



No.5

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# Handbook Notice

September 2013

Financial Conduct Authority





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## Handbook Notice 005

This Handbook Notice introduces the Handbook and other material made by the Board under its legislative powers on 1 August 2013 and 26 September 2013. 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

Fax: 020 7066 0991

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Post: Customer Contact Centre  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
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# 1. Overview

## Legislative changes

- 1.1** On 1 August 2013, the FCA Board made changes to the Handbook in two instruments which are listed in the table below.

CP	Title of instrument	Instrument No.	Changes effective
13/7	Fees (Consumer Credit Interim Permission) Instrument 2013	2013/59	2.9.2013
13/7	Consumer Credit (Designation) Instrument 2013	2013/60	1.4.2014

- 1.2** On 26 September 2013, the FCA Board made changes to the Handbook in six instruments which are listed in the table below.

CP	Title of instrument	Instrument No.	Changes effective
NA	Handbook Administration (No 31) Instrument 2013	2013/61	Various <sup>1</sup>
Ch 3 13/3	Mortgage Market Review (Training and Competence) Instrument 2013	2013/62	26.4.2014
Ch 2 13/3	Consumer Insurance (Disclosure and Representations) Act 2012 Instrument 2013	2013/63	1.10.2013
Ch 3 13/3	Mortgage Market Review (Pipeline Business) (Transitional Provisions) Instrument 2013	2013/64	26.4.2014
13/5	Client Assets Sourcebook (Indirect Clearing) Instrument 2013	2013/65	1.10.2013
NA	Capital Resources Requirements for Personal Investment Firms (Amendment No 2) Instrument 2013	2013/67	Various <sup>2</sup>

- 1.3** Instruments FCA 2013/66 and FCA 2013/68 have also been made by the Board but will be published at a later date. The changes will be summarised in the November Handbook Notice.

<sup>1</sup> See Chapter 2.

<sup>2</sup> See Chapter 2.

### **Summary of changes**

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

### **Feedback on responses to consultations**

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- 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 1 August 2013 and 26 September 2013. 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 [www.bankofengland.co.uk/pr/Pages/publications/default.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/default.aspx)

### ***Fees (Consumer Credit Interim Permission) Instrument 2013 (FCA 2013/59)***

- 2.2** Following consultation in CP13/7<sup>3</sup>, the Board has made changes to the following sections of the FCA Handbook:
- Glossary of definitions**  
**FEES 8**
- 2.3** In summary, these changes set out the fees that we will charge firms that register with us for 'interim permission' and which firms will not have to pay these fees.
- 2.4** This instrument came into force on **2 September 2013**. Feedback to this consultation was published by the FCA in a separate Policy Statement.<sup>4</sup>

### ***Consumer Credit (Designation) Instrument 2013 (FCA 2013/60)***

- 2.5** Following consultation in CP13/7<sup>5</sup>, the Board has made changes to the following sections of the FCA Handbook:
- Made the Consumer Credit sourcebook (CONC)**  
**Glossary of definitions**
- 2.6** In summary, these changes set out our decision in relation to carrying across some Consumer Credit Act secondary legislation into FCA rules, by means of a designation instrument. The detail of our consumer credit regime will be consulted on in the autumn.
- 2.7** This instrument comes into force on **1 April 2014**. Feedback to this consultation was published by the FCA in a separate Policy Statement.<sup>6</sup>

<sup>3</sup> CP13/7 *High-level proposals for an FCA regime for consumer credit* (March 2013).

<sup>4</sup> [www.fca.org.uk/static/documents/policy-statements/ps13-07.pdf](http://www.fca.org.uk/static/documents/policy-statements/ps13-07.pdf)

<sup>5</sup> CP13/7 *High-level proposals for an FCA regime for consumer credit* (March 2013).

