



No.8

Handbook Notice

January 2014

Financial Conduct Authority



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Handbook Notice 008

This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative powers on 12 December 2013 and 30 January 2014, and by the Executive Committee of the FCA Board on 17 January 2014. It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

General comments and queries on the Handbook can be addressed to:

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However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Customer Contact Centre:

Tel: 0845 606 9966

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1.

Overview

Legislative changes

- 1.1** On 12 December 2013, the FCA Board, in addition to the instruments listed in the last Handbook Notice, made changes to the Handbook in one instrument which is listed in the table below.

CP	Title of instrument	Instrument No.	Changes effective
13/2	Supervision Manual (Product Sales Data and Mortgage Lending and Administration Return) Instrument 2013	2013/83	1.1.2015

- 1.2** On 17 January 2014, the Executive Committee of the FCA Board made changes to the Handbook in one instrument listed in the table below.

CP	Title of instrument	Instrument No.	Changes effective
N/A	Capital Requirements Directive IV (Reporting Guidance) Instrument 2014	2014/1	20.1.2014

- 1.3** On 30 January 2014, the FCA Board made changes to the Handbook in nine instruments which are listed in the table below.

CP	Title of instrument	Instrument No.	Changes effective
13/9	Senior Management Arrangements, Systems and Controls Sourcebook (AIFM Remuneration Code) Instrument 2014	2014/2	31.1.2014
N/A	Capital Requirements Directive IV (Handbook Administration) Instrument 2014	2014/3	31.1.2014
13/9	Training and Competence Sourcebook (Accredited Bodies and Qualifications Amendments No 10) Instrument 2014	2014/4	1.2.2014
13/4	Retail Distribution Review (Adviser Charging No 7) Instrument 2014	2014/5	31.12.2014
13/9	Supervision Manual (Listing Authority Review Committee) Instrument 2014	2014/6	31.1.2014
13/9	Supervision Manual (Suspicious Transaction Reports) (Amendment) Instrument 2014	2014/7	6.2.2014

13/9	Over-the-Counter Derivatives, Central Counterparties and Trade Repositories (No 2) Instrument 2014	2014/8	31.1.2014
13/8	Listing Rules and Disclosure and Transparency Rules (Primary Information Providers) Instrument 2014	2014/9	31.1.2014
13/14	Fees (Consumer Credit) Instrument 2014	2014/10	1.4.2014

Summary of changes

- 1.4** The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.

Feedback on responses to consultations

- 1.5** Feedback to consultations are either set out in Chapter 3 of this Notice or published in separate Policy Statements.

2. Summary of changes

- 2.1** This chapter briefly describes FCA Handbook changes and changes outside the Handbook made by the Board on 12 December 2013 and 30 January 2014, and by the Executive Committee of the FCA Board on 17 January 2014. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the PRA please see <http://www.bankofengland.co.uk/pr/Pages/publications/default.aspx>

Supervision Manual (Product Sales Data and Mortgage Lending and Administration Return) (Amendment) Instrument 2013 (FCA 2013/83)

- 2.2** Following consultation in CP13/2¹, the FCA Board has made changes to the following sections of the FCA Handbook:

SUP 16

- 2.3** In summary, these changes set out the FCA's plans for data collection to supervise the new rules being introduced by the Mortgage Market Review (MMR).

- 2.4** This instrument comes into force on **1 January 2015**. Feedback to this consultation was published by the FCA in a separate Policy Statement.²

Capital Requirements Directive IV (Reporting Guidance) Instrument 2014 (FCA 2014/1)

- 2.5** The Executive Committee of the FCA Board has made changes to the following sections of the FCA Handbook:

SUP 16

- 2.6** In summary, these changes introduce minor amendments to the guidance on reporting requirements for firms further to the implementation of the Capital Requirements IV Directive and the Capital Requirements Regulation. These amendments were not consulted on as they concerned minor administrative and consequential changes to clarify existing guidance notes in the light of other substantive instruments already published.

- 2.7** This instrument came into force on **20 January 2014**.

¹ CP13/2 *Mortgage Market Review – Data Reporting* (May 2013)

² PS13/12 *Mortgage Market Review – Data Reporting* (December 2013)

Senior Management Arrangements, Systems and Controls Sourcebook (AIFM Remuneration Code) Instrument 2014 (FCA 2014/2)

- 2.8** Following consultation in Chapter 14 of CP13/9³, the FCA Board has made changes to the following sections of the FCA Handbook:

**SYSC 19B
FUND 3**

- 2.9** In summary, these changes add guidance to the FCA Handbook to provide certainty to firms entering the AIFMD regime on how to comply with the relevant rules.
- 2.10** This instrument comes into force on **31 January 2014**. Feedback to this consultation is set out in Chapter 3 of this Notice.

