

Brexit and contractual continuity

Consultation Paper

CP19/2***

January 2019



How to respond

We are asking for comments on this Consultation Paper (CP) by 29 January 2019.

You can send them to us using the form on our website at: www.fca.org.uk/cp19-02-response-form.

Or in writing to:

Handbook Review Team
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Email:

cp19-02@fca.org.uk

How to navigate this document onscreen



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Sector	Chapter
EEA-based firms passporting into the UK and Treaty firms	1, 2 and 3



1 Introduction

The wider context of this consultation

- 1.1** Under the EU passporting regime, financial services firms specified in the relevant directives¹ in any European Economic Area (EEA) country have access to the single market for financial services.² This means that they can set up branches or provide financial services, within the scope of the passporting provisions of the directives, in other EEA countries without the need for further authorisation.
- 1.2** On 29 March 2019, the UK will leave the EU. In March 2018, the UK Government and the European Commission agreed the terms of an implementation period, which was included in the draft withdrawal agreement. During this period, set to start on 29 March 2019 and last until 31 December 2020, EU law and consumer rights and protections will continue to apply in the UK. For more detail on the implementation period, please refer to the Treasury's [approach to financial services legislation under the European Union \(Withdrawal\) Act 2018](#).
- 1.3** During this time, firms will continue to have access to the same passporting arrangements as they do now. Hence, firms should continue with plans to implement EU legislation that is still to come into effect before the end of December 2020.
- 1.4** However, the withdrawal agreement will need to be approved by the UK Parliament and the European Parliament in order to take effect on exit day. To be ready for all scenarios, we have made the necessary arrangements for us to continue to meet our statutory objectives and reduce harm should the withdrawal agreement not come into effect and no other political arrangement has been reached (often referred to as "hard Brexit").
- 1.5** Under these circumstances, once the UK has left the EU, reciprocal market access would no longer be available through the passporting arrangements between the EU and UK for firms. The UK would become a 'third-country' and EEA-based firms might need to seek authorisation in the UK to continue to access the UK market.
- 1.6** In [CP18/29](#) and [CP18/36](#), we consulted on Handbook rules in relation to the temporary permissions regime (TPR) for inbound EEA firms which has been established by the [EEA Passporting Rights \(Amendment, etc. and Transitional Provisions\) \(EU Exit\) Regulations 2018](#) (the TPR Regulations) and other relevant regulations. The TPR will enable EEA firms to continue their activities in the UK for a limited period after Brexit, as explained in CP 18/29. To further reduce the risk of harm associated with an abrupt loss of permission on exit day, the Government have published [draft legislation](#) (the

1 These are the Banking Consolidation Directive (BCD), the Capital Requirements Directive (CRD), the Solvency II Directive (S2), the Markets in Financial Instruments Directive (MiFID II), the Insurance Mediation Directive (IMD) and from October 2018 the Insurance Distribution Directive (IDD), the Mortgage Credit Directive (MCD), the Undertakings for Collective Investment in Transferable Securities Directive (UCITS), the Alternative Investment Fund Managers Directive (AIFMD), the Payments Services Directive (PSD2), the Electronic Money Directive (EMD) and the Emission Allowance Auctioning Regulation.

2 In addition, firms not covered by these directives can also have access to the UK financial services market by virtue of rights under the EU treaties if certain conditions are met, as specified in Schedule 4 to the Financial Services and Markets Act 2000. These firms are known as Treaty firms.

FSCR Regulations). This ensures that firms can still fulfil their existing contractual obligations in the UK for a limited period of time, even if they are outside the TPR following the UK's withdrawal from the EU.

- 1.7** The new financial services contracts regime (the FSCR) is available for firms with pre-existing contracts in the UK that would require a permission to service, which:
- do not submit a notification to enter into the TPR, or
 - are unsuccessful in securing, or do not apply for, full UK authorisation through the TPR route (and leave the TPR)
- 1.8** The FSCR will apply automatically to these firms. It will allow them to continue to service UK contracts entered into before exit day or before exiting the TPR for a limited period, provided that they meet the conditions of the FSCR. Further details about the conditions of the regime can be found in Chapter 2.
- 1.9** The FSCR has been established to allow EEA-based firms to run-off existing UK contracts and to conduct an orderly exit from the UK market. Unlike the TPR, the FSCR will not allow firms in the regime to undertake any new business in the UK. The FSCR would provide that a firm is able to carry on a regulated activity only where it is necessary for the performance of a pre-existing contract (which is a contract made before exit day, where a firm enters the FSCR on exit day), along with certain other specified activities.
- 1.10** EEA firms should consider their planned activities in the UK in relation to their permitted activities and should assess what steps to take before exit day. For example, firms that require more flexibility in the activities they are permitted to carry on under authorisation should consider entering the TPR.
- 1.11** The FSCR is not relevant for:
- EEA-domiciled investment funds which are currently marketed into the UK. If an operator wishes to market such a fund into the UK after exit day, they will need to notify us that they want the fund to be included in the TPR, as explained in CP18/29
 - UK firms that passport into the EEA, because the question of whether a firm requires authorisation in the territory of the EEA or its Member States is one for EU law and the law of the Member States. If you are a UK firm serving EEA customers under a passporting arrangement, then you will need to consider how the UK's withdrawal from the EU affects your business and, if necessary, discuss plans with the relevant EEA authorities.
 - An EEA-based manager of a UK authorised fund (i.e. an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company) that wishes to continue to manage such a fund after exit day. In this circumstance, an EEA-based manager will need to set up a UK incorporated body to take on that role. However, it will be able to manage the fund for a temporary period after exit day via the temporary permission regime (see CP18/29 and CP18/36). Therefore, such firms should notify for temporary. **It is important to recognise that the FSCR regime will not enable a manager of such a scheme to continue to manage such a scheme after exit day.** The same issue applies to operators, trustees or depositaries of such funds.



What we cover in this CP

1.12 This CP should be read alongside the FSCR Regulations. We have structured this CP as follows:

- Chapter 2 sets out details of the FSCR
- Chapter 3 sets out our proposals for the rules that will apply to firms in the FSCR

What we are consulting on

1.13 The FSCR Regulations will allow EEA firms that have pre-existing contracts in the UK which would require a permission to service to continue to carry on the relevant regulated activities in the UK for a limited period while in the FSCR. We must amend our Handbook to apply appropriate rules to firms in the FSCR for this UK business. We are consulting on the application of these rules in this CP. Our approach is set out in Chapter 3.

Who this applies to

1.14 Who needs to read this paper:

- EEA firms that are passporting into the UK under the Financial Services and Markets Act 2000 (FSMA) and Treaty firms
- EEA electronic money and payment institutions and registered account information service providers passporting into the UK.

1.15 Who else might be interested in this document:

- current and prospective customers of firms that currently passport into the UK
- advisers of firms that passport into the UK.

The outcome we seek

1.16 In our proposals we have tried to balance the need to:

- secure an appropriate level of consumer protection following an EEA firm's loss of passporting rights
- design a regime that EEA firms can reasonably comply with from exit day, which minimises disruption for consumers.

1.17 However, for certain firms in the regime, there are limitations in the FSCR Regulations on what rules can be applied. This is explained further in Chapter 3.

How this links to our objectives

- 1.18** Our strategic objective is to ensure that regulated markets function well. We also have 3 operational objectives which are to secure an appropriate degree of consumer protection, protect and enhance the integrity of the UK financial system, and promote effective competition in the interests of consumers.
- 1.19** This regime allows for the continuity of existing contracts after exit day and on exit from the TPR. Our proposals balance the factors described above so that the FSCR meets our objectives and avoids the abrupt loss of passporting rights which creates a risk to consumer protection and market integrity if existing contracts between UK customers and EEA firms become unserviceable.

Measuring success

- 1.20** We will be successful if EEA firms which do not enter the TPR, or which exit the TPR without full UK authorisation, are able to wind-down their UK business in an orderly fashion after exit day while continuing to service their existing UK customers. Also, EEA firms should be clear on how the FSCR will operate, what they will need to do, and how our rules will apply to them. .

Next steps

- 1.21** We want to know what you think of the proposals in Chapter 3 of this CP.
- 1.22** Please respond by 29 January 2019.
- 1.23** You can use the form on our website: www.fca.org.uk/cp19-02-response-form or email us: cp19-02@fca.org.uk, or write to us:

Handbook Review Team
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

- 1.24** The consultation period for this CP is 3 weeks. This is to ensure we have sufficient time to incorporate comments from stakeholders ahead of 29 March 2019. We intend to give feedback on this CP and publish final versions of these materials shortly before exit day.



2 The financial services contracts regime (FSCR)

- 2.1** In this chapter, we set out details of the FSCR and the 2 mechanisms within the FSCR (supervised run-off and contractual run-off).
- 2.2** As explained in Chapter 1, the purpose of the FSCR is to allow EEA firms which are outside of the TPR to run-off their existing contracts with UK customers and exit the UK market in an orderly manner. Firms in the FSCR will not be allowed to undertake any new UK business. The actions permitted are limited to regulated activities which are necessary:
- for the performance of a contract entered into before exit (or, where the firm enters the regime after exit from the TPR, before entry into the regime),
 - to transfer property, rights or liabilities under a pre-existing contract (where the transfer is from an FSCR firm then it must only be to another UK authorised firm), or
 - for the undertaking of certain activities in relation to managing financial risk.
- 2.3** If firms are unsure of whether they will fall within the FSCR they should seek legal advice. In particular, if a firm considers that it will require more flexibility than is available under the FSCR in what it is permitted to do under its authorisation, it should consider entering the TPR. Under the FSCR Regulations, the FSCR will apply automatically to any firm which would otherwise require permission in the UK to service pre-existing contracts.
- 2.4** The FSCR will be time-limited depending on the type of regulated activity being performed. It will apply for a maximum of 5 years for all contracts except for insurance contracts and for a maximum of 15 years for those contracts. The Treasury can extend these periods, if necessary, based on a joint assessment by the FCA and the PRA.
- 2.5** The FSCR will be available to firms which we and the Prudential Regulation Authority (PRA) at the Bank of England are both responsible for regulating (dual-regulated firms), and to firms which we are solely responsible for regulating (solo-regulated firms). Dual regulated firms should also have regard to information published by the PRA in relation to the FSCR.

