

Handbook Notice No 106

January 2023

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1 Overview

Legislative changes

- 1.1 On 26 January 2023, the Board of the FCA made the relevant changes to the Handbook as set out in the instruments listed below.

CP	Title of instrument	Instrument No	Changes effective
CP22/22	British Steel Pension Scheme (Financial Resilience) (No 2) Instrument 2023	FCA 2023/1	31/01/2023
CP22/17	Senior Managers and Certification Regime (Significant SYSC Firm) Instrument 2023	FCA 2023/2	27/01/2023

Summary of changes

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

Feedback on responses to consultations

- 1.3 Consultation feedback is published in Chapter 3 of this Notice or in separate Policy Statements.

FCA Board dates for 2023

- 1.4 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

FCA board meetings		
February	23	2023
March	30	2023
April	27	2023
May	25	2023
June	29	2023
July	27	2023
September	28	2023
October	26	2023
November	23	2023
December	14	2023

2 Summary of changes

- 2.1 This Handbook Notice describes the changes to the FCA Handbook and other material made by the FCA Board under its legislative and other statutory powers on 26 January 2023. 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 Prudential Regulation Authority please see <https://www.bankofengland.co.uk/news/prudential-regulation>.

British Steel Pension Scheme (Financial Resilience) (No 2) Instrument 2023

- 2.2 The FCA Board has made changes to the Handbook sections listed below:

CONRED 3.1, 3.2, 3.3, Sch 2.1AG

- 2.3 In summary, this instrument makes changes to extend the temporary asset retention rules to ensure that the rules continue to apply until firms have resolved all the scheme cases that they are responsible for, plus other relevant cases outside the scheme.
- 2.4 This instrument comes into force on 31 January 2023. Feedback has been published in a separate [Policy Statement](#).

Senior Managers and Certification Regime (Significant SYSC Firm) Instrument 2023

- 2.5 The FCA Board has made changes to the Handbook sections listed below:

SYSC 23 Annex 1, 7.4, 7.5, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 10.5

- 2.6 In summary, this instrument makes changes so that only firms that would have been both significant IFPRU firms and IFPRU investment firms under the pre-IFPR arrangements fall within the definition of a 'significant SYSC firm' for the purpose of the Enhanced scope SM&CR regime.
- 2.7 This instrument comes into force on 27 January 2023. Feedback has been published in Chapter 3 of this Handbook Notice.

3 Consultation feedback

- 3.1 This chapter provides feedback on consultations that will not have a separate policy statement published by the FCA.

Senior Managers and Certification Regime (Significant SYSC Firm) Instrument 2023

Background

- 3.2 When introducing the Investment Firm Prudential Regime (IFPR) in January 2022, we renamed and moved the definition of a 'significant IFPRU firm' within our Handbook. This definition had been used as one of the criteria for identifying Enhanced firms under the Senior Managers & Certification Regime (SM&CR). We renamed and moved the definition to retain it in our Handbook, following the deletion of the IFPRU sourcebook as part of implementation of the IFPR.
- 3.3 Since then, a number of firms and trade bodies brought to our attention that the newly named definition of a 'significant SYSC firm' in the Senior Management Arrangements, Systems and Controls (SYSC) sourcebook could result in more firms being brought into scope as Enhanced firms than under the previous definition as it had been understood and applied.
- 3.4 Under the SM&CR, the highest tier of requirements is reserved for Enhanced firms. Representations were made to us by these firms and trade bodies, that the Enhanced status certain firms had newly acquired was not commensurate with the risk they posed to the market.
- 3.5 Our data indicated that while around 105 firms were 'significant' firms under the previous IFPRU definition and subject to the SM&CR Enhanced Regime, that number could have climbed to around 830 under the 'significant SYSC firm' definition.
- 3.6 Our policy intent had been for the scope of application of the SM&CR Enhanced regime to be maintained as it was prior to the implementation of the IFPR. We therefore proposed in [Consultation Paper \(CP\) 22/17](#) to amend the definition of a 'significant SYSC firm' to make sure that this outcome is delivered.
- #### Summary of proposals
- 3.7 We proposed to make clear that only a firm that would have been both a significant IFPRU firm and an IFPRU investment firm under the pre-IFPR arrangements fell within the definition of a 'significant SYSC firm' for the purpose of the Enhanced scope SM&CR regime.

