

## **P362 DRAFT ALTERNATIVE LEGAL TEXT**

### **SECTION B: THE PANEL (V24.0)**

#### **3. POWERS AND FUNCTIONS OF PANEL, ETC**

##### **3.1 General**

*Amend paragraph 3.1.2 to read as follows:*

3.1.2 Without prejudice to paragraph 3.1.1, the powers, functions and responsibilities of the Panel shall include the following:

- (a) deciding (subject to a reference to or approval of the Authority, as provided in the Code) on the expulsion or suspension of the rights of any Party pursuant to and in accordance with Section H3.2;
- (b) implementing or supervising the implementation of the procedures for modification of the Code in Section F;
- (c) establishing arrangements for the resolution of Trading Disputes in accordance with Section W;
- (d) determining values for parameters (to be applied in the Code) as may be required of the Panel in accordance with any provision of the Code;
- (e) adopting and from time to time revising Code Subsidiary Documents in accordance with Section F3;
- (f) taking steps to ensure that the Code is given effect in accordance with its terms, and (but only where expressly so provided in the Code) taking steps to ensure compliance by Parties with the provisions of the Code;
- (g) providing or arranging for the provision of reports and other information to the Authority in accordance with the further provisions of the Code;
- (h) not used;
- (i) deciding matters which (pursuant to any provision of the Code providing for such referral) are referred to it following any decision or determination of BSCCo or a BSC Agent;
- (j) setting the terms of reference for the BSC Auditor under Section H5 and considering the BSC Audit Report;
- (k) if requested by the Authority, conveying any direction or request of the Authority to any Party, BSCCo, the BSC Auditor or any BSC Agent;
- (l) preparing, considering, recommending changes (if necessary) and approving documents relating to performance assurance in accordance with Section Z and hearing and determining any Risk Management Determination Appeals;
- (m) approving or rejecting applications for transfer of a Party's Accession Agreement and BSC Party ID in accordance with Section A; and

(n) implementing or supervising the implementation of the procedures for BSC Sandbox Applications and monitoring BSC Derogations in accordance with Section H10.

## SECTION H: GENERAL (V20.0)

*Insert new paragraph 10 to read as follows:*

### **10. BSC SANDBOX**

#### **10.1 BSC Derogations**

10.1.1 The Authority may, in accordance with this paragraph 10, grant any person, other than a BSC Company, a derogation from one or more provisions of the Code in which case paragraph 10.4 shall apply (a "BSC Derogation").

#### **10.2 Applications for a BSC Derogation**

10.2.1 Any person other than a BSC Company may make a written request for a BSC Derogation to the Authority pursuant to the Authority's regulatory sandbox procedures as set by the Authority from time to time and the Authority shall determine whether to pass such request to BSCCo for consideration (a "BSC Sandbox Application").

10.2.2 Notwithstanding any other provision of this paragraph 10, the Panel may determine, in its absolute discretion, the priority and the timetable for any steps proposed to be undertaken by the Panel or BSCCo in relation to a BSC Sandbox Application.

10.2.3 Without prejudice to the generality of the foregoing, BSCCo shall not be required to conduct an evaluation of a proposed BSC Derogation or submit a draft Sandbox Report to the Panel until a Sandbox Applicant has:

- (a) provided all of the information that BSCCo reasonably requires in order to conduct such evaluation and prepare such report; and
- (b) paid to BSCCo a fee which represents the reasonable costs to BSCCo of processing the BSC Sandbox Application, such fee to be approved by the Panel from time to time.

10.2.4 Following receipt of a BSC Sandbox Application, but subject to paragraph 10.2.3, BSCCo shall:

- (a) evaluate the risks and impacts of the proposed BSC Derogation in accordance with the BSC Sandbox Procedure;
- (b) conduct consultation(s) with:
  - (i) Parties; and
  - (ii) such interested third parties as it considers necessary;
- (c) publish the responses to such consultation(s) on the BSC Website;
- (d) prepare a draft report for the Panel which shall include:
  - (i) a summary of the representations received during the consultation(s) conducted pursuant to paragraph 10.2.4(b);
  - (ii) assessment of whether a proposed BSC Derogation meets the BSC Sandbox Eligibility Criteria;

