

Financial Services Authority

# Handbook Notice 128

Board meeting: 28 February 2013  
19 March 2013  
& 25 March 2013

Notice published: 26 March 2013



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This Handbook Notice introduces the Handbook and other material made by the Board under its legislative powers on 28 February 2013, 19 March 2013 and 25 March 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 FSA. For most firms this will be the FSA's Firm Contact Centre:

Tel: 0845 606 9966  
Fax: 020 7066 0991  
Email: [fcc@fsa.gov.uk](mailto:fcc@fsa.gov.uk)  
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# 1

## Overview

### Legislative changes this month

#### The Handbook

- 1.1** On 28 February 2013 the transitional board of the Financial Conduct Authority made changes to the Handbook in five instruments:
- Legal Cutover (Financial Conduct Authority and Prudential Regulation Authority Handbooks (Glossary)) Instrument 2013 (FCA 2013/6 and PRA 2013/1);
  - Legal Cutover (Financial Conduct Authority and Prudential Regulation Authority Handbooks (General Provisions)) Instrument 2013 (FCA 2013/7 and PRA 2013/2);
  - Financial Conduct Authority and Prudential Regulation Authority Handbook Designation Instrument 2013 (FCA 2013/8 and PRA 2013/4);
  - Financial Conduct Authority and Prudential Regulation Authority Handbook Designation (General Modifications) Instrument 2013 (FCA 2013/9 and PRA 2013/4); and
  - Financial Conduct Authority and Prudential Regulation Authority Handbook Designation (Particular Modifications) Instrument 2013 (FCA 2013/10 and PRA 2013/5).
- 1.2** The changes made by these instruments are summarised in Chapter 2 of this Notice.
- 1.3** On 19 March 2013 the transitional board of the Financial Conduct Authority made changes to the Handbook in twenty six instruments:
- Legal Cutover (Skilled Persons) Instrument 2013(FCA 2013/11 and PRA 2013/6);

- Legal Cutover (Variation of Permission) Instrument 2013 (FCA 2013/12 and PRA 2013/7);
- Legal Cutover (Waiver and Modification of Rules) Instrument 2013 (FCA 2013/13 and PRA 2013/8);
- Legal Cutover (Controllers and Close Links) Instrument 2013 (FCA 2013/14 and PRA 2013/9);
- Legal Cutover (Passporting) Instrument 2013 (FCA 2013/15 and PRA 2013/10);
- Legal Cutover (Notifications) Instrument 2013 (FCA 2013/16 and PRA 2013/11);
- Legal Cutover (Reporting Requirements) Instrument 2013 (FCA 2013/17 and PRA 2013/12);
- Legal Cutover (Transfer of Business) Instrument 2013 (FCA 2013/18 and PRA 2013/13);
- Legal Cutover (General Transitional and Miscellaneous Provisions) Instrument 2013 (FCA 2013/19 and PRA 2013/14);
- Legal Cutover (Fees) Instrument 2013 (FCA 2013/20 and PRA 2013/15);
- Legal Cutover (Approved Persons) Instrument 2013 (FCA 2013/21 and PRA 2013/16);
- Legal Cutover (Threshold Conditions) Instrument 2013 (FCA 2013/22);
- Legal Cutover (Supervision of Authorised Firms) Instrument 2013 (FCA 2013/23);
- Legal Cutover (Variation of Permission (Amendment No 2)) Instrument 2013 (FCA 2013/24);
- Listing Rules (Cancellation and Suspension Notices) Instrument 2013 (FCA 2013/25);
- Listing Rules (Sponsors) (Amendment No 4) Instrument 2013 (FCA 2013/26);
- Legal Cutover (Recognised Investment Exchanges and Recognised Auction Platforms) Instrument 2013 (FCA 2013/27);
- Legal Cutover (Decision Procedure and Penalties Manual) Instrument 2013 (FCA 2013/28);
- Legal Cutover (Enforcement Guide) Instrument 2013 (FCA 2013/29);
- Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18);

- Benchmarks Instrument 2013 (FCA 2013/33);
- Conduct of Business Sourcebook (Key Features Illustrations for Personal Pensions) (Amendment) Instrument 2013 (FCA 2013/34);
- Financial Services Compensation Scheme (Funding Review: Retail Pool) Instrument 2013 (FCA 2013/35);
- Financial Services Compensation Scheme (Management Expenses Levy Limit 2013/2014) (FCA) Instrument 2013 (FCA 2013/36 and PRA 2013/9);
- Employers' Liability Insurance: Disclosure by Insurers (No 3) Instrument 2013 (FCA 2013/38); and
- Over-the-Counter Derivatives, Central Counterparties and Trade Repositories Instrument 2013 (FCA 2013/39).

