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FCA publishes PS17/12: Implementing information prompts in the annuity market

On 26 May 2017, the Financial Conduct Authority (FCA) published a policy statement, [PS17/12](#), which sets out its response to the feedback received to its November 2016 consultation paper, [CP16/37](#), on

implementing information prompts in the annuity market. The policy statement also sets out the FCA's final rules, the Conduct of Business Sourcebook (Pension Annuity Comparator) Instrument 2017, [FCA 2017/30](#), which require firms to inform consumers, by providing an information prompt, how much they could gain from shopping around and switching provider, before they buy an annuity.

The FCA received 28 responses to its consultation paper and says that, in general, respondents were supportive of the principle of the information prompt but had concerns about specific aspects of the FCA's proposals.

Based on feedback, the FCA has made the following changes to the final rules compared to those consulted upon:

- requiring the inclusion of a clear and prominent warning about enhanced annuities;
- requiring that firms engaging with consumers over the telephone will only have to provide the information prompt in relation to the specific guaranteed quote that a consumer has indicated they would like to proceed with; and
- requiring firms to implement by 1 March 2018.

Further detail is set out in chapter 2 of the policy statement.

Firms affected by these changes will need to ensure compliance from 1 March 2018.

FCA publishes GC17/5: Proposed guidance on the FCA's approach to the review of Part VII insurance business transfers

On 15 May 2017, the FCA published a guidance consultation, [GC17/5](#), on its approach to reviewing insurance business transfers schemes under Part VII of the Financial Services and Markets Act 2000 (FSMA) (Part VII transfers).

While the Prudential Regulation Authority (PRA) leads the Part VII process (particularly for specific regulatory functions such as providing certificates), the FCA also has an active role. In particular, under section 110 of FSMA, the FCA has a right to be heard on applications to sanction a Part VII transfer.

The FCA says the guidance will be of interest to:

- applicants and their professional advisors;
- independent experts (IEs) usually appointed by the applicants to report to the Court on the terms of the scheme.

The FCA says that the guidance does not aim to explain all aspects of its role in the process or all of the issues that firms may need to consider as there are many variations within each transfer. Additionally, it will not always insist that the approach set out in this guidance is the approach that must be used for a particular transfer. However, it expects firms proposing a Part VII transfer to explain why they are diverging from this guidance, where this is relevant to a particular Part VII transfer.

The guidance is designed to help with both the process and consideration of a Part VII transfer and the information in the guidance is split into the following sections:

- chapter 2 sets out some considerations for firms before contacting the FCA and what they will need to produce for any pre-application meeting;
- chapter 3 details the documents the FCA expects to receive and consider about the nomination and approval of the IE;
- chapter 4 sets out the FCA's overall approach, expectations and key considerations when reviewing the proposed transfer;

- chapters 5 to 7 include detailed information and examples for the key documentation: the scheme documents, the IE report and communications;
- chapter 8 sets out examples and factors for applicants to consider if firms proposing a Part VII transfer intend to make any applications for dispensations from the requirements in the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001.

The FCA says that one particular aim of the guidance is to provide some examples of the types of comments that it has made or is likely to make to applicants and IEs about their submissions on proposed Part VII transfers. The FCA hopes that this will help applicants draft their proposals in ways that minimise challenge from it and lead to a more efficient review process.

The FCA expects firms to read the guidance together with its guidance in chapter 18 of the Supervision manual in the FCA Handbook. It also recommends that applicants read the PRA's April 2015 [statement of policy](#) on its approach to insurance business transfers.

Comments are requested by 15 August 2017. The FCA intends to issue finalised guidance in autumn 2017.

FCA publishes revised lists of retail products within and outside the PRIIPs definition

On 12 May 2017, the FCA updated its [webpage](#) on packaged retail and insurance-based investment products (PRIIPs) disclosure: key information documents with revised lists of the retail products that it considers fall within the definition of a PRIIP for the purposes of the PRIIPs Regulation and those retail products that it considers do not fall within the PRIIPs definition.