Capital Requirements Directive IV (Handbook Administration) Instrument 2014 (FCA 2014/3)

- 2.11** The FCA Board has made changes to the following sections of the FCA Handbook:

**Glossary
IFPRU 1, 2, 3, 4, Sch 1, Sch 2
SUP 13**

- 2.12** In summary, these changes make minor corrections or consequential changes to the FCA Handbook as a result of the Capital Requirements IV Directive. These changes were not consulted on as they concerned minor administrative changes to clarify existing provisions in the light of other substantive instruments.
- 2.13** This instrument comes into force on **31 January 2014**.

Training and Competence Sourcebook (Accredited Bodies and Qualifications Amendments No 10) Instrument 2014 (FCA 2014/4)

- 2.14** Following consultation in Chapter 2 of CP13/9⁴, the FCA Board has made changes to the following sections of the FCA Handbook:

**Glossary
TC App 4**

- 2.15** In summary, these changes update the list of appropriate qualifications table.
- 2.16** This instrument comes into force on **1 February 2014**. Feedback to this consultation is set out in Chapter 3 of this Notice.

³ CP13/9 *Quarterly Consultation (No 2)* (September 2013)

⁴ CP13/9 *Quarterly Consultation (No 2)* (September 2013)

Retail Distribution Review (Adviser Charging No 7) Instrument 2014 (FCA 2014/5)

- 2.17** Following consultation in CP13/4⁵, the FCA Board has made changes to the following sections of the FCA Handbook:

COBS 6

- 2.18** In summary, these changes extend the existing ban on new referral payments by discretionary investment managers to advisers to cover top-up payments and cases where no personal recommendations are provided, but the adviser provides other services to the retail client.
- 2.19** This instrument comes into force on **31 December 2014**. Feedback to this consultation is published in a separate Policy Statement.

Supervision Manual (Listing Authority Review Committee) Instrument 2014 (FCA 2014/6)

- 2.20** Following consultation in Chapter 8 of CP13/9⁶, the FCA Board has made changes to the following sections of the FCA Handbook:

SUP 9

- 2.21** This instrument deletes SUP 9.5 from the FCA Handbook in order to discontinue the Listing Authority Review Committee.
- 2.22** This instrument comes into force on **31 January 2014**. Feedback to this consultation is set out in Chapter 3 of this Notice.

Supervision Manual (Suspicious Transaction Reports) (Amendment) Instrument 2014 (FCA 2014/7)

- 2.23** Following consultation in Chapter 4 of CP13/9⁷, the FCA Board has made changes to the following sections of the FCA Handbook:

SUP 15

- 2.24** In summary, these changes provide further clarity about the scope of instruments subject to the suspicious transaction reporting regime.
- 2.25** This instrument comes into force on **6 February 2014**. Feedback to this consultation is set out in Chapter 3 of this Notice.

Over-the-Counter Derivatives, Central Counterparties and Trade Repositories (No 2) Instrument 2014 (FCA 2014/8)

- 2.26** Following consultation in Chapter 11 of CP13/9⁸, the FCA Board has made changes to the following sections of the FCA Handbook and material outside the FCA Handbook:

Glossary SUP 15A EG 19

⁵ CP13/4 *Distribution of retail investments: referrals to discretionary investment managers and adviser complaints reporting* (July 2013)

⁶ CP13/9 *Quarterly Consultation (No 2)* (September 2013)

⁷ CP13/9 *Quarterly Consultation (No 2)* (September 2013)

⁸ CP13/9 *Quarterly Consultation (No 2)* (September 2013)

- 2.27** In summary, these changes provide links to the additional supervisory and enforcement powers in the second statutory instrument implementing the European Markets and Infrastructure Regulation (EMIR). Further, the instrument clarifies how we intend to use those powers to enforce compliance with EMIR.
- 2.28** This instrument comes into force on **31 January 2014**. Feedback to this consultation is set out in Chapter 3 of this Notice.

Listing Rules and Disclosure and Transparency Rules (Primary Information Providers) Instrument 2014 (FCA 2014/9)

- 2.29** Following consultation in CP13/8⁹ and subsequent consultation papers, the FCA Board has made changes to the following sections of the FCA Handbook:

Glossary
FEES 3 and 4
LR 1, App 1 and App 3
DTR 1C, 6, 8 and TP1

- 2.30** In summary, these changes introduce new rules in relation to the new statutory regime for primary information providers (PIPs).
- 2.31** This instrument comes into force on **31 January 2014**. Feedback to this consultation is set out in a separate Policy Statement.

