interview conducted for the purposes of the investigation.

...

7.1.4 G The FCA is keen to promote co-operation with overseas regulators and EEA regulators. It views provision of assistance to overseas regulators and EEA regulators as an essential part of discharging its general functions.

7.2 Interviews

Appointment of investigator and confidentiality of information

7.2.1 G Under section 169(1)(b) and section 131FA of the Act, the FCA may appoint an investigator to investigate any matter at the request of an overseas regulator or EEA regulator. The powers of the investigator appointed by the FCA (referred to here as the ‘FCA’s investigator’) include the power to require persons to attend at a specified time and place and answer questions (the compulsory interview power).

7.2.2 G Where the FCA appoints an investigator in response to a request from an overseas regulator or EEA regulator it may, under section 169(7) or section 131FA of the Act, direct him to permit a representative of that regulator to attend and take part in any interviews conducted for the purposes of the investigation. The FCA may only give a direction under
section 169(7) or section 131FA if it is satisfied that any information obtained by an overseas regulator or EEA regulator as a result of the interview will be subject to the safeguards equivalent to those contained in Part XXIII (Public Record, Disclosure of Information and Cooperation) of the Act.

...

Policy on use of investigative powers

7.2.4 G The FCA’s policy on how it will use its investigative powers, including its power to appoint investigators, in support of overseas regulators and EEA regulators, is set out in the FCA’s Enforcement Guide (EG).

Use of direction powers

7.2.5 G The FCA may need to consider whether to use its direction power at two stages of an investigation:

(1) at the same time that it considers the request from the overseas regulator or EEA regulator to appoint investigators;

(2) after it has appointed investigators, either at the request of the overseas regulator or EEA regulator or on the recommendation of the investigators.

7.2.6 G Before making a direction under section 169(7) or section 131FA the FCA will discuss and determine with the overseas regulator or EEA regulator how this statement of policy will apply to the conduct of the interview, taking into account all the circumstances of the case. Amongst other matters, the FCA will at this stage determine the extent to which the representative of the overseas regulator or EEA regulator will be able to participate in the interview. The overseas regulator or EEA regulator will be notified of this determination on the issuing of the direction.

7.2.7 G The direction will contain the identity of the representative of the overseas regulator or EEA regulator that is permitted to attend any interview and the role that he will play in the interview. If the FCA envisages that there will be more than one interview in the course of the investigation, the direction may also specify which interview(s) the representative is allowed to attend.

Conduct of interview

...

7.2.9 G The FCA’s investigator will act on behalf of the FCA and under its control. He may be instructed to permit the representative of the overseas regulator or EEA regulator to assist in the preparation of the interview. Where the FCA considers it appropriate, it may permit the representative to attend and ask questions of the interviewee in the
course of the interview. The interview will be conducted according to the terms of the direction and the notification referred to in DEPP 7.2.6G.

7.2.10 G If the direction does permit the representative of an *overseas regulator* or *EEA regulator* to attend the interview and ask the interviewee questions, the FCA’s investigator will retain control of the interview throughout. Control of the interview means the following will apply:

...  

(3) The FCA’s investigator has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the *overseas regulator* or *EEA regulator* was either present or not present.

(4) Where the FCA’s investigator considers it appropriate, he may either suspend the interview, ask the overseas representative to leave the interview, or terminate the interview and reschedule it for another occasion. In making that decision he will bear in mind the terms of the direction, any agreement made with the *overseas regulator* or *EEA regulator* as to the conduct of the interview and the contents of this statement of policy.

7.2.11 G The FCA will in general provide written notice of the appointment of an investigator to the *person* under investigation pursuant to the request of an *overseas regulator* or *EEA regulator*. Whether or not the interviewee is the *person* under investigation, the FCA’s investigator will inform the interviewee of the provisions under which he has been appointed, the identity of the requesting authority and general nature of the matter under investigation. The interviewee will also normally be informed if a representative of the *overseas regulator* or *EEA regulator* is to attend and take part in the interview. Notification of any of these matters may not be provided in advance of the interview if the FCA believes that the circumstances are such that notification would be likely to result in the investigation being frustrated.

...  

7.2.14 G When the FCA’s investigator has exercised the compulsory interview power, at the outset of the interview the interviewee will be given an appropriate warning. The warning, amongst other things, must state that the interviewee is obliged to answer all questions put to them during the interview, including any put by the representative of the *overseas regulator* or *EEA regulator*. It will also state that in criminal proceedings or proceedings for *market abuse* the FCA will not use as evidence against the interviewee any information obtained under compulsion during the interview.

7.2.15 G The FCA’s investigator may decide which documents or other
information may be put to the interviewee, and whether it is appropriate
to give the interviewee sight of the documents before the interview
takes place. Where the overseas regulator or EEA regulator wishes to
ask questions about documents during the interview and the FCA’s
investigator wishes to inspect those documents before the interview, he
will be given the opportunity to do so. If the FCA’s investigator wishes
to inspect them and has not been able to do so before the interview, he
may suspend the interview until he has had an opportunity to inspect
them.