<sup>6</sup> [www.fca.org.uk/static/documents/policy-statements/ps13-07.pdf](http://www.fca.org.uk/static/documents/policy-statements/ps13-07.pdf)

### **Handbook Administration (No 31) Instrument 2013 (FCA 2013/61)**

- 2.8** The Board has made minor administrative changes to various modules of the FCA Handbook, as listed below. These correct or clarify existing provisions. They were not consulted on because they are regarded either as falling within the scope of previous consultations or as being so minor that they do not warrant consultation. None of these changes represents any alteration in FCA policy.

**Glossary of definitions**

**SYSC 4**

**FEES 6**

**IPRU(INV) 11 and TPs**

**COBS 4 and 20**

**MCOB 5 and 10**

**CASS 6 and 7A**

**SUP 13, 15, 16 and 21**

**DISP 1**

**COMP 5**

**COLL 8**

**CONC App 1**

**FUND 1**

**LR 3**

**PR 1, 2 and App 3**

**BSOG 3**

- 2.9** In summary, the amendments made this month are as follows:

- reinstatement of a previous version of the definition of “intermediate unitholder”: this instrument revokes the change made to this definition by the *Retail Distribution Review (Platforms) Instrument 2011 (FSA 2011/47)* and reinstates the version of this definition made by the *Authorised Contractual Schemes (Handbook Amendments) Instrument 2013 (FCA 2013/50)*;
- correction of cross-references in SYSC 4.2.8G, FEES 6 Annex 3AR, IPRU(INV) TPs, COBS 4.12.4R, COBS 20.3.8G, MCOB 10.3.1R, CASS 6.1.16IAR; SUP 13.8.1R, SUP 15.3.28R, SUP 21.1.2G and COLL 8 Annex 1R;
- correction of minor errors in DISP 1.3.7R, LR 3.2.4R and BSOG 3.8.5G;
- typographical corrections in IPRU(INV) 11.4, MCOB 5.5.1R, COMP 5.5.3R and FUND 1.3.7G;
- deletion, in MCOB 5.5.1R(2)(e), of the words “or variation” (in relation to a regulated mortgage contract) which is incorrect because MCOB does not apply to contract variations, as made clear in MCOB 5.1;
- the word “trustee” in CASS 7A.2.2R(2) has been de-italicised; the Glossary definition of “trustee” tracks section 237(2) of the Act, which is only relevant for the purposes of Part XVII of the Act; however, the process referred to in CASS 7A is under section 55P which is a different and unrelated Part of the Act, so “trustee” should not be in italics here;



- the wording changes to Section H of the Retail Mediation Activities Return (RMAR) (SUP 16 Annex 18AR) are to clarify that existing questions 3, 4, 5 and 6 should be answered at the *end* of the reporting period; this has been done in order to ensure that firms are clear that these questions apply a slightly different requirement to those in questions 8, 9 and 10 which ask firms to report *during* the reporting period;
- corresponding changes have been made to the Notes for completion of the RMAR (SUP 16 Annex 18BG); the current guidance for questions 3, 4, 5 and 6 state that firms should report “as at the reporting date”; this was intended to mean at the end of the reporting period but could be wrongly interpreted as meaning as at the submission date;
- renumbering of most of the provisions in the appendices to CONC; and
- changes to various provisions in PR to correspond with underlying legislative changes.

**2.10** These changes come into force as follows:

- the changes to PR come into force on **27 September 2013**;
- the changes to the Glossary and to the IPRU(INV) TPs come into force on **31 December 2013**;
- the change to COBS 20.3.8G comes into force on **1 January 2014**;
- the changes to CONC come into force on **1 April 2014**;
- the changes to MCOB 5.5.1R come into force on **26 April 2014**; and
- the remainder of the instrument comes into force on **1 October 2013**.