Fees (Consumer Credit) Instrument 2014 (FCA 2014/10)

- 2.32** Following consultation in CP13/14¹⁰, the FCA Board has made changes to the following sections of the FCA Handbook:

Glossary
FEES 3

- 2.33** This instrument ensures that charges are in place for firms seeking consumer credit authorisation under the new FCA regime.
- 2.34** This instrument comes into force on **1 April 2014**. Feedback to this consultation will be set out separately in the fees consultation paper to be published in March 2014.

⁹ CP13/8 *Arrangements for the Disclosure of Regulated Information. Feedback on CP12/37, CP13/5, CP13/6 and supplementary consultation* (August 2013)

¹⁰ CP13/14 *Regulatory fees and levies: policy proposals for 2014/15* (October 2013) and *Revised proposals on consumer credit application fees* (December 2013)

3.

Consultation feedback

- 3.1** This chapter provides feedback on consultations that do not have a separate Policy Statement published by the FCA.

Chapter 14 of CP13/9, Quarterly consultation (No 2)

Senior Management Arrangements, Systems and Controls (AIFM Remuneration Code and Guidelines) Instrument 2014 (FCA 2014/2)

Background

- 3.2** The Alternative Investment Fund Managers Directive (AIFMD) requires firms within the scope of the Directive to comply with remuneration rules.¹¹ These remuneration rules are based on existing Capital Requirements Directive (CRD) legislation that applies to credit institutions and investment firms. The objective of these rules is to require an alternative investment fund manager (AIFM) to comply with remuneration policy which:

- a.** is consistent with and promotes sound and effective risk management and
- b.** does not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs it manage.

Summary of proposals

- 3.3** The Directive also requires the European Securities and Markets Authority (ESMA) to develop guidelines on sound remuneration policies under AIFMD (guidelines), which it published on 3 July 2013.¹² The guidelines cover a number of substantive areas, such as the definitions of remuneration and identified staff, the concept of proportionality, the composition and role of remuneration committees, payment in units, shares or other instruments and disclosure. The UK has complied with the guidelines.
- 3.4** We transposed these rules in the AIFM Remuneration Code which forms chapter 19B of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC 19B).
- 3.5** We consulted in CP13/9¹³ on guidance on the AIFM remuneration code (SYSC 19B). Our objectives were to clarify the AIFMD rules where there was uncertainty and to apply the rules to specific UK structures that were not dealt with in the Directive. There were two parts to this consultation:

¹¹ Article 13 and Annex II of AIFMD.

¹² Guidelines on sound remuneration policies under the AIFMD, ESMA.2013/232. www.esma.europa.eu/system/files/2013-232_aifmd_guidelines_on_remuneration_-_en.pdf

¹³ CP13/9 *Quarterly Consultation (No 2)* (September 2013)

- a. an instrument adding several guidance provisions to SYSC 19B and
- b. non-Handbook guidance on the AIFM remuneration code.

3.6 The instrument provides readers of SYSC 19B with web-links to our AIFM remuneration code guidance and the ESMA Guidelines. Additionally, the instrument adds guidance provisions that relate to:

- a. certain de-minimis remuneration structures that should be exempted from certain remuneration rules on the payment of variable remuneration, and
- b. the definition of a 'particularly high amount' of variable remuneration, which acts as the threshold for an increase of deferred variable remuneration from 40% to 60% of variable remuneration.

Non-Handbook guidance

3.7 As regards the non-Handbook guidance, we consulted on the following subjects:

- a. specifying the remuneration period to which the regime and the appropriate disclosure requirements first apply;
- b. proportionality applied to AIFMs and to certain individual's remuneration structures;
- c. the remuneration regime applying to delegates of the AIFM performing portfolio or risk management;
- d. the treatment of payments to partners or members of an AIFM;
- e. the payment to senior staff of AIFMs in retained units, shares and other instruments; and
- f. retention periods for units, shares and other instruments paid to senior staff of AIFMs

Feedback

3.8 The consultation closed on 6 November 2013. Fifteen responses were received, mostly from industry trade bodies, law firms and large investment managers. The respondents overwhelmingly welcomed our initiative to provide guidance on the AIFMD remuneration regime and the bulk of the content of our guidance, but also suggested some changes which we discuss below.

3.9 We received no comments on the changes to the Handbook in the instrument.

3.10 As regards the non-Handbook guidance, nine respondents agreed with our proposal to implement the AIFM remuneration code in the first full performance period following the authorisation of the AIFM. A few other respondents suggested amendments to the text or enlargements to this proposal. One respondent asked us to clarify the timing of remuneration disclosure that is required in the annual reports of an AIF.