7.2.16 G When the FCA’s investigator has exercised the compulsory interview
power, the FCA’s investigator will require the person attending the
interview to answer questions. Where appropriate, questions may also
be posed by the representative of the overseas regulator or EEA
regulator. The interviewee will also be required to answer these
questions. The FCA’s investigator may intervene at any stage during
questioning by the representative of the overseas regulator or EEA
regulator.

Language

7.2.17 G Interviews will, in general, be conducted in English. Where the
interviewee’s first language is not English, at the request of the
interviewee arrangements will be made for the questions to be
translated into the interviewee’s first language and for his answers to be
translated back into English. If a translator is employed at the request of
the representative of the overseas regulator or EEA regulator then the
translation costs will normally be met by the overseas regulator or EEA
regulator. Where interviews are being conducted in pursuance of an EU
law obligation these costs will be met by the FCA. In any event, the
meeting of costs in relation to translators and, where applicable, the
translation of documents will always be agreed in advance with the
overseas regulator or EEA regulator.

Tape-recording

7.2.18 G All compulsory interviews will be tape-recorded. The method of
recording will be decided on and arranged by the FCA’s investigator.
Costs will be addressed similarly to that set out in the preceding
paragraph. The FCA will not provide the overseas regulator or EEA
regulator with transcripts of the tapes of interviews unless specifically
agreed to, but copies of the tapes will normally be provided where
requested. The interviewee will be provided with a copy of tapes of the
interview but will only be provided with transcripts of the tapes or
translations of any transcripts if he agrees to meet the cost of producing
them.

Representation

7.2.19 G The interviewee may be accompanied at the interview by a legal
adviser or a non-legally qualified observer of his choice. The costs of
any representation will not be met by the FCA. The presence at the interview of a representative of the overseas regulator or EEA regulator may mean that the interviewee wishes to be represented or accompanied by a person either from or familiar with that regulator’s jurisdiction. As far as practical the arrangements for the interview should accommodate this wish. However, the FCA reserves the right to proceed with the interview if it is not possible to find such a person within a reasonable time or no such person is able to attend at a suitable venue.

7.2.20 G In relation to the publication of investigations by overseas regulators or EEA regulators, the FCA will pursue a policy similar to the policy that relates to its own investigations.

...  

Sch 3  Fees and other required payments

...  

Sch 3.2G

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<th>The FCA’s power to impose financial penalties is contained in:</th>
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<tr>
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<td>Section 89Q (Disciplinary powers: contravention of s.89P(4)(b) or (d)) of the Act</td>
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<tr>
<td>section 131G (Power to impose penalty or issue censure) of the Act</td>
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<td>Section 249 (Disciplinary measures) of the Act</td>
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<td>the Transfer of Funds (Information on the Payer) Regulations 2007 (SI 2007/3298)</td>
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<td>the RCB Regulations</td>
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<td>the Payment Services Regulations</td>
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<tr>
<td>the Cross Border Payments in Euro Regulations [deleted]</td>
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<td>the OTC derivatives, CCPs and trade repositories regulation</td>
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<td>the AIFMD UK regulation</td>
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<td>the Referral Fees Regulations</td>
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<td>the MiFI Regulations</td>
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<tr>
<td>the Payment Accounts Regulations</td>
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<tr>
<td>the Small and Medium Sized Business (Finance Platforms) Regulations</td>
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**Sch 4**

**Powers Exercised**

Sch 4.1G

The following powers and related provisions in or under the Act have been exercised by the FCA to make the statements of policy in DEPP:
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<td>63ZD</td>
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<td>69</td>
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<td>210(1)</td>
<td>Statements of policy (including as applied by regulation 86(6) of the Payment Services Regulations, by paragraph 3 of the Schedule to the Cross-Border Payments in Euro Regulations, by article 23(4) of the MCD Order, regulation 43 of the Small and Medium Sized Business (Credit Information) Regulations, by regulation 36(6) of the Payment Accounts Regulations and by regulation 40 of the Small and Medium Sized Business (Finance Platforms) Regulations)</td>
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<td>345D</td>
<td>Imposition of penalties on auditors or actuaries: statement of policy</td>
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<td>The Authority’s procedures (including as applied by paragraph 7 of Schedule 5 to the Payment Services Regulations, by paragraph 5 of the Schedule to the Cross-Border Payments in Euro Regulations, by article 24(2) of the MCD Order, regulation 44 of the Small and Medium Sized Business (Credit Information) Regulations,</td>
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by paragraph 4 of Schedule 7 of the *Payment Accounts Regulations* and by regulation 41 of the *Small and Medium Sized Business (Finance Platforms) Regulations*.

Paragraph 16 (Penalties) of Schedule 1 (The Financial Services Authority)

Sch 4.2G

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

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<td>Paragraph 1 of Schedule 1 (Application of sections 66 to 70 of the Act) of the UK Securitisation Regulations</td>
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<tr>
<td>Paragraph 3 of Schedule 1 (Application of Part 11 of the Act (information gathering and investigation)) of the UK Securitisation Regulations</td>
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<td>Paragraph 4 of Schedule 1 (Application of Part 14 of the Act (disciplinary measures)) of the UK Securitisation Regulations</td>
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<tr>
<td>Application of Part 26 of the Act (notices) of the UK Securitisation Regulations</td>
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