1.4 The changes made by these instruments are summarised in Chapter 2 of this Notice.

1.5 The transitional board of the Financial Conduct Authority also approved the making by the Board of the Financial Ombudsman Service on 20 March of three instruments:

- Fees Manual (Financial Ombudsman Service Case Fees 2013/2014) Instrument 2013 (FOS 2013/1).
- Financial Ombudsman Service (Miscellaneous Rule Amendments) Instrument 2013 (FOS 2013/2);
- Dispute Resolution: Complaints (Amendment No 5) Instrument 2013 (FOS 2013/3).

1.6 The changes made by these instruments are summarised in Chapter 2 of this Notice.

1.7 On 25 March, the transitional board of the Financial Conduct Authority made changes to the Handbook in the following instrument:

- Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments) Instrument 2013 (FCA 2013/30 and PRA 2013/17)

1.8 The changes made by this instrument are summarised in Chapter 2 of this Notice.

## **Changes outside the Handbook**

1.9 For changes outside the Handbook see Chapter 3 of this Notice.

## Description of changes

- 1.10 The legislative changes referred to above are listed and briefly described in Chapters 2 and 3 (where appropriate) of this Notice.

## Feedback on responses to consultations

- 1.11 Chapter 2 contains brief references to the consultative stages of the new legislative material made by the Board this month. The other Handbook changes referred to in Chapter 2 were consulted on in the following documents:

- CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012);
- CP12/26, *Regulatory reform: the PRA and FCA regimes for Approved Persons*, (October 2012);
- Chapter 9 of CP12/27, *Quarterly consultation (No. 34)*, (October 2012);
- CP12/28, *Regulatory fees and levies: Policy proposals for 2013/14*, (October 2012);
- CP12/29, *Personal pensions – feedback to CP12/5 and final rules on disclosure by SIPP operators, and consultation on inflation-adjusted illustrations*, (November 2012);
- CP12/34, *Regulatory reform FCA Handbook*, (November 2012);
- CP12/36, *The regulation and supervision of benchmarks*, (December 2012);
- CP12/37, *The Financial Services Bill: implementing markets powers, decision-making procedures and penalties policies*, (December 2012);
- CP12/39, *The PRA's approach to enforcement: consultation on proposed statutory statements of policy and procedure*, (December 2012);
- CP13/1, *FSCS Funding Model Review – feedback on CP12/16 and further consultation*, (January 2012);
- CP13/3, *Regulatory reform: Handbook transitional arrangements, the appointment of with-profits committee members and certain other Handbook amendments*, (January 2013).
- CP13/4, *Financial Services Compensation Scheme – management expenses levy limit 2013/14*, (January 2012);
- Chapter 2 of CP13/5, *Quarterly consultation (No. 35)*, (February 2013); and



- CP13/6, *Regulatory reform: FCA Handbook amendments relating to the Enforcement Guide*, (February 2013).

1.12 Feedback on consultations in Chapter 9 of CP12/27, Chapter 2 of CP13/5 and CP13/4 is set out in Chapter 4 of this Notice.

### **Making corrections**

1.13 The FSA 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**

1.14 This Notice is published on the FSA website and is available in hardcopy.

1.15 The formal legal instruments (which contain details of the changes) can be found on the FSA's website listed by date and reference number at <http://fsahandbook.info/FSA/InstrumentsByDate.jsp> or listed by module at <http://fsahandbook.info/FSA/InstrumentsByModule.jsp>. The definitive version of the Handbook at any time is the version contained in the legal instruments.

1.16 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.

1.17 The consolidated text of the Handbook can be found on the FSA's website at <http://fsahandbook.info/FSA/html/handbook/>.

1.18 Copies of the FSA's consultation papers referred to in this Notice are available on the FSA's website or on request in hardcopy form.