Proportionality

3.11 As part of assessing whether proportionality should apply, we proposed a range of sizes, based on net assets under management, to act as thresholds for two categories of firms. Eight respondents argued for setting such size thresholds at the highest end of the proposed ranges,

explaining generally that only larger firms can pose prudential and other risks to markets and investors. Additionally, a few respondents suggested clarifying the categories of firms or adding an additional category of firms such as for AIFMs managing non-UCITS retail schemes (NURS).

- 3.12** We asked if other regulatory requirements should be considered equally as effective for purposes of delegation by the AIFM of portfolio or risk management. Respondents mentioned that the following regimes should be considered equally as effective: the forthcoming UCITS remuneration regime (which is a part of the UCITS V legislative proposal), any non-EEA jurisdiction that has signed the memorandum of understanding related to AIFMD, or any G20 country, who has accepted the Financial Stability Board (FSB) remuneration principles.
- 3.13** Several respondents added additional comments about the proposed proportionality framework. Three respondents stated that the listing of an AIFM should not favour full compliance with the AIFM remuneration code. Two respondents noted that an AIFM may have difficulties performing the proportionality analysis in comparing its business and risks to its peers because of the difficulty in obtaining information.
- 3.14** Some respondents suggested additional criteria for the proportionality framework. Three respondents mentioned that, if an AIFM manages authorised funds such as NURS, this should favour disapplication of certain remuneration rules. Similarly, two others argued that an AIFM should take into account the relevant regulation impacting the management of their AIFs and, where risk-taking is circumscribed by such regulation, this would favour the disapplication of certain rules. Two respondents recommended considering the amount of AIF management based on assets under management that an AIFM performs and setting a percentage threshold below which an AIFM would be able to disapply certain rules.

Treatment of partnerships

- 3.15** We received five comments on our proposed methods to allocate payments to partners under the regime. One respondent noted that it should be allowed to use a mixture of approaches and the ability to switch between them. Another respondent emphasised that the guidance should not limit the ability of limited liability partnerships (LLPs) to structure payments tied to a person's ownership stake, which would undermine the principle found in the ESMA Guidelines that dividends and distributions to owners of AIFMs should be excluded from the scope of remuneration.
- 3.16** We received three responses concerning interactions between the regulatory and taxation regimes. Respondents noted generally that the approaches to allocating payments to partners should be aligned with changes in tax law and practice to permit AIFMs established as partnerships to continue to be taxed as partners rather than employees.

Other issues

- 3.17** Nine respondents commented on our proposals regarding payment in units, shares or other instruments. In particular, two respondents suggested adding thresholds calculated on a currency amount or a percentage of an individual's time, which would provide more flexibility to a firm to comply with its requirements. Two other respondents stated that it should be permitted to pay in the shares of the parent company of the AIFM.
- 3.18** Other general comments to our guidance stated that we should clarify the provision in the guidelines applying proportionality to numerical thresholds and the interaction between AIFMD and CRD remuneration rules.

Our response

3.19 We are pleased with the response to our consultation. In many cases, our discretion in this area is limited by European legislation or UK regulation on partnership taxation. Nevertheless, we have made some amendments to the non-Handbook guidance and to the instrument.

3.20 Regarding the timing of implementation, we have clarified when and how firms should first disclose remuneration information under the Directive. In brief, where an AIFM determines it lacks the relevant information and/or that it believes such information as is available would not be materially relevant, reliable, or provide a proper basis for comparison, it could consider explaining the basis for the lack of such disclosure.

Proportionality

3.21 In response to several comments on the size thresholds for the two categories of firms, we amended the description of the categories to align them closely with the categorisation provided in article 9 of the Alternative Investment Fund Managers Regulations 2013. This provides the size thresholds for full-scope AIFMs and the categories of which are defined by the Directive and implementing measures. As a result, this categorisation should provide more certainty to firms.

3.22 We have decided to set the size threshold at the mid-point of the ranges that we consulted on. Although several respondents argued for higher size thresholds, including one respondent who analysed comprehensive data on the European industry, we have set the thresholds based on our regulatory data (FSA038) and our judgement of the number of firms and percentage of total AIF assets that should be caught by the regime. We expect these thresholds to create the presumption that managers of the majority of AIF assets in the UK will be subject to the full regime because of the concentration of assets in a number of very large asset managers. Current data on the industry is not calculated based on the Directive's calculation methods and does not take into account how firms may restructure to comply with the Directive's requirements. Because of the lack of data calculated under the Directive, we intend to keep the size thresholds in the guidance under review and may revise them once we have received and analysed the comprehensive reporting from AIFMs on their managed AIFs.