### ***Mortgage Market Review (Training and Competence) Instrument 2013 (FCA 2013/62)***

**2.11** Following consultation in Chapter 3 of CP13/3<sup>7</sup>, the Board has made changes to the following sections of the FCA Handbook:

#### **TC Appendix 1 and 4**

**2.12** As part of the Mortgage Market Review (MMR), we introduced a requirement that all mortgage sellers should be appropriately qualified.

**2.13** In summary, the rules ensure that the requirement for mortgage sellers to be appropriately qualified applies as intended and that the rules do not inadvertently capture staff not involved in the sales process. We have also removed the qualification requirement for individuals carrying out straightforward execution-only contract variations.

**2.14** This instrument comes into force on **26 April 2014**. Feedback to this consultation is set out in Chapter 3 of this Notice.

<sup>7</sup> CP13/3 *Quarterly consultation (No 1)* (June 2013).

### ***Consumer Insurance (Disclosure and Representations) Act 2012 Instrument 2013 (FCA 2013/63)***

- 2.15** Following consultation in Chapter 2 of CP13/3<sup>8</sup>, the Board has made changes to the following sections of the FCA Handbook:  
**ICOBS 2, 5 and 8**
- 2.16** In summary, these changes align ICOBS with the Consumer Insurance (Disclosure and Representation) Act 2012.
- 2.17** This instrument comes into force on **1 October 2013**. Feedback to this consultation is set out in Chapter 3 of this Notice.

### ***Mortgage Market Review (Pipeline Business) (Transitional Provisions) Instrument 2013 (FCA 2013/64)***

- 2.18** Following consultation in Chapter 3 of CP13/3<sup>9</sup>, the Board has made changes to the following sections of the FCA Handbook:  
**MCOB TP 1**
- 2.19** In summary, these changes will allow firms to continue to process applications for mortgages on a non-advised basis for a further three months from 26 April 2014. This provision will only apply to applications which were submitted on a non-advised basis before this date. All other provisions in the Mortgage Market Review, including those on responsible lending, will apply from 26 April 2014.
- 2.20** This instrument comes into force on **26 April 2014**. Feedback to this consultation is set out in Chapter 3 of this Notice.

### ***Client Assets Sourcebook (Indirect Clearing) Instrument 2013 (FCA 2013/65)***

- 2.21** Following consultation in CP13/5<sup>10</sup>, the Board has made changes to the following sections of the FCA Handbook:  
**Glossary of definitions  
CASS 7 and 7A**
- 2.22** In summary, we have made amendments to CASS as required by the regulatory technical standards<sup>11</sup> (RTS) in relation to the European Market Infrastructure Regulation (EMIR) on indirect clearing arrangements. The changes do not implement the RTS, which have the force of a Regulation (so are directly applicable), rather they ensure that CASS does not conflict with the RTS.
- 2.23** This instrument comes into force on **1 October 2013**. Feedback to this consultation is set out in Chapter 3 of this Notice.

<sup>8</sup> CP13/3 *Quarterly consultation (No 1)* (June 2013).

<sup>9</sup> CP13/3 *Quarterly consultation (No 1)* (June 2013).

<sup>10</sup> CP13/5 *Review of the client assets regime for investment business* (July 2013).

<sup>11</sup> Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements [...].

***Capital Resources Requirements for Personal Investment Firms (Amendment No 2) Instrument 2013 (FCA 2013/67)***

- 2.24** The Board has made changes to the following sections of the FCA Handbook:  
**IPRU(INV) TPs**
- 2.25** In summary, the new capital resource requirements for personal investment firms (PIFs), which were due to start a phased implementation on 31 December 2013, are being deferred for a period of two years and instead will now commence on 31 December 2015.
- 2.26** In 2009 the Financial Services Authority (FSA) published rules changing the capital requirements for PIFs. These were originally due to come into force in December 2011 but implementation was deferred until December 2013 due to concerns about the impact of those rules on some types of firm.
- 2.27** Since the original deferral, a series of developments has led us to question whether this approach remains the most appropriate. In particular, many firms are still implementing changes to their business models as a result of the Retail Distribution Review and the European Banking Authority (EBA) is undertaking work (under the Capital Requirements Directive) for non-PIFs, but which could be relevant to PIFs. Also, the FCA has a competition objective that was not present under the FSA. In their current format, we believe these rules would not necessarily be consistent with that objective. Therefore, we have decided to defer implementation of these rules for a further two years to allow a more fundamental review of our proposed approach
- 2.28** Part of this instrument comes into force on **31 December 2013** and part on **31 December 2015**.