Supervised run-off

- 2.6** The following entities will automatically enter into supervised run-off (SRO) at the time indicated below:
- An EEA or a Treaty firm which qualifies for authorisation before exit day to carry out a regulated activity in the UK in line with FSMA Schedule 3 or 4 either (1) on a freedom

of establishment basis (an EEA branch firm) or (2) which has a top-up permission³, in either case which did not notify us before 28 March 2018 of its intention to enter into the TPR but which has pre-existing contracts in the UK which would require a permission to service. The firm will automatically enter into SRO on exit day if there is no implementation period

- An EEA branch firm, or an EEA or a Treaty firm which qualifies for authorisation before exit day to carry out a regulated activity in the UK in line with FSMA Schedule 3 or 4 on a freedom to provide services basis (an EEA services firm), which is unsuccessful in obtaining full UK authorisation through the TPR route but which has pre-existing contracts in the UK which would require a permission to service. In this case, the firm will automatically enter into SRO when it exits the TPR
- An EEA authorised e-money institution (EMI) which was providing services through a branch or UK agent immediately before exit day in exercise of passport rights, did not notify us of the intention to enter into the TPR and requires permission to service pre-existing contracts or to redeem outstanding e-money. The firm will automatically enter into SRO on exit day if there is no implementation period
- An EMI which was providing payment and e-money services in accordance with permission under the TPR and, at the end of the TPR period, is not an authorised e-money institution, and who requires permission to service pre-existing contracts or to redeem outstanding e-money. The firm will automatically enter SRO on exit from the TPR
- An EEA authorised payment institution (PI) or EEA Registered Account Information Service Provider (RAISP) which was providing payment services in the exercise of passport rights immediately before exit day, is not a UK registered RAISP on exit day, did not notify us of the intention to enter the TPR and requires permission to service outstanding contractual obligations. In this case, the firm will enter SRO on exit day if there is no implementation period
- A PI or RAISP which was providing payment services in the UK in accordance with permission under the TPR and is not a UK Registered RAISP on exit from the TPR. If such firms require permission to service outstanding contractual obligations on exit from the TPR, they will automatically enter into SRO

2.7 As is the case for firms in the TPR (TP firms), firms within SRO (SRO firms) will be deemed to have Part 4A permission⁴ for carrying out activities within the scope of their passport as at exit day to the extent this is necessary to continue to service pre-existing contracts in the UK, as explained in paragraph 2.2, above. Unlike the TPR, no notification is required for this deemed permission to arise. Details of SRO firms will be shown on the Financial Services Register.⁵

2.8 SRO firms will continue to be authorised persons for the purposes of UK law. This means that our powers under FSMA and other relevant legislation will continue to apply to these firms, but we will also cover certain matters which were previously handled by the firms' home state. Consequently, we will have the power to supervise, monitor

³ If a firm established in the EEA which passports in to the UK does not have an EEA right or a Treaty right to carry on a particular regulated activity in the UK beyond its passported or Treaty activities, it must seek a permission under Part 4A of FSMA from the appropriate UK regulator to do so. This is known as a top-up permission.

⁴ PIs, RAISPs and EIs will be deemed to have authorisation or registration (in the case of RAISPs) under the Payment Services Regulations 2017 (PSRs) or the Electronic Money Regulations 2011 (EMRs) as appropriate.

⁵ The Financial Services Register is a public record that shows details of firms, individuals and other bodies that are, or have been, regulated by the PRA and/or the FCA: <https://register.fca.org.uk/>



and enforce SRO firms' compliance with our rules, including to vary and cancel their permissions or to impose requirements on them. In addition, SRO firms are required to maintain their home-state authorisation in order to benefit from the regime.

- 2.9** We expect to continue to supervise the UK business of firms in SRO in line with our published supervisory approach and on the same basis as TP firms. SRO firms may have more direct contact with us where we seek to identify or reduce harm, and we may request information directly where we need to identify or quantify the risk of harm to consumer or markets. We will have access to the complete set of supervisory powers and tools which we can use to ensure that firms remain compliant with our rules. Further details on our approach for TP firms are included in paragraphs 3.7 to 3.11 of CP18/29.
- 2.10** Details on Financial Services Compensation Scheme (FSCS) cover⁶, the jurisdiction of the Financial Ombudsman Service and our power to charge relevant levies and fees in relation to SRO firms can be found in Chapter 3.
- 2.11** More details about the rules we propose to apply to SRO firms can be found in Chapter 3. Given the length of time for which a firm might be in SRO, we may review the rules which apply to SRO firms in the medium term, once we have a better idea of how the regime is operating and how many firms are in it.

Contractual run-off

- 2.12** An EEA firm will automatically enter contractual run-off (CRO) if it is an EEA services firm (including a PI, RAISP or EMI which provides services on a cross-border basis) which does not notify us before 28 March 2019 of its intention to enter into the TPR, but which has pre-existing contracts in the UK which would require a permission to service. The firm will automatically enter into CRO on exit day if there is no implementation period.
- 2.13** CRO acts as an exemption from the general prohibition in section 19 of FSMA. In the case of PIs, RAISPs and EMIs, the prohibitions in Regulation 138 of the Payment Services Regulations 2017 and Regulation 63 of the Electronic Money Regulations 2011 as appropriate. The exemption will allow EEA services firms to perform regulated activities within the scope of their passport in the UK to the extent necessary to continue to service pre-existing contracts with UK customers after exit day, as explained in paragraph 2.2.
- 2.14** There is no notification requirement for the exemption to arise. However, under the FSCR Regulations firms are required to notify the FCA⁷ after entry into CRO as soon as reasonably practicable, that the firm is carrying a regulated activity in the UK. To continue to benefit from the exemption, firms must maintain their home-state authorisation. In addition, CRO firms must inform us if their home-state authorisation is varied or cancelled.

⁶ PIs, RAISPs and EMIs are not obliged to maintain FSCS cover, but they will be required to comply with the safeguarding requirements of the PSRs and EMRs.

⁷ The notification requirements are set out in regulation 53 of the FSCR regulations. Details of the notification process will be published in due course.

- 2.15** As a result of firms in CRO (CRO firms) being exempt from the general prohibition and the prohibition under regulation 138 of the PSRs and 63 of the EMRs, a CRO firm will not be an authorised person for the purposes of UK law. Therefore, our general powers under FSMA, the PSRs and the EMRs will not apply to CRO firms.
- 2.16** Under the FSCR Regulations, CRO firms will remain subject to any existing or future product intervention rules made by the FCA, if applicable. In addition, the FSCR Regulations give us power to vary or cancel the CRO exemption of a firm in certain circumstances, such as where we consider it to be necessary for the protection of consumers, payment service users or e-money holders. We also have the power to impose public censure on CRO firms.
- 2.17** CRO firms will not have FSCS cover under our rules.⁸ In addition, UK consumers should be aware that certain protections currently guaranteed under EU law may not be available within CRO. For example, it may no longer be possible for a UK resident to complain to an EEA alternative dispute resolution scheme. Whether this is the case will depend on the domestic legislation in the country where the CRO firm is based. Consumers in doubt about their protections should contact the firm in question for further information.
- 2.18** Pls and EMIs in CRO will not be required to comply with the UK requirements to safeguard customer funds. It is not certain whether they will be required to safeguard UK customer funds under the safeguarding provisions of the state in which they are authorised. This will depend on the requirements of the regulators of their home states. Consumers should contact the firm in question with any questions about the safeguarding of funds.

Moving firms between SRO and CRO

- 2.19** The FSCR provides a mechanism for firms to be moved from SRO to CRO and vice versa. To move a firm from CRO to SRO, we would have to cancel the exemption and direct that SRO should apply to the firm. For that to happen we would have to take into account the CRO firm's conduct, the practicality of supervision by the FCA, the size of the person's undertaking and the nature or extent of the regulated activity the person carries on. Where we proposed to use the power in relation to a PRA authorised person, we would need to consult the PRA. To move a firm from SRO to CRO, we could use the new power in section 55JA of FSMA to cancel the SRO permission and direct that the firm must go into CRO. To exercise the power, we would have to take into account the same matters as stated above.

Gibraltar-based firms

- 2.20** Gibraltar-based firms that currently passport into the UK will be able to continue to operate as they do now without needing to enter the FSCR. The Government has committed to work closely with the Government of Gibraltar to design a replacement framework for after 2020.⁹ A statement on the application of our rules after Brexit in relation to Gibraltar-based firms is available on our [website](#).

⁸ The PRA expects to continue FSCS cover for insurers in the CRO under the PRA's compensation rules.

⁹ Government Statement following the JMC(GEN), HMT, March 2018:
www.gov.uk/government/news/uk-government-statementfollowing-the-jmcgen-wednesday-8-march-2018



3 Applying our rules to the FSCR

3.1 In this chapter, we set out how our rules should apply to firms in the FSCR in respect of their UK activities.

Supervised run-off

3.2 As outlined in Chapter 2, the purpose of SRO is to allow EEA firms to benefit from a limited deemed Part 4A permission in order to service pre-existing contracts with UK customers after exit day. Consequently, SRO firms will come within the scope of our supervision and rule-making powers. So we need to amend our rules for these firms.

3.3 In CP18/29 and Chapter 4 of CP18/36 we consulted on the rules which we propose to apply to TP firms. We propose to apply the same approach to SRO firms, subject to any necessary modifications. We have considered many of the same factors set out in CP18/29 in deciding to apply this regime to SRO firms. Firms should see Chapter 4 of that CP and Chapter 4 of CP 18/36 to understand the reasons for our proposals for SRO firms.

3.4 The aim of our proposals is to preserve the status quo as much as possible (in line with our approach for TP firms). Generally, SRO firms will simply need to continue to comply with the rules which currently apply to them, either in the UK or in their home state.

3.5 In summary, our proposed approach is to require SRO firms to comply, in respect of their UK business, with:

- **All FCA rules which currently apply to them.**
- **All FCA rules which implement a requirement of an EU directive** which are currently reserved to the SRO firm's home state and which we do not currently apply to EEA firms (home state rules). We intend to accept 'substituted compliance' for these rules. If firms can demonstrate they continue to comply with the equivalent home state rules in respect of their UK business (including where this is on a voluntary basis if the relevant rules cease to cover UK business) they will be deemed to comply with our rules.
- **Certain additional FCA rules which we believe are necessary to provide appropriate consumer protection or relate to funding requirements.**

and to consider guidance on the rules above.

3.6 TP firms that enter SRO as a result of not having obtained Part 4A permission will need to continue to comply with the rules that applied to them during the TPR (subject to needing to amend their status disclosure, as explained below).

- 3.7** We are now consulting on the rules set out in Appendix 1. The way we propose to apply the rules to firms in SRO is simply by extending the definitions of “TP firm” and “temporary permission” to include firms in SRO. Therefore, the rules set out in Appendix 1 of CP 18/29 and the rules relevant to TP firms in Appendix 3 of CP 18/36 which include those definitions, we propose would also apply to firms in SRO.
- 3.8** As these rules are effectively the same as our proposals for TP firms, we have not repeated an explanation of the rules. Firms should see Chapter 4 of CP18/29 and Chapter 4 of CP18/36 for further details. However, we flag any significant modifications to our proposals in those CPs below. In summary, our proposals relate to the application to SRO firms of our TPR rules set out in CP18/29 and CP18/36:
- Rules which we proposed in CP 18/29 are added to the General Provisions Sourcebook (GEN) setting out the ‘general approach’. This includes how the approach applies to our prudential sourcebooks and certain specified technical standards made under MiFID II, together with amended definitions to apply the GEN rules to SRO firms¹⁰
 - The Principles for Businesses (the Principles) to the extent described in Chapter 4 of CP18/29
 - Rules in the Client Assets Sourcebook (CASS) relating to safeguarding client money and custody assets, proposed in CP18/29
 - Rules relating to the funding of the Single Financial Guidance Body (SFGB) and the Illegal Money Lending (IML) levy, proposed in CP18/29
 - Rules for recovering the cost of providing debt advice in Scotland, Wales and Northern Ireland by the devolved authorities proposed in CP18/34
 - Guidance supplementing existing Handbook guidance (in particular contained in the Supervision Manual (SUP)) about how the regulatory system works and our approach to supervision, proposed in CP18/29
 - Rules relating to the application of the Approved Persons Regime (APR) and the Senior Managers and Certification Regime (SM&CR), proposed in CP18/36
 - Rules relating to FSCS cover to provide consumers of an SRO firm operating from a UK establishment with FSCS protection¹¹ proposed in CP18/36
 - Guidance for incoming EEA-based firms in relation to home state compensation scheme coverage¹², proposed in CP18/36
 - Rules relating to the inclusion of SRO firms in the Compulsory Jurisdiction of the Financial Ombudsman Service, proposed in CP18/36

10 As explained in CP18/29, we are adopting this approach rather than specifically tailoring each sourcebook throughout our Handbook. Users will need to apply the overarching rule to each sourcebook to determine the rules with which SRO firms must comply

11 As noted in paragraph 1.11, incoming fund managers of UK authorised funds cannot continue to manage those funds within SRO (or CRO) after exit day. This means that FSCS cover will not be provided to these firms unless they set up a UK incorporated body to manage such funds.