3.23 We have clarified our guidance on which remuneration regimes are equally as effective for the purposes of delegation. We have been unable to add the new UCITS remuneration regime to this list as it has not yet been adopted. Finally, we do not think it should be conclusive just because a jurisdiction has signed a memorandum of understanding with the FCA or has agreed to the FSB Principles on Sound Compensation Practices. However, such arrangements may be considered in an AIFM's assessment of a jurisdiction's remuneration regime.

3.24 We have not changed our interpretation of how the listing of the AIFM should be considered when assessing proportionality. Compliance with AIFMD remuneration rules is likely to help align the interests of the AIFM's staff with external investors in the AIFM's equity. We have also addressed difficulties for firms in obtaining information about its peers. We have added in such cases that an AIFM may rely on objective risk measures and the FCA impact score (if known).

3.25 We have amended our guidance on a firm's nature, scope and complexity of activities so that firms may consider regulation that limits AIF strategies or the scope of investment. This is in response to comments received about treating AIFMs that manage authorised funds such as NURS or other regulated products proportionately. However, we do not agree that disapplication should result for firms whose AIFMD business is a small percentage of their overall business. Large firms would unfairly benefit from such a threshold.

Treatment of partnerships

- 3.26** We have agreed with a respondent's comments to allow a mixture of approaches and switching where reasonable in order to allocate payments to partners. We have also clarified our approach based on existing payments to partners.
- 3.27** Our guidance on a partner's deferred remuneration and non-cash remuneration will depend highly on the taxation regime in the UK and we have made some amendments on this basis.

Other issues

- 3.28** We have decided to add a few clarifications regarding payment in units, shares or instruments. We have specified that equity in the parent company of the AIFM would be appropriate where the AIFM business is relevant to the parent company's valuation. Additionally, we have allowed more flexibility in the underlying components of shares or instruments linked to the performance of a firm's AIFs or other portfolios.
- 3.29** Finally we have added guidance to firms that are able to disapply certain parts of the rules due to proportionality, but nevertheless want to apply in their discretion such parts of the rules. We have not added any further guidance about the interaction between AIFMD and CRD remuneration rules. Our general guidance contained in the proportionality section regarding staff at an AIFM performing permitted business not involving the management of AIFs should be sufficient.

Cost benefit analysis and compatibility statement

- 3.30** We received five responses with respect to the cost benefit analysis (CBA). Two respondents agreed with our CBA. The others were concerned that the CBA did not properly take account of the impact of the remuneration rules on delegates of the AIFM, group costs and impact on individuals' productivity. No competition concerns or comments on the compatibility statement were raised in the consultation.
- 3.31** Although some firms suggested that the size thresholds for the proportionality analysis should be higher, we have decided the size thresholds that are within the range consulted on. However, size is only one criterion and is not by itself determinative, and firms must consider the other criteria set out in the guidance. AIFMs should perform an assessment based on all the criteria and determine whether they think complying with the full remuneration regime is proportionate or appropriate for them. As such, there is no need to revise the CBA in CP13/9.
- 3.32** There have been some additional amendments to the guidance in response to consultation feedback. Any incremental costs from these changes, whether taken individually or together, are likely to be of minimal significance and, as such, the CBA in CP13/9 is still valid.

Equality and diversity issues

- 3.33** We received no comments in relation to our statement on equality and diversity set out in CP13/9.
- 3.34** We recognise that the topic of remuneration will generally have equality and diversity implications. However, we do not believe the remuneration rules in the Directive and Guidelines are designed or intended to have equality and diversity implications. The guidance on the AIFM remuneration code is primarily designed to further the objectives of the Directive, ie, to promote sound management of risk and control of risk-taking behaviour by AIFMs. So we are of the view that our guidance is also neutral with respect to equality and diversity implications.
- 3.35** The changes made by this instrument are listed in Chapter 2 of this Notice.

Chapter 2 of CP13/9, Quarterly consultation (No 2)

Training and Competence Sourcebook (Accredited Bodies and Qualifications Amendments No 10) Instrument 2014 (FCA 2014/4)

Background

- 3.36** The Training and Competence sourcebook (TC) sets out the qualification requirements for individuals carrying out certain retail activities, for example, advising on retail investment products. We consult for one month each time a qualification is added, removed or amended on the list of appropriate qualifications.

Summary of proposals

- 3.37** In CP13/9¹⁴ we consulted on the following amendments to the list of appropriate qualifications.