## 3. Consultation feedback

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

### **Chapter 3 of CP13/3, Quarterly consultation (No 1)**

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#### ***Mortgage Market Review (Pipeline Business) (Transitional Provisions) Instrument 2013 (FCA 2013/64)***

#### ***Mortgage Market Review (Training and Competence) Instrument 2013 (FCA 2013/62)***

##### ***Background***

##### ***Professional standards***

- 3.2** As part of the Mortgage Market Review (MMR), we introduced a requirement that all mortgage sellers should be appropriately qualified. Following publication of the final rules in October 2012, an issue was identified with the drafting of the rules, in that they included more people than we had originally intended and this needed to be corrected. At the same time, we were challenged on the application of the rules to staff carrying out post-contract variations on an execution-only basis. Having reviewed the nature of these transactions and carefully considered the potential for consumer detriment, we consulted on amending the rules to remove the qualification requirement for these transactions.

##### ***Pipeline applications***

- 3.3** Following publication of the final MMR rules, firms raised a question around the treatment of applications already being processed when the MMR comes into force. These are known as pipeline applications. They were concerned that if a change was made, they would need to re-assess the application against the MMR rules. This could present operational challenges to firms and add costs to the customer; particularly where the application began on a non-advised basis, as under the MMR rules the firm may now have to provide advice. Firms asked for a transitional period for pipeline applications submitted on a non-advised basis, which we agree is sensible and we consulted on amending the rules to reflect this.

##### ***Perimeter Guidance***

- 3.4** We also consulted on changes to the Perimeter Guidance manual on mortgage advice. We are still considering the responses to this and will provide feedback at a later date.

**Feedback**

- 3.5** We received 8 responses to the consultation from trade associations, firms, the FCA statutory panels and consumers. Respondents were generally supportive of the proposals and did not raise any significant concerns.
- 3.6** Some respondents were concerned that the proposed handbook text for pipeline applications did not adequately capture the policy intention and proposed that we amend the text from ‘..continue to process an application..’ to ‘..continue to process an application... where a change is required to that application’. They felt this would make the rule clearer.
- 3.7** Some respondents were concerned that there might be a need to re-assess an application if minor changes to a policy were made and raised concerns about exactly what sort of changes would trigger the application of our other rules (eg the responsible lending requirements).
- 3.8** One respondent did not agree that the qualification requirement should apply to staff involved in rate switches made on an execution-only basis.

**Our response****Professional standards**

- 3.9** We have amended the wording of the draft rule on which we consulted so that the rule better captures our policy intent. In our opinion, the changes are not significant but have been made to ensure that our intention as set out in our consultation was properly put into effect.
- 3.10** We set out our position with regard to rate switches made on an execution-only basis in CP13/3 and our position has not changed. We do not believe there is a strong case for amending our approach.

**Pipeline applications**

- 3.11** We have amended the wording of the transitional provision for pipeline applications to simplify its application and ensure it clearly meets the policy intention. We believe the new wording captures both applications still being assessed for the first time (at initial underwriting stage) when the MMR comes into force as well as applications which have subsequent changes made to them.
- 3.12** We have not made amendments suggested by respondents, as we think they would narrow the application of the transitional provision to only apply to applications which required that a change be made to them when we intend that it applies to all applications.
- 3.13** With regard to the wider application of the rules, we would expect firms to apply all the MMR rules not covered by the transitional provision as required. For example, if the change affects the affordability of the loan, we would expect firms to assess this in line with the affordability rules.
- 3.14** If the change is immaterial, such as a change of solicitor, this would not trigger the application of the rules. Therefore, we would not expect firms to reassess the application.