- (iii) analysis identifying the provisions of the Code (and for the purposes of this paragraph 10 a reference to the Code shall be deemed to include a reference to each Code Subsidiary Document) from which a BSC Derogation may be required;
- (iv) the Trial Period proposed by the Sandbox Applicant, which shall be the shortest period the Sandbox Applicant considers necessary to test the Sandbox Applicant's proposal;
- (v) the Trial Period that BSCCo considers is the shortest period necessary to test the Sandbox Applicant's proposal;
- (vi) the Transition Plan proposed by the Sandbox Applicant, including the Transition Period proposed by the Sandbox Applicant, which shall be the shortest period the Sandbox Applicant considers necessary to allow the Sandbox Applicant to exit from the proposed BSC Derogation;
- (vii) the Transition Period that BSCCo considers is the shortest period necessary to allow the Sandbox Applicant to exit from the proposed BSC Derogation;
- (viii) BSCCo's evaluation of the risks and impacts of the proposed BSC Derogation, pursuant to paragraph (a);
- (ix) the fees which BSCCo considers represent the reasonable costs to BSCCo of monitoring and administering such BSC Derogation;
- (x) the reports that BSCCo considers should be provided to BSCCo by the Sandbox Applicant; and
- (xi) such other matters as shall be required by the BSC Sandbox Procedure,

(the "Sandbox Report").

10.2.5 The Panel shall consider the draft Sandbox Report and, having taken due account of any representation contained in the summary referred to in paragraph 10.2.4(d)(i), shall determine:

- (a) whether to recommend to the Authority:
  - (i) that the BSC Sandbox Application should be granted or rejected;
  - (ii) what, if any, conditions should be set on such proposed BSC Derogation; and
  - (iii) that the Trial Period and the Transition Plan should be approved; or
- (b) whether to require amendments to:
  - (i) the draft Sandbox Report; and/or
  - (ii) the proposed Trial Period and/or Transition Plan,

in which case the Panel shall determine the timetable for making such amendments and specify its further requirements, BSCCo shall amend and

resubmit the draft Sandbox Report and the Panel shall reconsider the draft Sandbox Report in accordance with paragraphs 10.2.4 and 10.2.5(a).

10.2.6 When considering whether to recommend to the Authority that a BSC Derogation be granted pursuant to paragraph 10.2.5, the Panel shall determine whether such proposed BSC Derogation would:

(a) better facilitate the achievement of the Applicable BSC Objectives (provided that the powers, function and duties of the Panel in respect of the Modification Procedures shall not be fettered or restricted notwithstanding a determination of the Panel in respect of the BSC Sandbox Eligibility Criteria); and

(b) meet the eligibility criteria set out in the BSC Sandbox Procedure,

collectively the ("BSC Sandbox Eligibility Criteria").

10.2.7 Within 7 Business Days after the Panel meeting at which the draft Sandbox Report has been approved, BSCCo shall finalise the draft Sandbox Report and shall forthwith:

(a) submit such Sandbox Report to the Authority; and

(b) copy such report to:

(i) each Party and interested third party;

(ii) each Panel Member; and

(iii) the Sandbox Applicant.

10.2.8 If, at any time prior to the Derogation Period Commencement Date, the Panel is notified by the Authority that the Sandbox Applicant intends to withdraw its BSC Sandbox Application, the application shall lapse, and, in respect of the BSC Sandbox Application:

(a) no BSC Derogation shall commence; and

(b) no fee paid by the Sandbox Applicant shall be refunded to the Sandbox Applicant for any reason.

10.2.9 The Panel shall establish, and may revise from time to time, a document containing the processes that the BSC Panel, BSCCo and Sandbox Applicants shall follow with respect to BSC Sandbox Applications and the monitoring of BSC Derogations (the "BSC Sandbox Procedure"). BSCCo shall ensure that a copy of the BSC Sandbox Procedure (as revised from time to time) is published on the BSC Website.

### **10.3 Sandbox Send Back Process**

10.3.1 Where the Authority considers that it is unable to form an opinion in relation to a Sandbox Report submitted to it pursuant to paragraph 10.2.7, it may issue a direction to the Panel:

(a) specifying any additional steps that it requires in order to form such an opinion including amending the proposed conditions on the proposed BSC Derogation, revising the proposed Trial Period or Transition Plan, or providing additional analysis and/or information; and

(b) requiring such Sandbox Report to be revised and re-submitted to the Authority,

and the Authority may include in such direction its reasons for why it has been unable to form an opinion (a "Sandbox Send Back Direction").

10.3.2 The Panel shall re-submit the revised Sandbox Report as soon after the Authority's direction pursuant to paragraph 10.3.1 as is appropriate, taking into account the complexity, importance and urgency of the proposed BSC Derogation.