### **Obligation to publish feedback**

1.19 This Notice, and the feedback to which paragraph 1.7 refers, fulfil for the relevant text made by the Board the obligations in sections 155(5) and (6) 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 FSA'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.

## Comments

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

# 2

## Handbook changes made by the Board

### Introduction

- 2.1 This chapter is divided into two parts. The first part summarises changes made to the Handbook by the transitional board of the Financial Conduct Authority on 28 February 2013 to form the basis of the new FCA Handbook of rules, guidance and other material, to come into force on 1 April 2013. The second part briefly describes Handbook changes made by the Board on 19 March 2013.

### PART 1

*Legal Cutover (Financial Conduct Authority and Prudential Regulation Authority Handbooks (Glossary)) Instrument 2013 (FCA 2013/6 and PRA 2013/1)*

*Legal Cutover (Financial Conduct Authority and Prudential Regulation Authority Handbooks (General Provisions)) Instrument 2013 (FCA 2013/7 PRA 2013/2);*

*Financial Conduct Authority and Prudential Regulation Authority Handbook Designation Instrument 2013 (FCA 2013/8 and PRA 2013/4);*

*Financial Conduct Authority and Prudential Regulation Authority Handbook Designation (General Modifications) Instrument 2013 (FCA 2013/9 and PRA 2013/4); and*

*Financial Conduct Authority and Prudential Regulation Authority Handbook Designation (Particular Modifications) Instrument 2013 (FCA 2013/10 and PRA 2013/5).*

- 2.2 For legal cutover we will transition existing FSA rules and other provisions to the new regulators, and make only those changes to the existing FSA Handbook that are necessary to implement the Financial Services Act 2012 (the 2012 Act) and support the creation of the new regulatory structure.
- 2.3 In summary, these instruments create the FCA and PRA Handbooks which has involved three layers:
- the foundation is provided by badging or “designating” nearly every provision in the existing FSA Handbook to identify which of the new regulators will adopt each provision that is being carried forward. Approximately 23,000 provisions have been designated to be adopted by the FCA, the PRA, both, or neither – eg if a provision is being deleted or relates to a future Bank of England responsibility. The appropriate designation is determined by which regulator requires each provision to exercise its functions, roles and responsibilities under the new UK regulatory regime. At legal cutover, the ‘badged’ Handbook provisions will be visible to firms (and others) via the online FCA and PRA Handbooks;
  - in addition, a number of modifications have been made to the designated provisions. These do not represent changes of policy but include minor changes such as updating existing references to the FSA, to changing legislation, and to contact details. In a few cases, existing provisions have been split into two to produce legally sound FCA and PRA versions of the provision which better respect the jurisdiction of each regulator; and
  - some specific additional substantive changes to the existing FSA Handbook have been made to align the new rulebooks with the future objectives, functions and powers of the FCA and PRA, as set out in the 2012 Act, and the resulting adjustments to the regulatory procedures of the new regulators. Since September 2012, the FSA has been consulting on behalf of the FCA and PRA on proposed substantive changes through a series of consultation papers.
- 2.4 These instruments come into force on **1 April 2013**. Only some of the proposals for changes to the Glossary, and Chapter 2 of the General Provisions chapter of the Handbook (GEN 2), have been consulted on in CP12/24<sup>1</sup>. Feedback to this consultation was published

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<sup>1</sup> CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012).

by the FSA in a separate policy statement. The designation power (including related modifications) is not accompanied by any obligation to consult.

## **PART 2**

- 2.5** Part 2 of Chapter 2 describes changes made to the Handbook by the Board on 19 March 2013. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish.

## **GLOSSARY**

*Legal Cutover (Skilled Persons) Instrument 2013 (FCA 2013/11 and PRA 2013/6)*

- 2.6** For changes made to the Glossary by this instrument, see paragraphs 2.65 to 2.67 of this Notice.

*Legal cutover (Variation of Permission) Instrument 2013 (FCA 2013/12 and PRA 2013/8)*

- 2.7** For changes made to the Glossary by this instrument, see paragraphs 2.68 to 2.70 of this notice.

*Legal Cutover (General Transitional and Miscellaneous Provisions) Instrument 2013 (FCA 2013/19 and PRA 2013/14)*

- 2.8** For changes made to the Glossary by this instrument, see paragraphs 2.25 to 2.27.