**Cost benefit analysis and compatibility statement**

- 3.15** As we are proceeding with the changes as consulted on, we believe the cost benefit analysis and compatibility statement, as set out in CP13/3, remain valid.
- 3.16** In our opinion the changes we have made to the drafting of the rules will not cause any significant difference to mutual societies when compared to other firms.

### ***Equality and diversity issues***

- 3.17** There are no expected positive or negative impacts on a particular group or protected characteristic as a result of the changes to the Training and Competence sourcebook (TC) and the transitional provision for MCOB 4.8A for pipeline applications. A full impact assessment was conducted as part of the MMR Policy Statement<sup>12</sup> and the proposed changes do not impact this assessment.
- 3.18** The changes made by this instrument are listed in Chapter 2 of this Notice.

## **Chapter 2 of CP13/3, Quarterly consultation (No 1)**

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### ***Consumer Insurance (Disclosure and Representations) Act 2012 Instrument 2013 (FCA 2013/63)***

#### ***Background***

- 3.19** We proposed consequential amendments to the Insurance: Conduct of Business sourcebook (ICOBS) to align the rules with the Consumer Insurance (Disclosure and Representations) Act 2012 (the Act) which came into force on 6 April 2013.
- 3.20** The Act is relatively uncontroversial as it reflects the approach taken by the Financial Ombudsman Service and practices that are already accepted as industry good practice. It replaces the duty on the consumer to volunteer information material to the insurer's decision, as set out in the Marine Insurance Act 1906, with a duty on consumers to take reasonable care not to make a misrepresentation during pre-contractual negotiations. If the consumer fails to take reasonable care and makes a qualifying misrepresentation (ie careless, deliberate or reckless) the Act states that an insurer is entitled to a remedy against the consumer. For example, cancelling their policy and not paying any claims, or only paying a proportion of a claim. The remedies are specified in Schedule 1 to the Act.
- 3.21** The existing ICOBS rules refer to 'disclosure of material facts' in ICOBS 5, when arranging the insurance and 'non-disclosure of a fact material to the risk' in ICOBS 8, in relation to whether it is fair to reject a claim. Therefore, these are inconsistent with the Act creating ambiguity for firms in complying with our rules, potentially affecting our ability to take regulatory action in relation to these rules should we need to. As a result, we proposed to amend ICOBS to align the rules with the Act:
- ICOBS 5 - to reflect that the consumer's duty to disclose facts material to the risk has been abolished and replaced by a duty to take reasonable care not to make a misrepresentation. We also proposed to align the guidance in relation to firms asking clear and specific questions about anything important to the risk proposed.
  - ICOBS 8 - to reflect the change in the consumer's duty ie to take reasonable care not to make a misrepresentation and that an insurer has a remedy under the Act. in the event that a consumer fails to take reasonable care and makes a 'qualifying misrepresentation'.
- 3.22** In addition, the Act uses a wider definition of consumer than that used in ICOBS. It includes a customer who enters into the contract mainly for purposes unrelated to the individual's trade, business or profession. For consistency with the Act, and for the purpose of these amendments

<sup>12</sup> PS12/16 *Mortgage Market Review: Feedback on CP11/31 and final rules* (October 2012).

only, we proposed to reflect the Act's slightly wider definition of consumer. As insurers are subject to this wider definition, under the Act, we think that aligning the definition will avoid any unnecessary ambiguity and our requirements will be clearer for firms and consumers.