The updated webpage also gives the information that the FCA will consult on its approach to personalised projections during the second half of 2017.

PRA publishes PRA PS12/17: Strengthening individual accountability in banking and insurance: amendments and optimisations

On 12 May 2017, the PRA published a policy statement, [PS12/17](#), which provides feedback to responses to its September 2016 consultation paper, [CP34/16](#), on strengthening individual accountability in banking and insurance: amendments and optimisations.

The PRA received 16 responses to CP34/16:

- chapter 2 of the policy statement summarises feedback on the proposals for implementing the amendments to the senior managers and certification regime (SM&CR) and the senior insurance managers regime (SIMR) made by the Bank of England and Financial Services Act 2016 and the PRA's final policy;
- chapter 3 summarises feedback on the proposed optimisations to the SM&CR and the PRA's final policy;
- chapter 4 summarises feedback on the PRA's proposed optimisations to SIMR and the PRA's final policy;
- chapter 5 sets out the various timelines for implementing the rules and expectations in the policy statement.

The policy statement also provides:

- the final rules amending the SIMR: the PRA Rulebook: Solvency II Firms, Non Solvency II Firms: Senior Insurance Managers Regime Amendment Instrument 2017, [PRA 2017/23](#). Annexes A, C, G and J of this instrument come into force on 3 July 2017 and the remaining annexes come into force on 12 September 2017 (appendix 2);

- updates to Supervisory Statement (SS) [SS28/15](#) on strengthening individual accountability in banking' (appendix 3) and [SS35/15](#) on strengthening individual accountability in insurance (appendix 4);
- updates to the PRA's [statement of policy](#) on conditions, time limits and variations of approval (appendix 5); and
- final versions of [long form A](#), [short form A](#), [form E](#), [Solvency II firms - scope of responsibilities](#) and [large non-Directive firms - scope of responsibilities](#) with some slight modifications, to be used for applications from 12 September 2017 (appendix 6).

FCA publishes PS17/8: Applying conduct rules to all non-executive directors in the banking and insurance sectors

On 3 May 2017, the FCA published a policy statement, [PS17/8](#), which introduces final rules to extend its conduct rules in the Code of Conduct sourcebook (COCON) to standard non-executive directors (NEDs) in banks, building societies, credit unions and dual-regulated investment firms and insurance firms. The FCA says that applying COCON to standard NEDs will help raise standards of conduct and reduce the risk of future misconduct and mis-selling in firms. The FCA consulted on the rules in its September 2016 consultation paper [CP16/27](#).

Standard NEDs' are defined in in the FCA Handbook as those NEDs who do not hold senior management functions and, therefore, are not subject to regulatory pre-approval under:

- the senior managers & certification regime (SM&CR) for the banking sector;
- the Prudential Regulation Authority's (PRA) senior insurance managers regime;
- the FCA's revised approved persons regime for insurance firms.

The PRA refers to standard NEDs in banks and insurers as "notified NEDs" as they are subject to notification requirements under PRA rules.

The FCA received 14 responses to CP 16/27, all supportive of its proposals except for one. The feedback the FCA received, which is summarised in chapter 2 of the policy statement, focused on three main areas:

- some respondents noted that the different terminology used by the FCA (standard NEDs) and PRA (notified NEDs) is potentially confusing;
- some respondents asked for clarity on COCON breach reporting, as NEDs may not be employees of the firm;
- some respondents noted that the different FCA and PRA rules on timeframes for reporting requirements for COCON breaches by standard NEDs in banks could create confusion: the FCA consulted on annual notifications, while the PRA consulted on notifications within 7 business days of the relevant internal disciplinary action.

The final rules are contained in the Individual Conduct Rules (Non-Executive Directors) Instrument 2017, [FCA 2017/23](#), which comes into force on 3 July 2017. The instrument also amends Form H (the notification form for conduct rule breaches and disciplinary action).