*Legal Cutover (Fees) Instrument 2013 (FCA 2013/20 and PRA 2013/15)*

- 2.9** For changes made to the Glossary by this instrument, see paragraphs 2.30 to 2.32.

*Legal Cutover (Passporting) Instrument 2013 (FCA 2013/15 and PRA 2013/10)*

- 2.10** For changes made to the Glossary by this instrument, see paragraphs 2.77 to 2.79 of this Notice.

*Legal Cutover (Decision Procedure and Penalties Manual) Instrument 2013 (FCA 2013/28)*

- 2.11** For changes made to the Glossary by this instrument, see paragraphs 2.108 to 2.110 of this Notice.

*Listing Rules (Sponsors) (Amendment No 4) Instrument 2013 (FCA 2013/26)*

- 2.12 For changes made to the Glossary by this instrument, see paragraphs 2.127 to 2.129 of this Notice.

*Benchmarks Instrument 2013 (FCA 2013/33)*

- 2.13 For changes made to the Glossary by this instrument, see paragraphs 2.62 to 2.64 of this Notice.

*Financial Services Compensation Scheme (Funding Review: Retail Pool) Instrument 2013 (FCA 2013/35)*

- 2.14 For changes made to the Glossary by this instrument, see paragraphs 2.34 to 2.36 of this Notice.

*Over-the-Counter Derivatives, Central Counterparties and Trade Repositories Instrument 2013 (FCA 2013/39)*

- 2.15 For changes made to the Glossary by this instrument, see paragraphs 3.7 to 3.10 of this Notice.

*Fees Manual (Financial Ombudsman Service Case Fees 2013/2014) Instrument 2013 (FOS 2013/1)*

- 2.16 For changes made to the Glossary by this instrument, see paragraphs 3.40 to 3.42 of this Notice.

## **HIGH LEVEL STANDARDS**

### **Senior Management Arrangements, Systems and Controls sourcebook (SYSC)**

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

- 2.17 For changes made to SYSC by this instrument, please see paragraphs 2.100 to 2.102 of this Notice.

## Threshold Conditions (COND)

### *Legal Cutover (Threshold Conditions) Instrument 2013 (FCA 2013/22)*

2.18 Following consultation in CP12/34<sup>2</sup>, the Board has made the following changes to the Handbook:

**Changes:** *Changes to COND 1- 2*

.....

*Changes to ICOBS 8*

2.19 In summary, these changes:

- amend and update the FCA's Threshold Conditions guidance module of the Handbook (COND) as necessary, in line with the changes to the Financial Services Act 2012 and relevant secondary legislation; and
- replace guidance in ICOBS with a new rule requiring the appointment of a claims representative which is necessary as HM Treasury has deleted this requirement from the Threshold Conditions.

2.20 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

## Statements of Principle and Code of Practice for Approved Persons (APER)

### *Legal Cutover (Approved Persons) Instrument 2013 (FCA 2013/21 PRA 2013/16)*

2.21 For changes made to APER by this instrument, see paragraph 2.94 to 2.96 of this Notice.

## The Fit and Proper test for Approved Persons (FIT)

### *Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

2.22 For changes made to FIT by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

### *Benchmarks Instrument 2013 (FCA 2013/33)*

2.23 For changes made to FIT by this instrument, see paragraphs 2.62 to 2.64 of this Notice.

<sup>2</sup> CP12/34, *Regulatory reform FCA Handbook*, (November 2012).

### Training and Competence sourcebook (TC)

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

2.24 For changes made to TC by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

### General provisions (GEN)

*Legal Cutover (General Transitional and Miscellaneous Provisions) Instrument 2013 (FCA 2013/19 and PRA 2013/14)*

2.25 Following consultation in CP12/24<sup>3</sup> and CP13/3<sup>4</sup>, the Board has made the following changes to the Handbook:

**Changes:**

**Changes to the Glossary**

.....  
**Changes to GEN 4, 5, 6, Sch 5, Sch 6 and TP 1**

**Deletion of GEN Sch 4**

**Addition of GEN TP 2**

.....  
**Changes to COBS TP 2**

.....  
**Addition of ICOBS TP 2**

.....  
**Changes to MCOB TP 1**

.....  
**Changes to SUP 21, App 3, Sch 1, Sch 5, Sch 6 and TP 1**

**Addition of SUP Sch 5A**

2.26 In summary, these changes amend the Handbook to update the regulatory status disclosure wording to be used by all firms, to restrict the use of the FCA logo, and to provide appropriate transitional periods for use of the new wording and use of the FSA logo.