12 The amended guidance would read: “We expect incoming EEA-based firms in the TPR **or SRO** to consider and communicate to their customers any material changes in home state investor compensation scheme coverage, as a result of UK withdrawal from the European Union. We would also expect such a firm to provide, on a customer’s request, information concerning the firm’s inclusion in any compensation schemes, including the firm’s home state scheme.”



- Rules relating to the disclosure by a SRO firms of their authorisation status (status disclosure), proposed in CP18/36

3.9 As indicated above, we are proposing the following modifications to the proposals in CP18/29 and CP18/36 as they will apply to SRO firms:

- **General approach:** we propose to include additional guidance on the general approach as to how it applies to EEA firms which enter SRO after exit day on leaving the TPR
- **Status disclosure:** we are proposing different wording for SRO firms to the wording which we proposed for TP firms in Chapter 4 of CP18/36. This wording should be included in letters (and electronic equivalents) to retail clients explaining their authorisation status in line with the requirements of GEN 4.3. This is to reflect the different regime and purpose of the regime. Firms which enter SRO on exiting the TPR will need to update their status disclosure to reflect this wording at that point. In addition to our reasons for requiring specific status disclosure from TP firms as explained in CP18/36, this will give consumers the opportunity to find out about the the scope of a SRO firm's permission, and that it cannot enter into new regulated business. The actual requirement to include a status disclosure in the relevant communications is the same as for TP firms.

3.10 There are some FCA Handbook rules which apply to EMIs, PIs and RAISPs, but most of the requirements that apply to these firms are contained in the EMRs and the PSRs themselves. Of the above, only our proposals:

- relating to the funding of the SFGFB and the devolved authorities' debt advice
- to include all SRO firms (including those that do not have an establishment in the UK) in the Compulsory Jurisdiction of the Financial Ombudsman Service and to apply our complaints handling rules and guidance

apply to a PI, EMI or RAISP in SRO (in addition to other types of firms in the scope of this consultation).

3.11 In addition, our proposals for FCA fees for SRO firms set out below also apply to EMIs, PIs and RAISPs. Those firms should read the [FSCR Regulations](#) for the additional requirements which will apply to them in SRO.

Q1: Do you agree with our proposals to apply the same rules to SRO firms as the rules we have proposed to apply to TP firms, subject to necessary modifications? If not, why not?

Q2: Do you agree that our proposed rule changes in this CP give effect to this? If not, why not?

FCA fees

3.12 We recover our annual funding requirement (AFR) through periodic fees, paid annually in each fee-year (our fee-year runs from 1 April to 31 March). We consult each year, in April, on the allocation of the AFR across a series of fee-blocks that reflect broad sectors of the industry. Firms are grouped together into these fee-blocks based on the regulated activities they have permission to undertake. Firms can be in more than

one fee-block. The AFR allocated to the fee-blocks is recovered from firms within each fee-block based on a measure of their size (tariff base), relative to all the other firms in the same fee-block (we refer to these as variable fees).

- 3.13** The tariff base aims to be an objective measure of size that can be consistently applied to all firms in the fee-block. The tariff base varies across fee-blocks but the most common is income firms receive from the regulated activities covered by that fee-block. The AFR allocated to a fee-block is divided by the total tariff base reported by all the firms in the fee-block to calculate the fee-rate per unit of tariff base. For the fee-blocks that use income as a tariff base the fee-rate is per £1,000 of income. The fee-rate for a particular year will be calculated using tariff base data relating to the previous calendar year.
- 3.14** The variable fees fee-blocks have a minimum tariff base threshold below which no variable fees are paid. For the fee-blocks that use income as the tariff base the minimum threshold is £100,000. If a firm falls below the tariff base threshold for all the fee-blocks they come under they only pay minimum fees.
- 3.15** We propose that firms in SRO will pay periodic fees from the 2019/20 fee-year on the same basis as proposed in Chapter 7 of CP18/29 for TP firms. This reflects that, similar to TP firms in the TPR, within SRO will be deemed to have Part 4A permissions¹³ for carrying out activities within the scope of their passport as at exit day. Consequently, we will have the power to supervise, monitor and enforce SRO firms' compliance, including to vary and cancel their permissions or to impose requirements on them.
- 3.16** As with TP firms, SRO firms will be allocated to the fee-blocks based on the equivalent UK regulated activities that apply to the passport they hold at the point of entry to the regime. In Table A in Annex 4 of CP18/29 we listed the fee-blocks that can apply to TP firms setting out which passports fall under each fee-block. In Table B we included indicative periodic fee-rates so TP firms could calculate an estimate of the level of periodic fees they will pay in 2019/20. These indicative fee rates are based on the fee-rates for the 2018/19 fee-year. These tables can also be used to estimate the level of periodic fees SRO firms will pay in 2019/20.
- 3.17** The draft 2019/20 periodic fee-rates will be consulted in our April 2019 fees-rates CP. Those draft periodic fee-rates will be set to raise on the 2019/20 AFR to fund our work programme published in our 2019/20 Business Plan at the same time as the fee-rates CP. The consultation period is 2 months and we will provide feedback on responses to that consultation and final fee-rates in July 2019 following which invoices are issued for the payment of periodic fees. Payment will be due by 1 August 2019 or, if later, within 30 days of the date of the invoice. Payments to be made using either direct debit, credit transfer (Bacs/CHAPS), cheque, Maestro, Visa Debit or by credit card (Visa/Mastercard only).

Q3: Do you agree with our proposals for periodic fees payable by firms in SRO? If not, why not?

¹³ Pls, RAISPs and EIs will be deemed to have authorisation or registration (in the case of RAISPs) under the PSRs or the EMRs as appropriate.



Contractual run-off

3.18 As explained in Chapter 2, under the FSCR Regulations CRO firms will be exempt from the general prohibition. They are therefore not treated as authorised persons and we are generally unable to apply Handbook rules to these firms. However, the FSCR Regulations do allow us a limited rule-making power, but only to charge FCA fees. We are therefore proposing to apply the following rules to CRO firms. Our proposals for FCA fees below also apply in relation to EMIs, PIs and RAISPs.

3.19 CRO firms will also be required to remain authorised by their home-state to benefit from the CRO exemption under the FSCR Regulations. Rules in the firm's home state may continue to apply to its UK business.

FCA fees

3.20 We are proposing that CRO firms will not pay periodic fees. This reflects that we are not under a duty to maintain arrangements for supervision and enforcement of CRO firms. So we only expect to incur costs in carrying out our functions for CRO firms in fewer situations than would be the case for authorised persons (or those deemed to be so).

3.21 We are therefore proposing that CRO firms pay a Special Project Fee (SPF) in circumstances where we are required to undertake work exercising powers given to us under the FSCR Regulations. The existing restructuring SPFs are charged to recover our exceptional supervisory costs where a firm undertakes certain restructuring transactions (e.g. raising additional capital, reorganising the firm's group structure, a significant internal change programme). Restructuring SPFs are calculated based on the number of hours individuals work, plus external costs of professional advisers we need to engage. Restructuring SPFs are charged only where our additional costs exceed £25,000 where the firm is dual-regulated by us and the Prudential Regulation Authority (PRA) and £50,000 for firms that are solo-regulated by us. They are payable in addition to the periodic fees paid by firms.

3.22 The CRO SPF would be calculated in the same way as restructuring SPFs but only where the costs of carrying out our functions exceptionally exceed a £5,000 threshold for any individual firm. The lower threshold for the CRO SPF reflects that a CRO firm would not be paying periodic fees.

Q4: Do you agree with our proposals for fees payable by firms in CRO? If not, why not?

FCA fees for firms moved between SRO and CRO

3.23 As discussed in Chapter 2, firms can be moved from SRO to CRO and vice versa.

3.24 Where a firm is moved from SRO to CRO, we are proposing that the periodic fee payable by the firm while in the SRO relates to the whole of any fee-year (1 April to 31 March) and is not refundable. This is in line with our policy for UK based firms where their permissions are cancelled during a fee-year.

3.25 Where firms are moved from CRO to SRO, we are proposing that the SRO periodic fee payable will be prorated for the number of remaining months of that fee-year. This is in line with our policy for UK firms that become authorised within a fee-year. There would be no refund of any CRO SPF due while the firm was in CRO.



Q5: Do you agree with our proposals for fees payable by firms that are moved from SRO to CRO and vice versa? If not, why not?



Annex 1

Questions in this paper

- Q1:** Do you agree with our proposals to apply the same rules to SRO firms as the rules we have proposed to apply to TP firms, subject to necessary modifications? If not, why not?
- Q2:** Do you agree that our proposed rule changes in this CP give effect to this? If not, why not?
- Q3:** Do you agree with our proposals for periodic fees payable by firms in SRO? If not, why not?
- Q4:** Do you agree with our proposals for fees payable by firms in CRO? If not, why not?
- Q5:** Do you agree with our proposals for fees payable by firms that are moved from SRO to CRO and vice versa? If not, why not?

Annex 2

Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed Handbook rules. Specifically, section 138(2)(a) requires us to publish 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'. It also requires us to include estimates of those costs and benefits, unless in our opinion these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate and in those cases we have to include a statement of that opinion.