Firms that are affected by these changes will need to:

- ensure that standard NEDs receive appropriate training on COCON and how it applies to them;
- report to the FCA any breaches of COCON by standard NEDs resulting in disciplinary action, using Form H6 (it should be noted that this requirement only applies to banks at this stage). For the first reporting period, the notification must cover breaches occurring between 3 July 2017 and the last day of August 2017. This must be submitted to the FCA within two months

of the end of the reporting period. As clarified in CP16/27, insurers will still be subject to reporting requirements in SUP 15.3.11R(1) and must notify the FCA in line with SUP 15.7.

In the policy statement the FCA also says that it will publish:

- a consultation paper on the extension of the individual accountability regime to solo-regulated firms. This will include some changes that will impact all firms subject to the SM&CR, including banks;
- a consultation paper on the extension of the individual accountability regime to insurance firms, which will also include proposals on reporting requirements for breaches of COCON under section 64C of the Financial Services and Markets Act 2000.

ABI announces interim phase of the pensions dashboard project

On 17 May 2017, the Association of British Insurers (ABI) [announced](#) that it will establish and lead an interim phase of the pensions dashboard project.

The project to develop a prototype, which the ABI has managed on behalf of HM Treasury, comes to a close at the end of May 2017 and the General Election means there will be a pause before the Government can resume its role in developing the service.

The ABI says that while there has been good progress on the technology for dashboards, there is still a lot to do. There is a need to understand consumer needs in detail, the costs and benefits for all parts of the industry, and to further develop data standards for how a future service would be delivered. All of the firms currently contributing to the project have unanimously agreed to start fresh work on these issues.

The Government's objective is for the service to be available to consumers by 2019, and for it to be offered by a range of different organisations rather than by a single, central service.

The interim phase of the project will have four main aims:

- to establish a cost benefit analysis for the wider industry;
- to research customer needs and establish what features people are likely to find most useful in a dashboard;
- to establish the requirements and costs for a secure end-to-end service between data providers and data consumers;
- to further develop the technical data standards for all firms and work with the Pensions Administration Standards Association on agreeing a code of conduct in line with requirements from the Pensions Regulator.

FCA publishes PS17/6: Disclosure rules following application of PRIIPs Regulation

On 2 May 2017, the FCA published a policy statement, [PS17/6](#), which summarises and responds to the feedback to its July 2016 consultation paper, [CP16/18](#), which set out how it proposed to reflect the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation in the FCA Handbook.

The policy statement sets out how the FCA's disclosure requirements will change to reflect the introduction of the PRIIPs key information document (KID), and sets out final rules and guidance in the Packaged Retail and Insurance-based Investment Products Regulation Instrument 2017, [FCA 2017/28](#). The FCA says that, given the delayed application of the PRIIPs Regulation, these rules will apply from 1 January 2018, the same day on which the PRIIPs Regulation is expected to take effect.

The FCA says that many respondents to the consultation paper wanted to establish what the scope and practical impact of the PRIIPs Regulation will be for them and asked for further guidance or comment. A small number of respondents considered some of the FCA's proposed Handbook guidance superfluous and the FCA accepts that some firms may consider certain guidance on PRIIPs unnecessary. However, other firms were supportive. On reflection, therefore, the FCA has decided that in addition to providing some clarification in the policy statement on the scope of the regulation, it will publish the Handbook guidance consulted on in the consultation paper with only a few amendments.

The key points made by respondents to the consultation paper were as follows:

- most respondents agreed with the proposals to amend or delete disclosure requirements in the FCA Handbook that would duplicate or conflict with the requirement to draw up and provide a PRIIPs KID;
- most respondents agreed that firms may need to prepare and provide additional disclosure material to supplement the information in the KID, and supported the guidance the FCA proposed in relation to this, for example, information required by the Solvency II Directive may need to be given separately to the KID. Further, if advice, consultancy or distribution costs apply and are not reflected in the KID, then persons advising on, or selling, the PRIIP will need to provide information detailing such costs, so the retail investor can understand the cumulative effect that these aggregate costs have on the return of the investment;
- most respondents agreed that firms should be able to, but not be required to, provide post-contractual documents in relation to PRIIPs. If provided, this disclosure would be in addition to the standalone KIDs that will need to be provided pre-sale.