10.3.3 Subject to paragraph 10.3.4, in relation to each Sandbox Send Back Direction BSCCo shall prepare a draft Sandbox Send Back Process for approval by the Panel which:

- (a) shall include a procedure and timetable for the reconsideration by the Panel of its recommendation and the re-submission of the revised Sandbox Report to the Authority; and
- (b) may include such further matters as the Panel considers necessary to address the Sandbox Send Back Direction including:
  - (i) further consultation with Parties and interested third parties;
  - (ii) revised or additional analysis and/or information;
  - (iii) amending the proposed conditions on the proposed BSC Derogation;
  - (iv) revising the proposed Trial Period or Transition Plan; and
  - (v) any other steps required by the Panel to address the Sandbox Send Back Direction.

10.3.4 Where the requirements specified in the Sandbox Send Back Direction are of a minor nature such that it would be more appropriate for BSCCo to address the matters contained therein without preparing a draft Sandbox Send Back Process then:

- (a) BSCCo may take such steps as are necessary to address the requirements of that Sandbox Send Back Direction; and
- (b) the provisions of paragraphs 10.3.6(b), 10.3.6(c), 10.3.7 and 10.3.8 shall apply thereto provided that if the Panel does not approve the revised draft Sandbox Report then it may require BSCCo to prepare a draft Sandbox Send Back Process in accordance with paragraph 10.3.3.

10.3.5 The Panel shall consider the draft Sandbox Send Back Process and, having considered any comments made or received by the representative of the Authority, shall determine whether to approve the draft Sandbox Send Back Process or to instruct BSCCo to make such changes to the draft Sandbox Send Back Process as may be specified by the Panel.

10.3.6 Following approval by the Panel of the Sandbox Send Back Process:

- (a) BSCCo shall perform the additional steps set out in the Sandbox Send Back Process;
- (b) BSCCo shall:
  - (i) notify the Sandbox Applicant that the Authority has issued a Send Back Direction;
  - (ii) revise the Sandbox Report;

(iii) re-submit that Sandbox Report to the Panel; and

(iv) take any further steps in relation to the Sandbox Report as are set out in this paragraph 10.3 and the Sandbox Send Back Process; and

(c) the Panel shall consider the revised Sandbox Report in accordance with paragraph 10.3.7,

in each case in accordance with the procedure(s) and timetable set out in the Sandbox Send Back Process.

10.3.7 The Panel shall consider the revised Sandbox Report and determine:

(a) whether to revise the recommendation it made to the Authority pursuant to paragraph 10.2.5;

(b) whether to approve the revised Sandbox Report or to instruct BSCCo make such further changes to the revised report as may be specified by the Panel;

(c) (if applicable) whether to approve any revised proposed conditions on the proposed BSC Derogation; and/or

(d) (if applicable) whether to approve any revised proposed Trial Period or Transition Plan.

10.3.8 After the Panel has considered the revised Sandbox Report, BSCCo shall:

(a) finalise the revised Sandbox Report which shall, for the purposes of the Code, be deemed to be the Sandbox Report as from the date of the Panel's determination pursuant to paragraph 10.3.7; and

(b) submit such Sandbox Report to the Authority; and

(c) copy such report to:

(i) each Party and interested third party;

(ii) each Panel Member; and

(iii) the Sandbox Applicant.

#### **10.4 Impact of BSC Derogation**

10.4.1 Subject to paragraph 10.2.8, any BSC Sandbox Application (including the associated Trial Period and Transition Plan) that has been approved by the Authority shall be a BSC Derogation and, subject to paragraph 10.7.7, such BSC Derogation shall remain in force for the relevant Trial Period together with any relevant Transition Period relating to such Derogation (the "**Derogation Period**").

10.4.2 Subject to paragraph 10.4.3, for the duration of the Derogation Period:

(a) each Derogation Party shall be relieved of their obligation to comply with the Code to the extent permitted by a BSC Derogation; and

(b) no act or omission by a Derogation Party that would be a breach or Default of the Code shall be deemed to be a breach or Default to the extent only that such act or omission is permitted by a BSC Derogation.

#### 10.4.3 In respect of each BSC Derogation:

- (a) a Derogation Party shall be required to comply with all provisions of the Code that are relevant to such Party and which are outside the scope of such BSC Derogation;
- (b) a Derogation Party shall be required to comply with any conditions included in such BSC Derogation;
- (c) BSCCo may charge, and a Derogation Party shall pay to BSCCo such fees as published in the BSC Sandbox Report;
- (d) such BSC Derogation shall have no effect to the extent that it purports to derogate from:
  - (i) any Licence conditions;
  - (ii) any other Industry Code (but without prejudice to any other regulatory sandbox arrangements);
  - (iii) any Legal Requirement (including, for the avoidance of doubt, any Relevant European Legal Requirement);
  - (iv) any provision of the Code identified in Section F1.1.9; or
  - (v) any provision of this paragraph 10.