Rationale for intervention

2. After Brexit, firms which were passporting into the UK will no longer be able to do so. In [CP18/29](#) and [CP18/36](#), we explained that the TPR aims to ensure that there is minimal disruption to markets and consumers because of the loss of passporting, by allowing EEA firms to continue to operate in the UK for a limited period while they apply to become authorised in the UK. The FSCR, has the same aim of minimal disruption to markets and consumers by allowing incoming EEA firms which do not enter the TPR, or which exit the TPR without full UK authorisation, to continue to operate in the UK for a limited period for the purpose of continuing to service UK contracts entered into prior to exit day or, if applicable, prior to when they exited the TPR.
3. As is the case for TP firms, without other rule changes, firms currently passporting into the UK that enter SRO (whether on exit day or as a result of leaving the TPR without full UK authorisation) will have to comply with the Handbook as Part 4A firms (whose head or registered offices are overseas) because of the effect of the FSCR Regulations. This would be challenging for many firms given the short time until exit day and would not minimise disruption for consumers and the UK market. Further, the costs to firms of making changes to comply with our full Handbook in a short period of time may be large because of the relatively short space of time firms would have to become compliant with UK rules. In addition, to the extent that Handbook rules would not apply to SRO firms in this situation (in particular EEA services firms without an establishment in the UK), we need to consider what rules do need to be applied to provide appropriate consumer protection, to the extent permitted by the FSCR Regulations.

Our intervention

4. The CBA presented in this Annex is an analysis of the costs and benefits of applying the proposals set out in this CP for SRO firms, in particular:



- the Handbook rules which are given effect through the proposed general approach, including our proposals relating to the application of the Prudential sourcebooks and certain specified technical standards made under Markets in Financial Instruments Directive (the MiFID BTS)
- our proposed approach to Principles of Business rules (PRIN)
- the proposed rules relating to safeguarding client assets
- the proposed rules relating to the APR and the SM&CR
- the proposed rules relating to the FSCS
- the proposed rules relating to the Financial Ombudsman Service
- the proposed rules relating to status disclosure

to SRO firms as against the baseline scenario described below. These proposals are substantially the same as our proposals for TP firms in CP18/29 and CP18/36. There is no requirement under FSMA for us to publish a CBA in relation to the proposals we make in relation to FCA fees, SFGFB funding, devolved authorities' debt advice funding, or the IML levy for SRO firms.

5. There is no requirement under FSMA for us to publish a CBA in relation to the proposals we make in relation to FCA fees for CRO firms.

Baseline for FSCR changes

6. This CBA does not analyse the costs and benefits of the FSCR itself, which will be established by the FSCR Regulations. Our duty is to analyse the costs and benefits of the changes to the Handbook rules on which we are consulting in this CP.
7. As is the case for TP firms, the baseline against which we are analysing the costs and benefits takes as its starting point the fact that firms which enter SRO will be treated as if they are Part 4A firms because of the FSCR Regulations. Without any further changes, SRO firms would therefore be subject to our rules to the extent that our Handbook (in its post-exit day form) states that they apply to a Part 4A firm, provided the SRO firm meets any additional conditions of application of a rule. This would be the case whether a firm enters SRO on exit day, or at a later date as a result of exiting the TPR without full UK authorisation. Therefore, we consider that for SRO firms, the baseline scenario is the same as described in the CBAs included in CP18/29 and CP18/36 for TP firms.
8. We would note that the baseline scenario being used does not correspond to the position that EEA firms currently passporting into the UK are in, but instead represents the hypothetical situation that they would be in after Brexit as a result of the FSCR Regulations and, for SRO firms, taking into account the changes made to our Handbook at exit day.

The general approach for SRO firms

Costs of the general approach

9. We consider that the effect of the general approach for SRO firms is the same as described in paragraphs 15 to 19 of the CBA included in CP18/29 for TP firms, and that the analysis of the costs for SRO firms would therefore be the same as explained in those paragraphs for TP firms. However, as SRO firms will not be seeking full UK authorisation, the comment we make in paragraph 19 about TP firms needing to come into compliance with the UK implementation of relevant requirements within three years is not relevant to SRO firms.
10. We do not believe that it is reasonably practicable to produce a quantitative estimate of any of these costs, for these reasons:
- We have designed the general approach so that SRO firms can generally continue to comply with rules/MiFID BTS with which they are already complying, rather than requiring firms to actually make significant changes.
 - There is significant uncertainty about the number of incoming EEA firms that will come into SRO either on exit day or as a result of leaving the TPR without full UK authorisation, and the split between the types of firms which will come into SRO. This is because firms may choose to enter the TPR rather than the FSCR and, of those that do, it is not possible to know how many will not obtain full UK authorisation. We are running a survey of EEA firms to find out their intentions, which is ongoing. In addition, different firms will be in the regime for different periods of time, depending on how long it takes for them to run-off their UK business. As such the impact of the application of rules/MiFID BTS which will apply to SRO firms during SRO will vary from firm to firm.
 - Firms are likely to find it challenging to produce robust quantitative estimates as against the baseline scenario which is a hypothetical situation.
 - We do not believe the work involved in producing quantitative estimates as against the baseline scenario which is a hypothetical situation (including requiring firms to provide data) would be justified by the value of the estimates to consultees in terms of their ability to consider the impact of the rules on them and to respond intelligently.
 - There is insufficient time in which to conduct the analysis and produce quantitative estimates. The scope and number of rules involved in this analysis means that it would require significant time to produce a quantitative estimate of the impact of applying or disapplying relevant rules as against the baseline scenario. For the purposes of estimating the impact of substituted compliance we would need to determine the content of many home state rules in each of the 30 other EEA member states and analyse them against the UK implementation of the equivalent requirements. However, the time in which to conduct the analysis and produce quantitative estimates has by necessity been constrained by external dependencies and the deadline for finalising this work is not moveable as we need to make the Handbook rules by early 2019.



11. As explained, in relation to TP firms in paragraph 21 of the CBA included in CP18/29, we do not anticipate any increase in overall resources being allocated to the supervision of firms as a result of SRO but, in the event of harm being identified, we will be in a better position to act, where appropriate, while noting the complexities involved in enforcing cross-border in this scenario.

Benefits of the general approach

12. We consider that the analysis of the benefits of the general approach as applied to SRO firms is the same as described in relation to TP firms in paragraphs 22 to 25 of the CBA included in CP18/29, although we note that the benefit of substituted compliance for SRO firms is that they will never have to come into compliance with the UK implementation of relevant requirements (rather than delaying compliance as described in paragraph 24 of that CBA). We believe that it is not reasonably practicable to quantify these benefits for the reasons described in paragraph 11 above.

Prudential sourcebooks

13. We consider that the analysis of the costs and benefits arising from our proposals for SRO firms is the same as that described for TP firms in paragraph 27 of the CBA included in CP18/29.

Principles for Businesses (Principles)

14. We consider that the effect of the application of the Principles to SRO firms as against the baseline scenario, and the analysis of the costs and benefits arising is the same as that described for TP firms in paragraphs 34 and 36 of the CBA included in CP18/29. For the reasons outlined in paragraph 36 of that CBA, and taking into account the points in paragraph 11 above, we believe it is not reasonably practicable to produce a quantitative estimate of the costs and benefits of our application of the Principles to SRO firms.

Safeguarding client assets

15. We consider that the application of rules to SRO firms in the baseline scenario, and the analysis of the costs and benefits arising from the application of our proposals to SRO firms as against that baseline, are the same for SRO firms as described for TP firms in paragraphs 38 to 56 of the CBA included in CP18/29. This is because we are not making any changes to the client assets rules applying to TP firms for SRO firms. We note that the analysis in paragraph 46 of that CBA relating to TP firms eventually having to comply with the full CASS regime if they obtain full UK authorisation is not relevant to SRO firms (which will not be seeking UK authorisation).

Approved Persons Regime (APR) and Senior Managers & Certification Regime (SM&CR)

16. We consider that the baseline assumptions, and the analysis of the costs and benefits arising from the application of our proposals to SRO firms as against the baseline scenario, are the same for SRO firms as described for TP firms in paragraphs 11 to 32 of the CBA included in CP18/36. However, we note that the references to the TPR being for a temporary period and to the third-country branch regime applying to a TP firm when it receives Part 4A authorisation are not relevant to SRO firms (which will not be seeking UK authorisation), as the effect of our proposals is not to delay costs for SRO firms of needing to apply extra requirements but to prevent them from arising altogether.

Financial Services Compensation Scheme (FSCS)

17. We consider that the application of rules to SRO firms in the baseline scenario, and the analysis of the costs and benefits arising from the application of our proposals to SRO firms as against that baseline, are generally the same for SRO firms as described for TP firms in paragraphs 33 to 41 of the CBA included in CP18/36 (save in respect of incoming fund managers, who are not able to manage UK authorised funds in the SRO, and therefore will not have FSCS cover). This is because we are not making any substantive changes in respect of our compensation rules and related FEES rules when applying to TP firms for SRO firms.

Financial Ombudsman Service

18. We consider that the application of rules to SRO firms in the baseline scenario, and the analysis of the costs and benefits arising from the application of our proposals to SRO firms as against that baseline, are the same for SRO firms as described for TP firms in paragraphs 42 to 47 of the CBA included in CP18/36. This is because we are not making any substantive changes in respect of the Financial Ombudsman Service's jurisdiction or to the complaint handling rules and related FEES rules when applying to TP firms for SRO firms.

Status disclosure

19. We consider that the application of rules to SRO firms in the baseline scenario, and the analysis of the costs and benefits arising from the application of our proposals to SRO firms as against that baseline, are the same for SRO firms as described for TP firms in paragraphs 48 to 52 and 54 to 56 of the CBA included in CP18/36.
20. As explained in that CBA and in the CBA in CP18/29 in relation to the TPR, there is significant uncertainty about the number and type of firms which will come into SRO. It is possible that the size of SRO firms will differ from the size of firms used to produce the estimate of costs included in paragraph 52 of the CBA included in CP18/36. Therefore, this estimate might not accurately reflect the costs which a SRO firm would incur as a result of our proposals. For reasons explained in paragraph 11 above, we believe that it is not reasonably practicable to produce a more reflective estimate for SRO firms.



Supervision Manual

- 21.** We consider that the application of relevant guidance to SRO firms in the baseline scenario, and the analysis of the costs and benefits arising from the application of our proposals to SRO firms as against that baseline, are the same for SRO firms as described for TP firms in paragraph 57 of the CBA included in CP18/29.

Familiarisation costs

- 22.** We consider that the analysis of the familiarisation costs arising from the application of our proposals to SRO firms, is the same for SRO firms as described for TP firms in paragraphs 59 to 61 of the CBA included in CP18/29.

Annex 3

Compatibility statement

Compliance with legal requirements

1. This Annex records our compliance with legal requirements applicable to the proposals in this consultation including an explanation of our reasons for concluding that our proposals in this consultation are compatible with certain requirements of the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, we are required by FSMA s.138I(2)(d) to include an explanation of why we believe making the proposed rules is (a) compatible with our general duties, under FSMA s.1B(1), so far as reasonably possible, to act in a way which is compatible with our strategic objective and advances one or more of our operational objectives, and (b) our duty in discharging our function of making rules (one of our "general functions") under FSMA s.1B(5)(a) to have regard to the regulatory principles in FSMA s.3B. We are also required by FSMA s.138K(2) to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out our view of how the proposed rules are compatible with the duty on us to discharge our general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (FSMA s.1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under FSMA s.1JA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. Our assessment of the equality and diversity implications of our proposals can also be found below.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA), we are subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

Our objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are primarily intended to advance our operational objectives of consumer protection and market integrity.