- 3.38** In relation to TC activities 2 and 12¹⁵, we proposed to add:

- SIX Swiss Exchange Certified Securities Trader plus the Swiss Markets Insight course; and
- Canadian Securities Institute's Canadian Securities Course (CSC) and Conduct and Practices Handbook Course (CPH) (provided accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation). Both the CSC and CPH must have been successfully completed.

- 3.39** In relation to TC activities 3 and 13¹⁶ we proposed to add:

- Canadian Securities Institute's Canadian Securities Course (CSC), Conduct and Practices Handbook (CPH), the Futures Licensing Course (FLC), the Derivatives Fundamentals Course (DFC) and the Options Licensing Course (OLC) (provided accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation). All the Canadian Securities Institute courses must be successfully completed; and
- Canadian Securities Institute's Canadian Securities Course (CSC), Conduct and Practices Handbook (CPH), the Futures Licensing Course (FLC) and the Derivatives Fundamentals and Options Licensing Course (DFOL) (provided accompanied by appropriate qualifications in Regulation and Ethics and Personal Taxation). All the Canadian Securities courses must be successfully completed.

- 3.40** We also proposed to make changes to three existing qualifications already on our appropriate qualifications lists:

- adding the Chartered Insurance Institute's Certificate in Investment Operations: Individual Savings Account Administration paper (FA5) to TC activity 15¹⁷ ;
- removing SIX Swiss Exchange as a qualification provider from the Certified Derivatives Trader as it should just be Deutsche Borse AG; and

¹⁴ CP13/9 *Quarterly consultation (No 2)* (September 2013)

¹⁵ TC activity 2 (advising on securities which are not stakeholder pensions, personal pensions or broker funds) and TC activity 12 (advising on and dealing in securities which are not stakeholder pensions, personal pensions or broker funds)

¹⁶ TC activity 3 (advising on derivatives) and TC activity 13 (advising on and dealing in derivatives)

¹⁷ TC activity 15 (overseeing on a day to day basis operating a collective investment scheme or undertaking the activities of a trustee or depositary of a collective investment scheme)

- amending the qualification provider details for the Diploma in Corporate Finance to show it is awarded jointly by The Chartered Institute of Securities and Investment and The Institute of Chartered Accountants in England and Wales.

3.41 In addition to the above proposals, we are making some administrative changes to the appropriate qualifications list that do not require consultation. These are:

- an update to the information for the Financial Services Skills Council (FSSC) to reflect their change of name to the Financial and Legal Skills Partnership (FLSP). Also, to reflect a change of title only of various FSSC/FLSP qualifications; and
- an update to both the appropriate qualifications list and the Glossary definition for accredited bodies for ifs School of Finance to reflect their change of name to ifs University College.

Feedback

3.42 We received one response which raised no concerns with our proposals.

Our response

3.43 We will go ahead and make the changes to our appropriate qualifications list.

Cost benefit analysis and compatibility statement

3.44 The cost benefit analysis and compatibility statement in the consultation remain unchanged from our consultation and remain valid.

Equality and diversity issues

3.45 We continue to believe these changes do not give rise to any discrimination.

3.46 The changes made by this instrument are listed in Chapter 2 of this Notice.

Chapter 8 of CP13/9, Quarterly consultation (No 2)

Supervision Manual (Listing Authority Review Committee) Instrument 2014 (FCA 2013/6)

Background

3.47 In CP13/9¹⁸ we consulted on our proposal to discontinue the Listing Authority Review Committee (LARC) and to delete SUP 9.5 from the Handbook.

3.48 LARC was set up in 2000 during the transfer of the listing function from the London Stock Exchange (LSE) to the FSA with the mandate of considering disputes on individual guidance provided by the UK Listing Authority (UKLA). It is a legacy from the time when UKLA was part of the LSE where the Quotations Committee functioned as a practitioner-based review body, available to reconsider decisions taken at staff level. LARC has convened only once since its establishment. This was in 2003.

3.49 In the FSA, LARC was established as a Committee of the Board, to act as an appeals body on decisions that sit outside the statutory notice regime (which are dealt with by the Regulatory Decisions Committee (RDC) or the Upper Tribunal). Its functions derive from the FCA Handbook (SUP 9.5), which provide for a person who disagrees with individual guidance given by the FCA

¹⁸ CP13/9 *Quarterly Consultation (No 2)* (September 2013)

concerning any Part VI rule (eg, Listing Rules, Prospectus Rules, Disclosure Rules, Transparency Rules and Corporate Governance Rules) to request that the guidance be reviewed at a meeting of senior FCA staff.