and each Derogation Party acknowledges and agrees that it shall be responsible for its compliance with any such Code provision, Licence condition, Industry Code or Legal Requirement (for the purposes of this paragraph 10.4.3 a "**relevant legal requirement**");

- (e) each Party:
  - (i) (to the fullest extent permitted by law but excluding any claim for death or personal injury as a result of negligence or any claim for fraud) hereby waives any claims, demands and proceedings against BSCCo in respect of all costs (including legal costs), fines, expenses, damages and other liabilities incurred by such Party (for the purposes of this paragraph 10.4.3 a "**claim**") in connection with any claim related to a Derogation Party's acts or omissions under a relevant legal requirement;
  - (ii) indemnifies and keeps indemnified BSCCo in connection with any claim related to a Derogation Party's acts or omissions under a relevant legal requirement.

10.4.4 With effect from 00:00 on the day following the Derogation Period End Date, such BSC Derogation shall no longer be in force and the Derogation Party shall comply with the Code in full from such time and date.

10.4.5 The granting of a BSC Derogation to any Party shall not relieve any other Party of all or any of its obligations under the Code.

10.4.6 Subject to paragraphs 10.5 and 10.6, no variation to a BSC Derogation shall be permitted.

#### 10.5 Trial Period Duration



10.5.1 A Trial Period shall take effect from the Derogation Period Commencement Date and, subject to paragraph 10.5.3, shall remain in effect for such period as has been approved by the Authority pursuant to paragraph 10.4.1.

10.5.2 The Trial Period, including any extensions approved thereto pursuant to paragraph 10.5.3, shall on no account exceed a total duration of [2] years from the Derogation Period Commencement Date.

10.5.3 Subject always to paragraph 10.5.2, the Panel may extend a Trial Period with the approval of, or at the direction of, the Authority provided that the Panel may only recommend an extension to a Trial Period in exceptional circumstances.

## **10.6 BSC Derogation Transition and Exit**

10.6.1 In respect of a BSC Derogation:

- (a) a Derogation Party shall comply with the relevant Transition Plan approved by the Authority pursuant to paragraph 10.4.1; and
- (b) the applicable Transition Period shall take effect from the end of the Trial Period relating to that BSC Derogation and shall remain in effect until the earlier of:
  - (i) the Derogation Period End Date;
  - (ii) the Implementation Date of a Code Modification relating to such BSC Derogation; or
  - (iii) 3 years after the Derogation Period Commencement Date.

10.6.2 The Panel may extend a Transition Period (other than a Transition Period that is being implemented pursuant to an Early Cessation Report) with the approval of, or at the direction of, the Authority where a Modification Proposal relating to the BSC Derogation was made before the conclusion of the Trial Period, and that Modification Proposal:

- (a) has not been implemented, rejected or withdrawn at the date of the extension request; or
- (b) has been withdrawn or rejected and the Panel determines that an extension to the Transition Period is reasonably necessary to allow the Derogation Party to exit from BSC Derogation,

provided that the Transition Period must end no later than 3 years after the Derogation Period Commencement Date.

10.6.3 BSCCo may charge, and a Derogation Party shall pay to BSCCo, such additional fees as BSCCo:

- (a) considers represent the reasonable additional costs to BSCCo of monitoring and administering an extension of the Transition Period in respect of such BSC Derogation; and
- (b) has notified to the Derogation Party prior to the extension of the Transition Period.

## **10.7 Derogation Reporting and Monitoring**

10.7.1 A Derogation Party shall provide to BSCCo such reports as may be specified in the Sandbox Report.

10.7.2 Upon receipt of a report pursuant to paragraph 10.7.1, BSCCo shall:

- (a) provide a copy of such report to each Panel Member;
- (b) if such report has not already been received by the Authority, provide a copy of such report to the Authority; and
- (c) publish a copy of such report on the BSC website, redacting such information as the Derogation Party expressly requests BSCCo keep confidential.

10.7.3 The Panel may recommend to the Authority at any time that a BSC Derogation be removed if the Panel considers that:

- (a) a BSC Derogation no longer meets the BSC Sandbox Eligibility Criteria; or
- (b) a Derogation Party is in breach of a BSC Derogation,

in which case it may make a recommendation to the Authority in accordance with paragraph 10.7.4.