8. Our consumer protection objective is to secure an appropriate degree of protection for consumers. In considering what degree of protection may be appropriate we are required to have regard to the 8 matters listed in FSMA s.1C(2)(a)-(h).
9. For SRO, we are generally proposing to continue to apply existing protections either contained in Handbook rules which currently apply to SRO firms or which are based on EU directives but reserved to the home state. We are not seeking to change the design of those protections. We have had regard to the matters listed in FSMA s.1C(2)(a)-(f) in deciding which rules to apply and those matters were also considered in the design of those protections when they were developed.
10. By applying the home state rules under the general approach through our Handbook, we are seeking to prevent consumers from being prejudiced because, following exit day, home state protections in relation to UK business may fall away.
11. Where we have identified key protections which fall away and cannot be dealt with by way of substituted compliance with a home state rule, in particular compensation scheme cover or access to an alternative dispute resolution scheme, we are intending to replicate those protections on a UK basis (for compensation scheme cover, only to the extent it is permitted by the FSCR Regulations). We are also proposing to apply certain other key protections which we consider vital, for example, the Principles, our proposals in relation to client assets and status disclosure requirements.
12. The matter listed in FSMA s.1C(2)(g) is not relevant to our proposals. In relation to the matter referred to in FSMA s.1C(2)(h), we have consulted with the Financial Ombudsman Service while developing our planned proposal to include EEA services firms in SRO in the Compulsory Jurisdiction.
13. For CRO firms, we are generally not able to apply rules by virtue of the FSCR Regulations.
14. Our market integrity objective is to protect and enhance the integrity of the UK financial system, which includes the matters listed in FSMA s.1D(2)(a)-(e). In addition to considering appropriate consumer protection, our proposals for SRO also seek to create a regime which SRO firms can comply with from exit day. This is to help mitigate the harms that could result from an abrupt loss of permission following exit day which could impact on the orderly operation of financial markets. As explained above we are generally not able to apply rules to firms in CRO.
15. We consider these proposals are compatible with our strategic objective of ensuring that the relevant markets function well. For SRO, we are proposing a regime that balances:
 - the need for appropriate consumer protection taking into account the possibility of home state protections falling away
 - the need to create a regime which SRO firms can comply with as of exit day to help mitigate the harm presented by an abrupt loss of permission.

For the purposes of our strategic objective, 'relevant markets' are defined by FSMA s.1F. As explained above, we are generally not able to apply rules to firms in CRO.

16. The proposals for FCA fees are not intended in themselves to advance our operational objectives. However, they will enable us to fund our activities to meet our responsibilities under the regime. Therefore, these proposals will indirectly advance our operational objectives.
17. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in FSMA s.3B.
- The need to use our resources in the most efficient and economic way**
18. Our approach to which of our rules should apply to SRO firms, and how we propose to apply most of the Handbook (by including an overarching rule in the GEN sourcebook rather than specifically tailoring each sourcebook as a matter of course as explained in Chapter 4 of CP18/29), takes into account the significant amount of work in a short timeframe that would be required to design a new regime and tailor our Handbook specifically for SRO. We believe the approach we are proposing represents a proportionate use of our resources to achieve our objectives in the circumstances.
- The principle that a burden or restriction should be proportionate to the benefits**
19. Our proposals seek to preserve the status quo as much as possible so that SRO firms generally need to simply continue to comply with rules which currently apply to them either in the UK or their home state and the relevant Handbook rules were designed having regard to the proportionality principle. We are only seeking to apply a limited number of new requirements where we consider that these are vital and proportionate (in particular, for consumer protection).
20. The SRO proposals for FCA fees rules are based on those for UK firms which were designed having regard to the proportionality principle. Firms are grouped together into fee-blocks, reflecting broad sectors of the industry, based on the regulated activities undertaken in the UK. This enables us to allocate our funding requirement across fee-blocks in proportion to the total resources we apply to meeting our operational objectives in relation to the regulated activities covered by all firms in each fee-block. Recovering, the funding allocated to fee-blocks from the firms in each fee-block based on their size ensures that the periodic fees they pay are proportionate to the benefits they receive from being authorised. The CRO proposals for FCA fees rules recognises that we are generally not able to apply rules to CRO firms and that the regulators are not under a duty to maintain arrangements in relation to supervision and enforcement of CRO firms.
21. The SRO proposals for the SFGB, devolved authorities' debt advice and IML levy rules are based on those for UK firms. They mirror the FCA rules for the fee-blocks used to allocate the funding required by the Department of Work and Pensions (DWP) and the Treasury. They use the same measures of size to recover the allocated funding from firms within the fee-blocks.
- The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**
22. This principle is not relevant to the design of the FSCR, as the regime has been created for the purpose of EEA firms running off existing UK contracts and conducting an orderly exit from the UK market.



The general principle that consumers should take responsibility for their decisions

23. The design of SRO seeks to generally preserve current rules in terms of the information which consumers receive. In addition, we consider that any new disclosure requirements we are proposing are vital to enable consumers to make informed decisions. As explained above, we are generally not able to apply rules to CRO firms.

The responsibilities of senior management

24. We are proposing to maintain the current requirements that apply to EEA branch firms under the SM&CR and (where relevant) APR in SRO. We do not propose any requirements for EEA services firms in line with the current position. As explained above, we are generally not able to apply rules to CRO firms.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons, including mutual societies and other kinds of business organisation

25. By generally only applying existing rules which are relevant to each type of firm plus certain additional key protections, our proposals for SRO do not seek to make any changes to the way in which the Handbook currently addresses this principle. As explained above, we are generally not able to apply rules to CRO firms.
26. The SRO proposals for FCA fees rules are based on those for UK firms which recognises the differences in the nature of the business carried out by different firms. The fee-blocks are defined by reference to related types of permitted business firms can undertake and the tariff base used to recover the allocated funding to the fee-blocks reflects the size of that business.
27. Mirroring the FCA rules for fee-blocks and measures of size the SRO proposed rules for the SFGB levy, devolved authorities' debt advice levy and IML levy recognises the differences in the nature of the business carried out by different firms.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA or requiring them to publish information

28. We have explained how the FSCR will function in this CP and in our statement issued when the FSCR Regulations were published by the Treasury in December last year. Certain proposals we are making for SRO firms will require firms to publish information about themselves.

The principle that we should exercise of our functions as transparently as possible

29. We launched a survey for incoming EEA firms in March 2018 to enable us to better understand firms' intentions, and have kept firms updated on our proposals for EEA firms in relation to the TPR following publication of the TPR Regulations last year. Following publication of the FSCR Regulations in December, we published a statement setting out more detail on 17 December 2018. We will continue to engage with stakeholders throughout this consultation process before making any rules.

Action to minimise the extent to which a business is used for a purpose connected with financial crime

30. We have had regard to the importance of taking action as required by FSMA s.1B(5) (b). As previously explained, we are seeking to apply the requirements which currently apply to SRO firms in our Handbook or which are covered by home state rules (subject to substituted compliance). As explained above, we are generally not able to apply rules to CRO firms.

Funding of the FSCS

31. We are obliged, under FSMA s.213(1), to design a compensation scheme under which valid claims are able to be paid. In doing so, the FCA is required by FSMA s.213(5) to take account of the desirability of ensuring that the amount of levies imposed on a particular class of authorised person reflects, so far as practicable, the amount of claims made, or likely to be made, in respect of that class. The proposed changes relating to the funding of the FSCS are designed to ensure that the scheme remains sufficiently funded because of extending cover to EEA firms in SRO operating from UK establishments. We have considered this in accordance with our obligations under FSMA s.213(5).

Expected effect on mutual societies

32. We do not expect the proposals in this paper to have a significantly different impact on mutual societies. To the extent any mutual societies come into SRO or CRO, they will be treated in line with the proposals set out in this CP in the same way as all other firms.

Compatibility with the duty to promote effective competition in the interests of consumers

33. The proposals set out in this consultation are consistent with our duty to promote effective competition in the interests of consumers, to the extent this is compatible with advancing our consumer protection or market integrity objectives. The proposals support the aim of the FSCR to minimise disruption to markets and consumers by allowing incoming EEA firms which do not enter the TPR, or which exit the TPR without full UK authorisation, to continue to operate in the UK for a limited period for the purposes of continuing to service UK contracts entered into prior to exit day.

Treasury recommendations about economic policy

34. In the remit letter¹⁴ published by the Treasury on 8 March 2017, the Chancellor of the Exchequer affirms our role in ensuring that consumers are appropriately protected. This is part of the Government's economic policy objective to create strong, sustainable and balanced growth. We have regard to this letter and the recommendations within. As explained above, our proposals are aimed at creating a regime which balances the need to continue to apply appropriate consumer protections but which SRO firms can comply with from exit day. As explained above, we are generally not able to apply rules to firms in CRO.

Equality and diversity

35. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity

14 www.gov.uk/government/publications/recommendations-for-the-financial-conduct-authority-spring-budget-2017



between persons who share a relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not.

- 36.** As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. As explained above, we are generally not able to apply rules to firms in CRO.
- 37.** We have considered the equality and diversity issues that may arise from the proposals in this CP. Our proposals on the rules which should apply to SRO firms largely either continue to apply existing Handbook rules, or permit firms the option to apply rules in their home state in order to comply with our rules.
- 38.** Since 2011¹⁵, we have been required by the Equality Act 2010 to take broad equality and diversity considerations into account when making new UK rules or changing existing UK rules. Additionally – in common with authorities in other EU states – we must also apply the EU Charter of Fundamental Rights (the Charter), which prevents discrimination in similar areas to the Equality Act, when adopting or applying a national law implementing an EU directive. Therefore, in relation to our proposal for substituted compliance, which would permit SRO firms to comply with rules in their home state that implement a requirement of an EU directive as a substitute for the corresponding UK rules, the application of the Charter to these home state rules gives us confidence that sufficient account should have been taken of equality and diversity considerations in their implementation in EU member states.
- 39.** Taking this into account, and the fact that we do not know which home states will be relevant for firms in SRO, we therefore do not think it is necessary or a proportionate use of our resources to attempt to analyse from an equality and diversity perspective the actual implementation of all the relevant rules in each of the 30 EEA states which our proposals effectively switch on. This is in consideration of the number of rules involved and the time available for that exercise.
- 40.** We recognise that the effect of FSCR and the impact of our proposals for the Handbook on the protections which are available to consumers may be particularly challenging for vulnerable consumers to understand. We expect firms to communicate with affected customers in a clear and timely fashion, including what regulatory protections will apply for their customers. We also intend to publish information on our website to help consumers understand how Brexit may affect them.
- 41.** Aside from this, we generally do not consider that the proposals in this CP materially impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules.
- 42.** In the meantime, we welcome input to this consultation on this.

15 The Public Sector Equality Duty (s.149 of the Equality Act 2010) – which requires us to take a much broader set of equality and diversity considerations into account – would only apply to changes (ie new rules/guidance or amendments to existing rules/guidance) made by the FSA or us after 5 April 2011. Previous legislation was focused only on sex, race and disability.