Annex 2 to the policy statement contains an updated list of products that the FCA considers to be PRIIPs or non-PRIIPs. The FCA had published preliminary lists of products in the consultation paper and following consideration of points raised by respondents and some further analysis, it has amended these lists slightly. The FCA says that its comments in the policy statement may be amended or clarified further following any clarification from the European Commission and/or the European Supervisory Authorities that may be provided during 2017.

Firms will need to comply with the directly applicable PRIIPs Regulation and any revised disclosure rules in the FCA Handbook from 1 January 2018.

The FCA says that it recognises that some firms will experience operational difficulties and legal uncertainty, and it has been asked to provide clarity. So, although there are risks involved in giving its views on certain issues now, in the policy statement the FCA considers it appropriate to provide firms with as much clarity as it can on its views on the scope of the PRIIPs Regulation. It will also consider updating its November 2016 [information document](#) or providing other comment if necessary.

During 2017 the FCA plans to consult separately on changes to the Enforcement Guide and Decision Procedure and Penalties manual (DEPP). This consultation will set out the FCA's enforcement approach in relation to investigations under the PRIIPs Regulation, including how it intends to exercise its powers against unauthorised firms alleged to have breached the PRIIPs Regulation. The FCA also plans to consult on amending DEPP to set out the decision-making procedure relating to decisions made under the PRIIPs Regulation.

INTERNATIONAL

Commission Delegated Regulation on RTS on KIDs for PRIIPs: corrigendum published in the Official Journal

On 11 May 2017, a [corrigendum](#) to the text of [Commission Delegated Regulation \(EU\) 2017/653](#) of 8 March 2017 was published in the Official Journal of the European Union.

The Delegated Regulation supplements the Regulation on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards (RTS) with regard to the presentation, content, review and revision of KIDs and the conditions for fulfilling the requirement to provide such documents.

The corrigendum amends certain formula that appear in Annex II and Annex IV to the Delegated Regulation.

SOLVENCY II

EIOPA publishes final report on the methodology to derive the ultimate final rate

On 23 May 2017, the European Insurance and Occupational Pensions Authority (EIOPA) published its [final report](#) on the methodology to derive the ultimate forward rate (UFR) under the Solvency II Directive.

EIOPA [consulted](#) on the methodology in April 2016 and section 2 of the final report includes a summary of the main comments received and EIOPA's resolution of these comments.

As a result of the consultation, EIOPA has made the following changes to the consultation proposal:

- the limit to annual changes of the UFR is lowered from 20 to 15 basis points, so that the UFR will change more gradually;
- in order to significantly reduce the frequency of UFR changes, the UFR will only be changed when the difference between the calculated UFR and the currently applicable UFR exceeds 15 basis points;
- the average for calculating the real rate component of the UFR will be a simple average instead of a weighted average that puts more weight on recent observations. Also this change will make the UFR move more gradually;
- the first application of the UFR methodology is set to the beginning of 2018 instead of mid-2017 in order to provide insurance and reinsurance undertakings with more time for their preparations;
- the start of the time series for the derivation of the expected real rate is put to 1961 instead of 1960. This change allows the use of consistent data for the derivation.

Section 3 of the report contains the final methodology to derive the UFR and how it will be implemented. Section 4 contains the results of an information request to undertakings on the UFR and the annex contains a resolution table with all stakeholder comments.

EIOPA has also published an [example calculation of the expected real rate](#) and an [updated version](#) of the report setting out the methodology to derive the UFR.

Commission Implementing Regulation laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2017 published in the Official Journal

On 18 May 2017, the [text](#) of Commission Implementing Regulation (EU) 2017/812 of 15 May 2017 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2017 in accordance with the Solvency II Directive was published in the Official Journal of the European Union.

The Implementing Regulation entered into force on the day following that of its publication in the Official Journal. It applies from 31 March 2017.

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