- 3.8 We proposed to make this change by amending the criterion for being an Enhanced firm that is based on being a significant SYSC firm in the FCA Handbook.
- 3.9 Following feedback, we have made this change to our rules, subject to minor amendments to make clear that a firm that only holds client assets and monies for unregulated business or for non-MiFID activities would not be a significant SYSC firm, consistent with the pre-IFPR approach.

Feedback

We received 4 responses to our chapter in [CP22/17](#). There were 2 responses from representative bodies and the other responses were from individual firms. They were all broadly supportive of our proposals.

Our response

Application of non-SM&CR requirements

- 3.10 Two respondents highlighted that, while the proposed amendment would remedy the SM&CR related issues described in the QCP, the new SYSC definitions still had impacts beyond SM&CR that could usefully be addressed. They made the point that under the proposed regime, some firms would face restrictions on the number of directorships they can hold and would be subject to additional risk and nomination committee requirements.
- 3.11 We considered the non-SM&CR impacts prior to consulting and concluded that it is right that the other rules apply beyond IFPRU firms. In these cases, there was no shared understanding that the rules were limited to those firms and in our view reflect existing standards of good governance for larger firms.
- 3.12 We periodically review the effectiveness of our rules and we are open to examining the way in which other requirements apply to significant firms in the future. In the meantime, we note that, where appropriate, firms can already apply for waivers from the governance requirements mentioned by the respondent.
- 3.13 One respondent stated that the proposed Handbook amendment did not appear to accurately exclude all former BIPRU firms.
- 3.14 We would like to reassure former BIPRU firms that having looked again closely at the legal text we consulted on, we are confident that it does exclude them.
- 3.15 Another respondent proposed that in order to maintain the original scope, we would also need to exclude firms that were previously exempt IFPRU commodities firms from the 'significant SYSC firm' classification in SYSC 1.5 or alternatively add them to the list of excluded firms set out in the proposed rule SYSC 23 Annex 1 9.3R.
- 3.16 We do not agree with the interpretation offered by this respondent and, after reviewing the rules, we do not consider it appropriate to exclude firms that were previously 'exempt IFPRU commodities firms'. IFPRU provisions listed

the main rules to which the 'significant SYSC firm' definition was relevant and exempt IFPRU commodity firms were not excluded from them all. Further, other IFPRU provisions stated that an IFPRU exempt commodities firm was subject to provisions that only applied to IFPRU investment firms.

- 3.17 A respondent submitted alternative drafting suggestions to reflect their view that a firm that only holds client assets and monies for non-MiFID purposes should be excluded from the Enhanced firm regime as it would not have been an IFPRU investment firm.
- 3.18 We agree with the point that under the old IFPRU definitions, a firm that could hold client money or assets, could still be excluded from the IFPRU investment firm definition as long as those monies or assets related to unregulated business or non-MiFID activities. We have therefore made an amendment to the final rules that makes that point explicit.

Cost benefit analysis

- 3.19 We consider these rule changes advance our operational objectives to secure an appropriate degree of protection for consumers, and to protect the integrity of the financial system.
- 3.20 We are satisfied that these changes restore firms to the position that they held previously under the SM&CR, prior to deletion of the IFPRU sourcebook and the transfer of the relevant criteria to the SYSC sourcebook.

Equality and diversity statement

- 3.21 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

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, reference number or module at www.handbook.fca.org.uk/instrument. 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 www.handbook.fca.org.uk/. A print version of the Handbook is available from The Stationery Office's shop at www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/.
- 4.6 Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website.

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 section 138K(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 handbookproduction@fca.org.uk (or see contact details at the front of this Notice).

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This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 26 January 2023.

It also may contain 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:

Lisa Ocero

Tel: 020 7066 0198

Email: Lisa.Ocero@fca.org.uk

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 Contact Centre:

Tel: 0300 500 0597

Fax: 0207 066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

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