Legislative and Regulatory Reform Act 2006 (LRRRA)

- 43.** We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that the regime we are proposing is proportionate and balances the need to create a workable regime that SRO firms can comply with from exit day with the need for appropriate consumer protection. As explained above, we are generally not able to apply rules to firms in CRO. We are consulting on our proposals in this CP, and will continue to engage with stakeholders throughout this consultation process before making any rules.
- 44.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that that our proposals meet the following principles:
- Regulators should base their regulatory activities on risk
 - Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
 - Regulators should ensure that their approach to their regulatory activities is transparent
- 45.** Having regard to this:
- The underlying rules that we apply to SRO firms through the general approach have been developed based on the risks involved in particular activities. We have also restricted new rules we are applying to SRO firms to situations where protections would otherwise fall away because of Brexit or are otherwise considered vital.
 - We published a statement of our approach when the FSCR Regulations were published in December, and this CP sets out our proposed regulatory approach which for SRO firms mirrors our approach in relation to the TPR, which has now been published for some time. The approach is based predominantly around continuing to comply with known rules, either in the UK or in the home state.



Annex 4

Abbreviations used in this paper

AFR	Annual funding requirement
AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive
APR	Approved Persons Regime
BCD	Banking Consolidation Directive
BTS	Binding Technical Standards
CASS	Client Assets Sourcebook (FCA Handbook)
CBA	Cost benefit analysis
CP	Consultation Paper
CRD	Capital Requirements Directive
DWP	Department of Work and Pensions
EEA	European Economic Area
ELTIF	EU European Long-Term Investment Fund
EMD	Electronic Money Directive
EMR	Electronic Money Regulations
EMI	Electronic Money Institution
EU	European Union
FEES	Fees Manual (FCA Handbook)
FSA	Financial Services Authority
FSCR	Financial Services Contracts Regime

FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
GEN	General Provisions (FCA Handbook)
HMT	Her Majesty's Treasury
IDD	Insurance Distribution Directive
IMD	Insurance Mediation Directive
IML	Illegal money lending (levy)
LRRA	Legislative and Regulatory Reform Act 2006
MiFID II	Markets in Financial Instruments Directive II
MiFIR	Markets in Financial Instruments Regulation
PRA	Prudential Regulation Authority
PSD2	Payments Services Directive
PI	Payment Institution
PRA	Prudential Regulation Authority
PRIN	Principles for Businesses (FCA Handbook)
PSR	Payment Services Regulations
RAISP	Registered Account Information Service Provider
S2	Solvency II Directive
SFGB	Single Financial Guidance Body
SI	Statutory Instrument
SM&CR	Senior Managers & Certification Regime
SPF	Special project fee
TPR	Temporary Permissions Regime
UCITS	Undertakings for Collective Investment in Transferable Securities



We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN



Appendix 1

Draft Handbook text

**EXITING THE EUROPEAN UNION: FINANCIAL SERVICES CONTRACTS
INSTRUMENT 2019**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137B (FCA General rules: clients’ money, right to rescind etc.);
 - (c) section 137R (Financial promotion rules);
 - (d) section 137SA (Rules to recover expenses – single financial guidance body);
 - (e) section 137SB (Rules to recover debt advice expenses incurred by the devolved authorities);
 - (f) section 137T (General supplementary powers);
 - (g) section 139A (Power of the FCA to give guidance);
 - (h) section 266 (Disapplication of rules in relation to recognised schemes);
 - (i) section 213 (The compensation scheme);
 - (j) section 214 (General);
 - (k) section 333T (Funding of action against illegal money lending);
 - (l) paragraph 23 (Fees) in Part 3 (penalties and fees) of Schedule 1ZA (The Financial Conduct Authority); and
 - (2) the relevant powers and related provisions referred to in Schedule 4 to the General Provisions of the FCA Handbook;
 - (3) the following provisions of the Payment Services Regulations 2017 as amended by the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 and the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) (No. 2) Regulations 2019:
 - (a) regulation 120 (Guidance); and
 - (b) regulation 35 of part 3 of schedule 3 (Power to charge fees); and
 - (4) the following provisions of the Electronic Money Regulations 2011 as amended by Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 and the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) (No. 2) Regulations 2019:
 - (a) regulation 60 (Guidance); and
 - (b) regulation 12K of part 1A of Schedule 3 (Power to charge fees).

- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. Part 2 of Annex C comes into force on 1 April 2019.
- D. The remainder of this instrument comes into force on [29 March 2019 at 11 p.m.].

Amendments to the Handbook

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

(1)	(2)
Glossary	Annex A
General Provisions (GEN)	Annex B
Fees manual (FEES)	Annex C
Compensation sourcebook (COMP)	Annex D

Notes

- F. In this instrument, notes shown as “*Editor’s note*” are intended for the convenience of the reader and do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Exiting the European Union: Financial Services Contracts Instrument 2019.

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

[*Editor's Note:* this Annex takes into account the changes proposed in CP18/29 'Temporary permissions regime for inbound firms and funds' (October 2018), CP18/34 'Regulatory fees and levies policy proposals' (November 2018), and CP 18/36 'Brexit: Proposed changes to the Handbook and Binding Technical Standards – Second Consultation' (November 2018) as if they were made.]

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

participant firm (1) a *firm* (including a *TP firm*) other than:

...

(n) a *TP firm* that under section 213(9A) or section 213(9A) [*bis*] of the *Act* is not to be regarded as a *relevant person*;

...

temporary EMI authorisation (in accordance with paragraph 2 of Part 1 of Schedule 3 and paragraph 12B of Part 1A of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018) authorisation under regulation 9 of the Electronic Money Regulations 2011, as the case may be, that a *person* is to be taken as having under ~~that paragraph 2 of Part 1 of Schedule 3 to~~ the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, or under paragraph 12B of Part 1A of Schedule 3 to those Regulations.

temporary permission (in accordance with regulation 8, ~~or 11, 28 or 34~~ of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018), as the case may be, *Part 4A permission* (or variation to the *permission*) that a *person* is treated as having under ~~that article~~ regulation 8, 11, 28 or 34 of those Regulations.

temporary PI authorisation (in accordance with paragraph 14(2)(a)(i) of Part 2 of Schedule 3 or paragraph 26(4)(a)(i) of Part 3 of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018) authorisation under the Payment Services Regulations 2017, as the case may be, that a *person* is taken as having under ~~that paragraph 14(2)(a)(i) of Part 2 of Schedule 3 to~~ the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, or under paragraph 26(4)(a)(i) of Part 3 of Schedule 3 to those Regulations.

temporary RAISP authorisation (in accordance with paragraph 14(2)(a)(ii) of Part 2 of Schedule 3 paragraph 26(4)(a)(ii) of Part 3 of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018) registration under the Payment Services Regulations 2017, as the case may be, that a *person* is taken as having under ~~that~~ paragraph 14(2)(a)(ii) of Part 2 of Schedule 3 in to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, or under paragraph 26(4)(a)(ii) of Part 3 of Schedule 3 to those Regulations.

TP firm (in accordance with regulation 8, ~~or 11, 28 or 34~~ of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018) as the case may be, a *person* who has *temporary permission* under regulation 8, 11, 28 or 34 of those Regulations.

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

CRO firm (in accordance with the *EU Exit Passport Regulations* and the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018) a *person* who is:

- (a) exempt for the purposes of section 19(1)(b) of the *Act* under regulation 47 of the *EU Exit Passport Regulations*; or
- (b) an EEA authorised electronic money institution who meets the requirements of Regulation 12L of Part 1A of Schedule 3 of the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018); or
- (c) an EEA authorised payment institution who meets the requirements of Regulation 36 of Part 3 of Schedule 3 of the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018); or
- (d) an EEA registered account information services provider who meets the requirements of Regulation 36 of Part 3 of Schedule 3 of the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018).

EU Exit Passport Regulations The EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018, SI 2018/1149.

EU Exit Financial Services Contracts Regulations

The Financial Services Contracts (Transitional and Saving Provisions) (EU Exit) (No. 2) Regulations 2019, SI [2019/XXXX].

E-money and Payments Transitional Provisions Regulations

The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018, SI 2018/1201.

supervised run-off firm

(in accordance with regulation 28 or 34 of the *EU Exit Passport Regulations*), a *person* who is treated as having *Part 4A permission* (or a variation to *permission*) under regulation 28 or 34 of those *Regulations*.

Annex B

Amendments to the General Provisions (GEN)

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

[*Editor's note:* this Annex takes account of the changes proposed in CP18/29 'Temporary permissions regime for inbound firms and funds' (October 2018) and CP18/36 'Brexit: proposed changes to the Handbook and Binding Technical Standards – second consultation' (November 2018) as if they were made.]

- | | | | | |
|--------|---------|---|------|---|
| 2.2.36 | Purpose | G | (1) | <p>The approach to what <i>rules</i> apply to <i>TP firms</i> is broadly to apply <i>rules</i> to <i>TP firms</i> which applied to them immediately prior to the <i>UK's</i> exit from the <i>EU</i>, whether those <i>rules</i> applied in the <i>United Kingdom</i> (as was the case for host state <i>rules</i>) or, where rules are directive-based, in the <i>firm's Home State</i> or, where relevant, the state where the <i>branch</i> is located from which the <i>firm's</i> service is provided.</p> |
| | | | (1A) | <p><u>The Glossary definitions of <i>TP firm</i> and <i>temporary permission</i> each include both <i>firms</i> that enter the temporary permission or temporary variation regime set out in Part 3 of the <i>EU Exit Passport Regulations</i> and <i>firms</i> that enter the financial services contracts regime set out in Part 6 of the <i>EU Exit Passport Regulations</i> on or after <i>exit day</i>.</u></p> |
| | | | (2) | <p><i>GEN 2.2.26R(1)</i> and <i>GEN 2.2.33R</i> refer to “a <i>rule</i> which imposed an obligation on a <i>person</i>” this is to distinguish a <i>rule</i> which imposes substantive obligations from a <i>rule</i> which sets out the application of <i>rules</i>.</p> |
| | | | (3) | <p><i>GEN 2.2.26R</i> to <i>GEN 2.2.35R</i> apply <i>rules</i> and <i>guidance</i> to <i>firms</i> which before <i>exit day</i> had passporting rights by virtue of the Treaty on the Functioning of the European Union, or of that Treaty as applied by the Agreement on the European Economic Area signed at Oporto on 2 May 1992 whose parties consist of the EEA States.</p> |
| | | | (4) | <p>The application of <i>rules</i> and <i>guidance</i> to <i>TP firms</i> <u>under Part 3 of the <i>EU Exit Passport Regulations</i></u> must be read in the light of the purpose of <i>temporary permission</i> <u>under Part 3 of those <i>Regulations</i></u>, which is to allow <i>TP firms</i> to continue to carry on <i>regulated activities</i> in the <i>United Kingdom</i>, or of the purpose of the temporary recognition regime for <i>TP UCITS qualifiers</i> or for <i>TP AIFM</i></p> |

qualifiers to continue to market funds in the *United Kingdom*. In each case that purpose takes into account that the legal framework underpinning cross border financial services has changed because the *Treaty*, EU regulations and EU directives no longer apply in the *United Kingdom* by virtue of EU law.