10.7.4 Before the Panel makes a recommendation pursuant to paragraph 10.7.3, BSCCo shall prepare, and submit to the Panel, a draft report which shall include:

- (a) rationale on whether:
    - (i) a BSC Derogation no longer meets the BSC Sandbox Eligibility Criteria; or
    - (ii) a Derogation Party is in breach of a BSC Derogation;
  - (b) an evaluation of the risks and impacts related to the recommendation;
  - (c) the views of the Derogation Party, if the Derogation Party has provided such views to BSCCo;
  - (d) such other matters as shall be required by the BSC Sandbox Procedure,
- (the "Early Cessation Report").

10.7.5 The Panel shall consider the draft Early Cessation Report and shall determine whether to:

- (a) recommend to the Authority that the BSC Derogation be removed prior to the scheduled end of the relevant Derogation Period; or
- (b) require amendments to the draft Early Cessation Report in which case the Panel shall determine the timetable for making such amendments and specify its further requirements, BSCCo shall amend and resubmit the draft report in accordance with such requirements and the Panel shall reconsider the draft report.

10.7.6 Within 7 Business Days after the Panel meeting at which the Early Cessation Report has been approved, BSCCo shall:

- (a) submit such report to the Authority; and

(b) copy such report to:

(i) each Party and interested third party;

(ii) each Panel Member; and

(iii) the Derogation Party.

10.7.7 If the Authority has approved a recommendation to remove a BSC Derogation prior to the scheduled end of the relevant Derogation Period then the Trial Period relating to that BSC Derogation, if such Trial Period is still in effect, shall immediately cease and paragraph 10.6 shall apply.

## **10.8 BSCCo Derogation Reporting**

10.8.1 BSCCo shall from time to time and at least annually submit to the Panel for approval a draft lessons learned report including:

(a) an estimate of the costs incurred by BSCCo in respect of the administration of this paragraph 10; and

(b) such other matters as shall be required by the BSC Sandbox Procedure.

10.8.2 In respect of each lessons learned report approved by the Panel, BSCCo shall:

(a) submit such report to the Authority; and

(b) publish such report on the BSC Website.

## SECTION X: DEFINITIONS AND INTERPRETATION

### ANNEX X-1: GENERAL GLOSSARY (V80.0)

*Insert the following new definitions in alphabetical order:*

<b><u>"BSC Derogation":</u></b>	<u>has the meaning given to that term in Section H10.1.1;</u>
<b><u>"BSC Sandbox Application"</u></b>	<u>has the meaning given to that term in Section H10.2.1;</u>
<b><u>"BSC Sandbox Procedure":</u></b>	<u>has the meaning given to that term in Section H10.2.9;</u>
<b><u>"Derogation Party":</u></b>	<u>in respect of a BSC Derogation, means each Party identified in that BSC Derogation as being entitled to rely on such BSC Derogation;</u>
<b><u>"Derogation Period Commencement Date"</u></b>	<u>means the date set by the Authority, or determined in accordance with the Authority's directions, on which a BSC Derogation shall commence;</u>
<b><u>"Derogation Period End Date":</u></b>	<u>means the date set by the Authority, or determined in accordance with Section H10 or the Authority's directions, on which a BSC Derogation shall cease;</u>
<b><u>"Derogation Period"</u></b>	<u>has the meaning given to that term in Section H10.4.1;</u>
<b><u>"Early Cessation Report":</u></b>	<u>has the meaning given to that term in Section H10.7.4;</u>
<b><u>"Relevant European Legal Requirement":</u></b>	<u>means any legal instrument of the European Commission to the extent such instrument remains a Legal Requirement by virtue of an Act of Parliament following the United Kingdom's withdrawal from the European Union;</u>
<b><u>"Sandbox Applicant":</u></b>	<u>means any person making a BSC Sandbox Application pursuant to paragraph H10.2.3;</u>
<b><u>"BSC Sandbox Eligibility Criteria":</u></b>	<u>has the meaning given to that term in Section H10.2.6;</u>
<b><u>"Sandbox Report":</u></b>	<u>has the meaning given to that term in Section H10.2.4;</u>
<b><u>"Sandbox Send Back Direction"</u></b>	<u>means a direction issued by the Authority pursuant to paragraph 10.3.1 of Section H;</u>
<b><u>"Sandbox Send Back Process"</u></b>	<u>means, in respect of a proposed BSC Derogation, the process determined in accordance with paragraph 10.3 of Section H;</u>

**"Transition Period"**

means the continuous period:

- (i) commencing immediately after the conclusion of the Trial Period; and
- (ii) ending on the Derogation Period End Date,

as determined pursuant to Section H10;

**"Transition Plan":**

means a detailed plan and timeline specifying how a Derogation Party will exit from the proposed BSC Derogation, as determined pursuant to Section H10;

**"Trial Period":**

means the continuous period during which a Derogation Party's proposal is trialled, as determined pursuant to Section H10;