- 3.50** We explained in CP13/9 that our primary reason for proposing the discontinuation of LARC is that it is anomalous, exceptional and it is not used. There is no other similar formal review body with the potential for practitioner involvement which can give a definitive FCA opinion as to the meaning and application of the FCA's rules.

Feedback and our response

- 3.51** We received no feedback to the consultation and will proceed with our proposals.

Cost benefit analysis and compatibility statement

- 3.52** The cost benefit analysis and compatibility statement set out in CP13/9 remain valid.

Equality and diversity issues

- 3.53** We do not believe that these proposals give rise to any equality or diversity issues. An Equality Impact Assessment (EIA) was therefore deemed unnecessary.

- 3.54** The changes made by this instrument are listed in Chapter 2 of this Notice.

Chapter 4 of CP13/9, Quarterly consultation (No 2)

Supervision Manual (Suspicious Transaction Reports) (Amendment) Instrument 2014 (FCA 2014/7)

Background

- 3.55** Chapter four of the Quarterly Consultation Paper CP13/9¹⁹ set out our proposed clarification to the existing requirement for firms to submit suspicious transaction reports (STRs) under our rules – SUP 15.10.2R and SUP 15.10.3R of the Supervision manual (SUP).
- 3.56** The Financial Services Authority (FSA), our predecessor organisation, and HM Treasury previously consulted on the STR requirements as part of the UK's implementation of the Market Abuse Directive (MAD) in June 2004.²⁰
- 3.57** We consulted (in CP13/9) on aligning the scope of the requirement to submit reports under SUP 15.10.2R and SUP 15.10.3R following feedback from the industry.
- 3.58** To ensure the two rules under which STRs are submitted are clear and consistent, we proposed removing the reference to a qualifying investment admitted to trading on a prescribed market from SUP 15.10.2R.

Feedback

- 3.59** We received one response to this consultation, from the Investment Management Association (IMA), stating that our clarification appeared sensible.

Our response

¹⁹ CP13/9 *Quarterly Consultation (No 2)* (September 2013)

²⁰ HMT and FSA joint consultation: UK Implementation of the EU Market Abuse Directive (Directive 2003/6/EC), June 2004

- 3.60** On the basis of this and the original feedback from industry, we will proceed with the clarification as we proposed.

Cost benefit analysis and compatibility statement

- 3.61** Section 138I of the Financial Services and Markets Act (FSMA) requires us to publish a cost benefit analysis of the implications of the proposed amendments.

- 3.62** As we are not altering the proposed Handbook text from that published in the consultation, and as we have received no feedback that has caused us to query the cost-benefit analysis, in chapter four of CP13/9, we consider that it remains valid.

- 3.63** 3.63 The proposals are compatible with our general duties because they improve the accuracy and usability of the clarified provisions, and thereby enhance the compatibility of those provisions with our statutory duties. These modifications are largely in response to industry requests for us to make them clearer.

- 3.64** So far as is compatible with our consumer protection or integrity objective, we must discharge our general functions (including making rules, guidance and general policy) in a way that promotes effective competition in the interests of consumers (pursuant to section 1B(4) FSMA). Our proposed changes to SUP will not affect competition in the sectors covered by the STR rules.

- 3.65** We do not expect the proposed changes to have a significantly different impact on mutual societies.

Equality and diversity issues

- 3.66** In CP13/9 we concluded that our proposals do not give rise to discrimination and are of low relevance to the equality agenda. We have received no feedback indicating any reason to change this view.

- 3.67** The changes made by this instrument are listed in Chapter 2 of this Notice.

Chapter 11 of CP13/9, Quarterly consultation (No 2)

Over-the-Counter Derivatives, Central Counterparties and Trade Repositories (No 2) Instrument 2014 (FCA 2014/8)

Background

- 3.68** The European Regulation on over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories, known as the European Market Infrastructure Regulation (EMIR), came into force on 16 August 2012 and technical standards to implement EMIR came into force on 15 March 2013. EMIR applies to any entity established in the EU that is a legal counterparty to a derivatives contract, including both non-financial and financial counterparties.

- 3.69** EMIR aims to improve transparency and reduce the risks associated with the derivatives market by introducing requirements to:

- report, to a trade repository, any derivative contract entered into;
- harmonise regulatory requirements across the EU for CCPs;

- clear, through a CCP, those OTC derivatives subject to a mandatory clearing obligation; and
- implement stricter risk management processes and margin for all non-cleared OTC derivatives trades.

3.70 EMIR does not require significant implementation in the FCA Handbook, as it is an EU Regulation (not a Directive) and the EU legislative text has direct legislative effect in the UK. HM Treasury have made some changes to domestic legislation to implement EMIR. These changes have been introduced through:

- the EMIR Statutory Instrument (EMIR SI), and to a lesser extent, the EU Qualifying Provisions Order, which came into effect on 1 April 2013.
- a second EMIR SI (EMIR SI²¹), under which a number of FCA related provisions (see below) came into effect on 26 August 2013.