- (5) For a *TP firm* under Part 3 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) 2018 preserve the scope of authorisation of an EEA-based *firm* which qualified for authorisation under Schedule 3 or 4 to the *Act*. Those Regulations do not extend the means by which a *TP firm* can carry on *regulated activities* in the *United Kingdom*, which remain limited (leaving aside top-up permission) to those which were available under the *Treaty* on the Functioning of the European Union, for example, a *firm* carrying on *regulated activities* in the *United Kingdom* from an establishment outside of the *EEA* cannot rely upon this means to do so. For a *TP firm* under Part 6 of the *EU Exit Passport Regulations*, the scope of the *firm's permission* is further limited by what is permitted under regulation 33 or 40 of those *Regulations*.
- (6) The General Rules apply where *regulated activities* have been amended on *exit day*, because the purpose of *temporary permission* is to enable *TP firms* to continue to carry on such *regulated activities* in the *United Kingdom*.
- (7) In relation to persons with *temporary EMI authorisation*, *temporary PI authorisation* and *temporary RAISP authorisation*, the specified directions, rules and guidance in *FEES 4A, 7B and 13A* apply to them. In addition, in relation to those *persons*, rules and guidance in *DISP* and *SUP* apply to those *persons* as they apply to *persons* that are authorised or registered in the *UK*.
- (8) A person with *temporary EMI authorisation* is deemed to be an *authorised electronic money institution* in accordance with regulation 2(a) of Part 1 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*. As such the provisions of the *Electronic Money Regulations* as amended by the *E-money and Payments Transitional Provisions Regulations* and subject to the exclusions set out in regulation 7 of the *E-money and Payments Transitional Provisions Regulations* apply to such *persons*.
- (9) This paragraph applies to *persons* with *temporary PI authorisation* and *temporary RAISP authorisation*:
- (a) a person with *temporary PI authorisation* is deemed to be an *authorised payment institution* in accordance with regulation 14(2)(a)(i) of Part 2 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*.
- (b) a person with *temporary RAISP authorisation* is deemed to be a *Registered Account Information Service Provider* in

accordance with regulation 2(2)(a)(ii) of Part 2 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations*.

As such, the provisions of the *Payment Services Regulations* as amended by the *E-money and Payments Transitional Provisions Regulations* and subject to the exclusions set out in regulation 19 of the *E-money and Payments Transitional Provisions Regulations* apply to *persons* to whom this paragraph applies.

- (10) The Glossary definitions of *temporary EMI authorisation*, *temporary PI authorisation* and *temporary RAISP authorisation* each include both *persons* that enter the temporary permission regime set out in Parts 1 and 2 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations* and *persons* that enter the financial services contracts regime in accordance with regulation 12B and 26 of Parts 1A and 3 of Schedule 3 of the *E-money and Payments Transitional Provisions Regulations* amended by the *EU Exit Financial Services Contracts Regulations*.

...

TP firms that enter the financial services contracts regime under Part 6 of the EU Exit Passport Regulations

- 2.2.38 G (1) As the definitions of *TP firm* and *temporary permission* also include *TP firms* under Part 6 of the *EU Exit Passport Regulations*, the *rules* and *guidance* in *GEN 2.2.26R* to *2.2.35G* also apply to *firms* which enter the financial services contracts regime set out in Part 6 of those *Regulations* after *exit day* having been in *temporary permission* under Part 3 of those *Regulations*, or which become *TP firms* under regulation 32 of those *Regulations*.
- (2) The application of *rules* and *guidance* to *TP firms* under Part 6 of the *EU Exit Passport Regulations* must be read in the light of the purpose of *temporary permission* under Part 6 of those *Regulations*, which is to enable such a *TP firm* to run down its regulated business in the *United Kingdom*. Regulation 33 or 40 of the *EU Exit Passport Regulations* sets out the scope of permitted activities, which is generally those *regulated activities* previously within the scope of the *firm's* passport, necessary to perform a pre-existing contract (as defined in regulation 46 of the *EU Exit Passport Regulations*).
- (3) Accordingly, the *rules* and *guidance* in *GEN 2.2.26R* to *2.2.31G*, and *2.2.35G* to *2.2.37G* continue to apply where a *TP firm* leaves *temporary permission* under Part 3 of the *EU Exit Passport Regulations* and then enters *temporary permission* under Part 6 of the *EU Exit Passport Regulations*, namely, where the *person* falls within regulation 31, 37 or 38 of the *EU Exit Passport Regulations*. The same is true for a *TP firm* which leaves *temporary permission* under regulation 28 of the *EU Exit Passport Regulations* and then

enters temporary permission under regulation 39 of those Regulations.

- (4) In those cases, GEN 2.2.27R has the effect that any changes referred to in that rule, which happen between *exit day* and when the *person* enters *temporary permission* (notwithstanding that they were previously in *temporary permission*) under the regulation in question, apply to the *TP firm*. This also applies to a *TP firm* which enters *temporary permission* for the first time under regulation 32 of the *EU Exit Passport Regulations*.
- (5) Where a *TP firm* enters *temporary permission* under regulation 32 of the *EU Exit Passport Regulations*, a rule referred to in GEN 2.2.26R(1) once again applies to that *person*, together with any changes referred to in paragraph (3). The rules applied by GEN 2.2.26R(2) to such a *TP firm* apply together with any changes referred to in paragraph (3).

...

4.3 Letter disclosure

Disclosure in letters to retail clients

...

- 4.3.1-A R A *TP firm* must take reasonable care to ensure that every letter (or electronic equivalent) which it or its *employees* send to a *retail client*, with a view to or in connection with the *TP firm* carrying on a *regulated activity*, includes the disclosure in, as the case may be:
- (1) for a *TP firm* under Part 3 of the *EU Exit Passport Regulations*, GEN 4 Annex 1B 1.1R or 1.2R (firms that are not PRA-*authorised persons*) or, GEN 4 Annex 1B 2.1R or 2.2R (PRA-*authorised persons*); or
- (2) for a *TP firm* under Part 6 of the *EU Exit Passport Regulations*, GEN 4 Annex 1C 1.1R or 1.2R (firms that are not PRA-*authorised persons*) or GEN 4 Annex 1C 2.1R or 2.2R (PRA-*authorised persons*).

...

GEN 4 Annex 1B Statutory status disclosure (TP firms under Part 3 of the EU Exit Passport Regulations)

The definition of “*TP firm*” wherever it appears in Annex 1B is replaced with “*TP firm* under Part 3 of the *EU Exit Passport Regulations*”.

...

GEN 4 Annex 1C Statutory status disclosure (TP firms under Part 6 of the EU Exit Passport Regulations)

1 TP firms under Part 6 of the EU Exit Passport Regulations that are not PRA-authorized persons

- 1.1 R This rule applies to TP firms under Part 6 of the EU Exit Passport Regulations that are not PRA-authorized persons in relation to activities carried on by them or their appointed representatives from establishments in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations without a top-up permission</u>	<u>“Deemed authorised and regulated by the Financial Conduct Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u> (Notes 1, 3 and 4)
(2)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations with a top-up permission</u>	<u>“Authorised by the Financial Conduct Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u> (Notes 1, 3 and 4)

- 1.2 R This rule applies to TP firms under Part 6 of the EU Exit Passport Regulations that are not PRA-authorized persons in relation to activities carried on by them or their appointed representative into the United Kingdom from an establishment that is not in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations without a top-up permission</u>	<u>“Deemed authorised and regulated by the Financial Conduct Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are</u>

		<p><u>necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>
(2)	<p><u>A TP firm under Part 6 of the EU Exit Passport Regulations with a top-up permission</u></p>	<p><u>“Authorised by the Financial Conduct Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>

2 TP firms that are PRA-authorized persons

- 2.1 R This rule applies to TP firms under Part 6 of the EU Exit Passport Regulations that are PRA-authorized persons, in relation to activities carried on by them or their appointed representatives from establishments in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<p><u>A TP firm under Part 6 of the EU Exit Passport Regulations without a top-up permission</u></p>	<p><u>“Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>
(2)	<p><u>A TP firm under Part 6 of the EU Exit Passport Regulations with</u></p>	<p><u>“Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head</u></p>

	<u>a top-up permission</u>	<u>office)]. Authorised by the Prudential Regulation Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u> <u>(Notes 1, 3 and 4)</u>
--	----------------------------	--

2.2

R This rule applies to TP firms under Part 6 of the EU Exit Passport Regulations that are PRA-authorized persons in relation to activities carried on by them or their appointed representative into the United Kingdom from an establishment that is not in the United Kingdom:

	<u>Type of firm</u>	<u>Required disclosure (Note 2)</u>
(1)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations without a top-up permission</u>	<u>“Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Deemed authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u> <u>(Notes 1, 3 and 4)</u>
(2)	<u>A TP firm under Part 6 of the EU Exit Passport Regulations with a top-up permission</u>	<u>“Authorised and regulated by [name of the overseas regulator of the overseas firm in the jurisdiction of that overseas firm’s registered office (or, if it has no registered office, its head office)]. Authorised by the Prudential Regulation Authority and with deemed variation of permission. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. The nature and extent of consumer protections may differ from those for firms based in the UK. Details of the Financial Services Contracts Regime, which</u>

		<p><u>allows EEA-based firms to operate in the UK for a limited period to carry on activities which are necessary for the performance of pre-existing contracts, are available on the Financial Conduct Authority’s website.”</u></p> <p>(Notes 1, 3 and 4)</p>
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Note 1 = A firm must use the formulation “Financial Conduct Authority” or “Prudential Regulation Authority” and not the abbreviated formulation “FCA” or “PRA” respectively.

Note 2 = Any firm listed in this table is permitted to add words to the relevant required disclosure statement but only if the firm has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received.

Note 3 = A “top-up permission” is a Part 4A permission granted to a firm which exercised passporting rights, but which activity was outside of the scope of its passport, i.e. where the regulated activity in question is not an activity which could be passported.

Note 4 = A firm is free to translate the name of its Home State regulator into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.

Annex C

Amendments to the Fees manual (FEES)

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

Part 1: comes into force on 29 March 2019 at 11 p.m.

[*Editor's note:* this Part takes account of the changes proposed in CP18/29 'Temporary permissions regime for inbound firms and funds' (October 2018) and CP 18/34 'Regulatory fees and levies policy proposals' (November 2018) as if they were made.]

1 Fees Manual

1.1 Application and Purpose

1.1.1 G ...

(4A) *FEES 4A relates to periodic fees for a TP person (including a supervised run-off firm) and special project fees for a CRO firm.*

...

2 General Provisions

...

2.4 VAT

2.4.1 R All fees payable or any stated hourly rate under *FEES 3* (Application, notification and vetting fees), *FEES 4* (Periodic fees), *FEES 4A* (Periodic fees for *TP persons, supervised run-off firms and CRO firms*), *FEES 7* (The CFEB levy), *FEES 7A* (The SFGB levy), *FEES 7B* (The ~~Temporary Permissions Regime~~ *SFGB levy for TP persons and supervised run-off firms*), *FEES 7C* (The DA levy) and *FEES 7D* (The TPR DA levy) are stated net of VAT. Where VAT is applicable this must also be included.