### **Feedback**

**3.23** Respondents agreed in principle to our proposal to align the ICOBS rules with the Act and said that it would provide clarity and avoid ambiguity and uncertainty but had some concerns about the detail of the proposed changes:

- One respondent was concerned about our proposal to apply a wider definition of consumer, to these provisions, because we already use various definitions of customer or consumer and they felt that to add a further definition will be confusing for firms.
- Two respondents suggested that we amend our proposed glossary definition for a 'qualifying misrepresentation' and include a fuller description, rather than simply referencing its meaning in the Act.
- Two respondents also felt that by keeping to the language of the Act, some of the proposed drafting of ICOBS 5 and ICOBS 8 is more complex than it needs to be and suggested some changes.

### **Our response**

**3.24** We have considered the respondents' suggestions and have decided to include the Act's full definition of a 'qualifying misrepresentation' as a new rule: ICOBS 8.1.3R, instead of referencing the Act in the glossary.

**3.25** Whilst we understand the other concerns raised we do not consider it necessary to make any other changes to rules proposed in the CP. The amendments to ICOBS 5, ICOBS 8 and customer definition are for consistency with the Act. The suggestions from respondents would require us to make changes that are not consistent with Act or to make inferences from the Act. In our view this could create unnecessary ambiguity.

### **Cost benefit analysis and compatibility statement**

**3.26** The cost benefit analysis and compatibility statement provided in CP13/3 remain valid and unchanged.

### **Equality and diversity issues**

**3.27** As stated in CP13/3, we do not envisage any equality and diversity impacts as a result of the proposed changes.

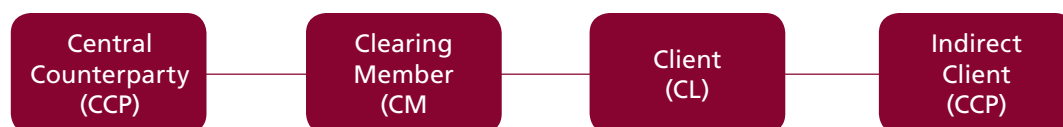
**3.28** The changes made by this instrument are listed in Chapter 2 of this Notice.

## Chapter 8 of CP13/5 Review of the client assets regime for investment business

### Client Assets Sourcebook (Indirect Clearing) Instrument 2013 (FCA 2013/65)

#### Background

- 3.29** In CP13/5, we proposed technical amendments to the Client Assets sourcebook (CASS) required by regulatory technical standards<sup>13</sup> (RTS) in relation to the European Market Infrastructure Regulation (EMIR) on indirect clearing arrangements. The changes ensure that CASS does not conflict with the RTS.
- 3.30** An indirect clearing arrangement is where a clearing member of a central counterparty (CCP) is prepared to facilitate clearing the positions of its client's clients, that is to say, its indirect clients (see diagram below). The changes are relevant in the failure of the clearing member's client, where the clearing member has received from or holds client money for that client. The changes will not be relevant where the clearing member accepts money from the client under a title transfer collateral arrangement (TTCA).



- 3.31** There are two requirements in the RTS that we are responding to:
- 3.32** The RTS contemplate that indirect clients should be '...included in the transfer of client positions to an alternative clearing member under the portability requirements...' <sup>14</sup> requiring clearing members to have in place a 'credible mechanism for transferring the positions and assets to an alternative client or clearing member...' <sup>15</sup> as part of the management of the default of the client. This can be seen as somewhat analogous to porting in EMIR itself.
- 3.33** The RTS also provide that the clearing member 'shall ... ensure that its procedures allow for the prompt liquidation of the assets and positions of indirect clients and the clearing member to pay all monies due to the indirect clients following the default of the client,' <sup>16</sup> – again, mirroring a requirement in EMIR for direct clearing.
- 3.34** To accommodate the two requirements, we proposed to:
- modify CASS 7 rules to allow for 'porting', that is for the clearing member to remit any client money relating to indirect clearing to an alternative client or clearing member (in accordance with the agreements in place) and to discharge its fiduciary duty by doing so; and

<sup>13</sup> Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements [...].