3.71 Corresponding provisions were introduced to the FCA Handbook in April to reflect the legislative amendments made in April and make firms aware of the FCA powers under the EMIR SI. The purpose of the changes proposed in Chapter 11 of CP13/9²², and now being published, is to reflect the changes that were made by HM Treasury through EMIR SI2. The EMIR SI2 changes which are relevant to the FCA include:

- widening the FCA's enforcement powers to enable the FCA to issue a statement of censure to persons for breaches of relevant EMIR requirements;
- adding provisions to allow the FCA to direct the form, or require verification of, notifications provided to the FCA in accordance with the EMIR technical standards, ie in respect of unconfirmed trades and outstanding disputes; and
- an amendment to make it clear that the FCA has the power to gather information to determine compliance by 'third country entities' referred to in article 4(1)(a)(v) of EMIR.

3.72 In addition to the Handbook amendments being made to reflect the above changes, a number of other proposals were consulted upon which provide additional clarification in respect of the changes made in April. Together, the Handbook changes, which will become effective from 31 January 2014, comprise guidance explaining the powers given to the FCA under EMIR SI2 and how the FCA intends to use such powers. There are no new rules being introduced that will give the FCA additional powers over and above those granted under EMIR SI2.

Feedback and response

3.73 No responses were received in respect of the consultation.

3.74 The Handbook changes will be made as of 31 January 2014. These changes explain the powers given to the FCA under EMIR SI2 and how the FCA intends to use such powers. There are no direct steps that entities which are within the scope of the relevant changes need to take in response.

²¹ The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013, which can be found at: www.legislation.gov.uk/ukSI/2013/1908/contents/made

²² CP13/9 *Quarterly Consultation (No 2)* (September 2013) www.fca.org.uk/static/documents/consultation-papers/cp13-09.pdf

Cost benefit analysis and compatibility statement

- 3.75** The guidance relates to directly applicable requirements under EMIR rather than FCA rules. Given this, we noted in the consultation that we considered the costs arising from the Handbook changes to be consequential in nature or describe processes or requirements in EMIR or primary legislation. We did not consider the impact of the obligations and requirements imposed by EMIR and by virtue of HM Treasury's EMIR SI. For this reason, no further cost benefit analysis of the proposals was provided. It is our view that the cost benefit analysis explanation provided in the original consultation remains valid.
- 3.76** We consider the changes to be compatible with the FCA's strategic objective of ensuring that the relevant markets (in section 1F of the Financial Service and Markets Act (FSMA)) function well. The changes support the implementation of EMIR, which seeks to improve transparency and reduce risk in the derivatives markets, as well as making clear to market participants how the FCA intends to use the new powers it has been given under the EMIR SI2.
- 3.77** We consider that the limited changes advance the FCA's operational objectives of consumer protection and ensuring market integrity. We are not making any further changes than necessary to support EMIR implementation. As such, we consider that we are not acting inconsistently with the FCA's duty under section 1B(4) of FSMA to, so far as compatible with the consumer protection objective or integrity objective, discharge our functions in a way which promotes effective competition in the interests of consumers.
- 3.78** In preparing the Handbook changes, we have had regard to the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We have also had regard to the regulatory principles set out in section 3B of FSMA and believe that the changes do not undermine any of these principles.

Equality and diversity issues

- 3.79** We continue to consider that the changes do not give rise to any discrimination or other equality concerns.
- 3.80** The changes made by this instrument are listed in Chapter 2 of this Notice.

4. Additional information

Making corrections

- 4.1** The FCA reserves the right to make correctional or clarificatory amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

Publication of Handbook material

- 4.2** This Notice is published on the FCA website and is available in hardcopy.
- 4.3** The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date and reference number at <http://fshandbook.info/FS/InstrumentsByDate.jsp> or listed by module at <http://fshandbook.info/FS/InstrumentsByModule.jsp>. The definitive version of the Handbook at any time is the version contained in the legal instruments.
- 4.4** The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.
- 4.5** The consolidated text of the Handbook can be found on the FCA's website at <http://fshandbook.info>.
- 4.6** Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website or on request in hardcopy form.

Obligation to publish feedback

- 4.7** This Notice, and the feedback to which paragraph 1.3 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost-benefit analysis and a statement under s138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

Comments

- 4.8** We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, they should be sent to Saira Hussain or Melanie Purdie (see contact details at the front of this Notice).

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