...

4A Temporary Permissions Regime (TPR) and Financial Service Contracts Regime (FSCR) – periodic fees

4A.1 Introduction

...

Purpose

4A.1.2 G The purpose of this chapter is to set out the requirements on *TP persons* to pay periodic fees. For the avoidance of doubt, the definition of *TP persons* includes *supervised run-off firms* but not *CRO firms*. *FEES 4A.2.1R* and *FEES 4A Annex 4R* apply to *CRO firms* only.

4A.1.3 G The detail of the special project fees payable by certain *TP persons* and *CRO firms* is set out in *FEES 4A Annex 3R* and *FEES 4A Annex 4R* respectively.

4A.2 Obligation to pay periodic fees

4A.2.1 R ...

A TP person or a CRO firm must pay any special project fees applicable to it under *FEES 4A Annex 3R* or *FEES 4A Annex 4R* respectively.

...

Periodic fees commencement

4A.2.9 R Periodic fees payable by *TP persons* under *FEES 4A.2.1R* relate to the whole of any fee year and are due for payment from the commencement of the fee year unless the modification in *FEES 4A.2.9AR* applies. Any payment made under *FEES 4A.2.1R* is not refundable.

4A.2.9A R Where a *CRO firm* becomes a *supervised run-off firm*, the periodic fee payable under *FEES 4A.2.1R* will be pro-rated over the remaining number of calendar months of the fee year that it is a *supervised run-off firm*.

...

FEES 4 rules incorporated into FEES 4A by cross-reference

4A.2.11 G The *FCA Handbook* provisions relating to the periodic fees for *TP persons* including *supervised run-off firms* in *FEES 4A* are meant to follow closely the provisions relating to the general provisions under *FEES 4*. For brevity, not all of the provisions in *FEES 4* are set out again in *FEES 4A*. In some cases, certain *FEES 4* rules are applied to the payment of the periodic fees for *TP persons* by individual rules in *FEES 4A*. The rest are set out in the table in *FEES 4A.2.13R*.

...

After *FEES 4A Annex 3R* insert the following new Annex. The text is not underlined.

4A Annex Special Project Fee for contractual run-off firms

4

R	(1)		The Special Project Fee for contractual run-off firms (the SPFCRO) is only payable by a <i>CRO firm</i> .
R	(2)		The SPFCRO is payable to recover the cost of the activities the <i>FCA</i> undertakes to carry out its functions under regulation 47 of the <i>EU Exit Passport Regulations</i> .
R	(3)		The <i>FCA</i> will levy its own SPFCRO separate to any levy issued by the <i>PRA</i> , and this may be in relation to the same event or circumstance.
R	(4)		No SPFCRO is payable to the <i>FCA</i> if the amount calculated in accordance with (5) in relation to the activities carried out by the <i>FCA</i> totals less than £5,000.
R	(5)		The SPFCRO for the <i>FCA</i> is calculated as follows:
		(a)	Determine the number of hours, or part of an hour, taken by the <i>FCA</i> in relation to the activities undertaken as a consequence of carrying out its functions referred to in (2).
		(b)	Next, multiply the applicable rate in the table at (7) by the number of hours or part hours obtained under (a).
		(c)	Then add any fees and disbursements invoiced to the <i>FCA</i> by any <i>person</i> in respect of services performed by that <i>person</i> for the <i>FCA</i> in relation to assisting the <i>FCA</i> in performing the activities referred to in (a).
		(d)	The resulting figure is the fee.
		(e)	The number of hours or part hours referred to in (a) are the number of hours or part hours as recorded on the <i>FCA</i> 's systems in relation to the activities referred to in (a).
R	(6)		The first column in the table at (7) sets out the relevant pay grades of those employed by the <i>FCA</i> and the second column sets out the hourly rates chargeable in respect of those pay grades.

R	(7)	Table of <i>FCA</i> hourly rates:	
		FCA pay grade	Hourly rate (£)
		Administrator	45
		Associate	75
		Technical Specialist	130
		Manager	145
		Any other person employed by the <i>FCA</i>	255
G	(8)	The obligation to pay the SPFCRO is ongoing. Accordingly, there is no limitation on the number of times that the <i>FCA</i> may invoice a <i>CRO firm</i> for the SPFCRO in relation to the same activities or circumstances referred to in (2). If the <i>FCA</i> does so, there is a single floor under (4) and not a separate one for each instalment.	
G	(9)	If the SPFCRO is payable, the full amount calculated under (5) is payable, and not just the excess over £5,000.	

7B Temporary Permissions Regime (TPR) and Financial Service Contracts Regime (FSCR) - Single Financial Guidance Body levy

7B.1 Application and purpose

...

Purpose

7B.1.3 G The purpose of this chapter is to set out the requirements on the *persons* listed in *FEES* 7B.1.1R to fund the Secretary of State costs relating to the *SFGB*, and the related *FCA* collection costs. For the avoidance of doubt, such *persons* also include *supervised run-off firms*.

...

7B.1.5 G ...

- (2) expenses incurred by the *FCA* in connection with its functions under section 137SA of the *Act*.

Regulations 28 and 34 of the *EU Exit Passport Regulations* provide that *supervised run-off firms* are treated as having *Part 4A permission* or a *variation* to that *permission*.

...

7D Temporary Permissions Regime (TPR) and Financial Service Contracts Regime (FSCR) – Devolved Authorities levy

7D.1 Application and purpose

...

Purpose

- 7D.1.2 G The purpose of this chapter is to set out the requirements on the *persons* listed in *FEES 7D.1.1R* to fund the Treasury's costs relating to the provision of debt advice by the *Devolved Authorities*, and the related *FCA* collection costs. For the avoidance of doubt, such *persons* also include *supervised run-off firms*.

...

7D.1.4 G ...

- (2) Sections 137SB(2) and (3) of the *Act* requires the *FCA* to make rules requiring *authorised persons*, *electronic money issuers* or *payment service providers* to pay specified sums, or sums calculated in a specified way to the *FCA* with a view to recovering:

- (a) the amount notified by the Treasury; and
- (b) expenses incurred by the *FCA* in connection with its functions under section 137SB of the *Act*.

Regulations 28 and 34 of the *EU Exit Passport Regulations* provide that *supervised run-off firms* are treated as having *Part 4A permission* or a *variation* to the *permission*.

...

13A Temporary Permissions Regime (TPR) and Financial Service Contracts Regime (FSCR) – Illegal money lending levy

13A.1 Application and purpose

...

Purpose

13A.1.2 R The purpose of this chapter is to set out the requirements on the *persons* listed in FEES 13A.1.1R to ~~pay the annual TPR IML levy to~~ fund the costs of taking action against illegal money lending. For the avoidance of doubt, such *persons* also include *supervised run-off firms*.

...

13A.1.4 G Section 333T of the *Act* (Funding of action against illegal money lending) requires the Treasury to notify the *FCA* of the amount of the Treasury’s illegal money lending costs. The *FCA* must make *rules* requiring *authorised persons*, or any specified class of authorised persons, to pay to the *FCA* the specified amounts or amounts calculated in a specified way, with a view to recovering the amounts notified to it by the Treasury.

Regulations 28 and 34 of the *EU Exit Passport Regulations* provide that *supervised run-off firms* are treated as having *Part 4A permission* or a *variation to the permission*.

Part 2: comes into force on 1 April 2019

[*Editor’s Note*: this Part takes into account the changes made by FCA 2018/22, which come into effect 1 April 2019. It also takes into account the changes proposed in CP18/36 ‘Brexit: Proposed changes to the Handbook and Binding Technical Standards – Second Consultation’ (November 2018) as if they were made.]

6 Annex Financial Services Compensation Scheme – classes 3AR

This table belongs to FEES 6.4.7AR and FEES 6.5.6AR

...	
Class 3	Investment Provision Claims
Firms with permission for:	any of the following:
	<i>managing investments;</i>
	<i>managing an AIF;</i>
	<i>managing a <u>UK</u> UCITS;</i>
	<i>acting as trustee or depositary of an AIF;</i>

	<i>acting as trustee or depositary of a UK UCITS;</i>
	<i>establishing, operating or winding up a collective investment scheme;</i>
	<i>establishing, operating or winding up a stakeholder pension scheme;</i>
	<i>establishing, operating or winding up a personal pension scheme;</i>
	<i>agreeing to carry on a regulated activity which is within any of the above.</i>
...	

TP 23 **Transitional provisions relating to FSCS levy arrangements from 1 April 2019**

<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(5)</u>	<u>(6)</u>
	<u>Material to which the transitional provision applies</u>		<u>Transitional Provision</u>	<u>Transitional provision: dates in force</u>	<u>Handbook Provisions coming into force</u>
23.1	The changes made to <i>FEES 6</i> by the <u>Exiting the European Union: Financial Services Contracts Instrument 2019</u>	R	The changes in (2) apply to any levy made after 1 April 2019. This is so even if: (1) the <i>claim against the relevant person or successor in default</i> arose or relates to <u>circumstances arising before that date; or</u> (2) the <i>relevant person or successor was in default</i> before that date.	From 1 April 2019, indefinitely	1 April 2019

Annex D

Amendments to the Compensation Sourcebook (COMP)

[*Editor's Note*: this Annex takes into account the changes made by FCA 2018/22, which come into effect 1 April 2019. It also takes into account the changes proposed in CP18/36, 'Brexit: Proposed changes to the Handbook and Binding Technical Standards – Second Consultation' (November 2018) as if they were made.]

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

5.5 Protected investment business

...

Territorial scope condition

5.5.2 R The territorial scope condition is that the *protected investment business* was carried on from:

(1) an establishment of the *relevant person* in the *United Kingdom*; ~~or~~

...

(6) an establishment in an EEA State of the relevant person, if it is a TP firm (other than a supervised run-off firm) that is:

(a) managing a UK UCITS; or

(b) managing an AIF that is an authorised fund.

...

6.2 Who is a relevant person?

...

6.2.4 G A *TP firm* that under section 213(9A) ~~or section 213(9A)~~ [bis] of the *Act* is not to be regarded as a *relevant person* is not a *participant firm*. For the purposes of the *FCA's* compensation *rules*, this means that most (but not all) *TP firms* operating in the *UK* without an *establishment* are not *participant firms*.

...

TP 1 Transitional Provisions

TP 1.1 Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions coming into force
...					
48	<u>Amendments introduced to COMP by the Exiting the European Union: Financial Services Contracts Instrument 201[X]</u>	R	<p>The amendments referred to in column (2) do not apply:</p> <p>(1) in relation to a <u>claim against a TP firm, or against a successor of a TP firm, that was in default before exit day; or</u></p> <p>(2) to any acts or omissions before <u>exit day that give rise to a claim against a TP firm, or against a successor of a TP firm, after exit day;</u></p> <p>but nothing in limb (2) of this rule shall <u>limit the ability of the FSCS to pay compensation in respect of a claim against a TP or a successor of a TP, where it is a relevant person for a reason other than because it is a TP firm.</u></p>	From <u>exit day, indefinitely</u>	<u>exit day</u>