<sup>14</sup> Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, [...], Recital 6.

<sup>15</sup> Ibid., Chapter II Article 4(4).

<sup>16</sup> Ibid., Chapter II Article 4(5).



- amend CASS 7A (client money distribution rules) so that (i) a clearing member, in accordance with the RTS, may remit any client money relating to indirect clearing directly to the relevant indirect clients in the event of the failure of the client, (ii) the money so remitted shall cease to be client money in the hands of the client, (and if applicable, the clearing member) and (iii) the clients' entitlement to the client money pool (of the failed client-firm) be reduced by any sum so remitted.

### ***Feedback***

- 3.35** We received 11 responses from firms and trade bodies, which were broadly supportive, mostly agreeing that the proposals were compatible with the RTS. There were some drafting suggestions and respondents also took the opportunity to raise issues in respect of general questions about the RTS that we cannot address with changes to CASS. The main such issue relates to the scope of indirect clearing.
- 3.36** Two respondents stated that the EMIR RTS could only apply to derivatives subject to mandatory clearing because the authority delegated to ESMA under EMIR only extended to such instruments. Therefore, these respondents suggested that the proposed drafting in CASS should not be directly linked to the wording of the RTS.
- 3.37** Some respondents commented that indirect clearing has yet to be understood by the industry and voiced concerns about the viability of the transfers of margin and positions envisaged by EMIR and the RTS.
- 3.38** One respondent noted that in relation to EMIR, we also included in CP13/5 a consultation on proposals in relation to direct clearing (multiple pools), which may increase the potential viability of porting, urging equivalent measures for indirect clearing.

### ***Our response***

- 3.39** We have discussed the respondents' comments on the scope of indirect clearing with colleagues at HM Treasury and the Bank of England. We acknowledge the potential limits of the authority delegated to ESMA under article 4(3) of EMIR and, in consequence, the possibility that indirect clearing arrangements satisfying the RTS could be limited to over-the-counter derivatives subject to mandatory clearing. Accordingly, we have made slight changes to the proposed wording of our rules. Although the instrument still makes reference to the RTS, the changes are intended to ensure that where a clearing member offers indirect clearing, the CASS rules need not to be construed so narrowly as to only apply to the indirect clearing of derivatives subject to the mandatory clearing obligation. We might contact respondents who raised the issue of the scope of indirect clearing directly in due course.
- 3.40** We note comments about potential difficulties in the viability of the transfers envisaged under the RTS. We are only in a position to ensure that CASS does not prevent the proper working of EMIR and the RTS, rather than providing additional interpretation and gloss on the legislation, which is directly applicable.
- 3.41** Given industry uncertainty about indirect clearing we are not consulting on introducing 'multiple pools' in relation to indirect clearing at this stage. Although we would consider such measures in future if necessary.

### ***Cost benefit analysis and compatibility statement***

- 3.42** In CP13/5 we stated that the proposed changes to CASS will impact firms on distribution of client money in the event of the firm's failure and did not foresee any compliance costs to firms with the proposals. There could be changes in firms attributed to EMIR but costs associated with these changes are not part of these proposals.

**3.43** One respondent felt that clearing members would incur additional costs for more detailed record keeping to enable the 'prompt liquidation' envisaged in the RTS. As noted above, we are not proposing any changes that give rise to costs for firms but it may be that changes in EMIR or the RTS may cause firms to incur costs. Therefore, the cost benefit analysis and compatibility statement in CP13/5 remain unchanged.

***Equality and diversity issues***

**3.44** We conducted an equality impact assessment in drawing up CP13/5 to ensure that the equality and diversity implications of any new policy proposals are considered.

**3.45** We continue to believe that our proposals will not have any positive or negative impacts on particular groups as a result of any protected characteristic.

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

## 4. Additional information

### Making corrections

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- 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

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- 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

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- 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

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- 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).

Financial Conduct Authority



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