2.27 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

2.28 For changes made to GEN by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

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<sup>3</sup> CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012).

<sup>4</sup> CP13/3, *Regulatory reform: Handbook transitional arrangements, the appointment of with-profits committee members and certain other Handbook amendments*, (January 2013).



## Fees manual (FEES)

### *Legal Cutover (Skilled Persons) Instrument 2013 (FCA 2013/11 and PRA 2013/6)*

- 2.29 For changes made to FEES by this instrument, see paragraphs 2.65 to 2.67 of this Notice.

### *Legal Cutover (Fees) Instrument 2013 (FCA 2013/20 and PRA 2013/15)*

- 2.30 Following consultation in CP12/28<sup>5</sup>, the Board has made the following changes to the Handbook:

**Changes:**

**Changes to the Glossary**

.....

**Changes to FEES 1-7 and TP 7**

**Addition of FEES TP 8**

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**Changes to SUP 16**

.....

**Changes to CREDS Sch 3**

- 2.31 In summary, these changes modify the FSA's fees methodology to adapt it for the FCA in 2013/14.
- 2.32 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

### *Benchmarks Instrument 2013 (FCA 2013/33)*

- 2.33 For changes made to FEES by this instrument, see paragraphs 2.62 to 2.64 of this Notice.

### *Financial Services Compensation Scheme (Funding Review: Retail Pool) Instrument 2013 (FCA 2013/35)*

- 2.34 Following consultation in CP13/1<sup>6</sup>, the Board has made the following changes in the Handbook:

**Changes:**

**Changes to the Glossary**

.....

**Changes to FEES 6 and TP 7**

- 2.35 In summary, these changes amend the retail pool in which FCA FSCS funding classes will participate so that if the pool is triggered by claims arising from the conduct of firms within

<sup>5</sup> CP12/28, *Regulatory fees and levies: Policy proposals for 2013/14*, (October 2012).

<sup>6</sup> CP13/1, *FSCS Funding Model Review – feedback on CP12/16 and further consultation*, (January 2013).

the intermediation classes, all FCA regulated deposit takers (acceptors), general insurers, life insurers and home finance providers should also contribute to the pool.

2.36 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Financial Services Compensation Scheme (Management Expenses Levy Limit 2013/2014) (FCA) Instrument 2013 (FCA 2013/36 and PRA 2013/19)*

2.37 Following consultation in CP13/4<sup>7</sup>, the Board has made the following changes to the Handbook:

**Changes: Changes to FEES 6**

2.38 In summary, these changes set the Financial Services Compensation Scheme (FSCS) Management Expenses Levy Limit (MELL) to £94.4m for 2013/14. This will allow the FSCS to raise funds to cover its expenses so that it can continue operating and meeting its objective of providing a high-quality compensation scheme that is efficient, fair, approachable and responsive.

2.39 This instrument comes into force on **1 April 2013**. Feedback to this consultation is set out in Chapter 4 of this Notice.

*Fees Manual (Financial Ombudsman Service Case Fees 2013/2014) Instrument 2013 (FOS 2013/1)*

2.40 The Board has approved the following changes to the Handbook:

**Changes: Changes to the Glossary**  
.....  
**Changes to FEES 5**  
.....  
**Changes to DISP 4 and Sch 4**

2.41 In summary, these changes amend the Financial Ombudsman Services case fee arrangements.

2.42 This instrument comes into force on **1 April 2013**.

*Financial Ombudsman Service (Miscellaneous Rule Amendments) Instrument 2013 (FOS 2013/2)*

2.43 The Board has approved the following changes to the Handbook:

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<sup>7</sup> CP13/4, *Financial Services Compensation Scheme – management expenses levy limit 2013/14*, (January 2013).

**Changes:****Changes to FEES 5**

.....

**Changes to DISP 3 and 4**

2.44 In summary, these changes replace FSA references with FCA.

2.45 This instrument comes into force on 1 April 2013.

**PRUDENTIAL STANDARDS****Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)**

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

2.46 For changes made to BIPRU by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

**Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)**

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

2.47 For changes made to MIPRU by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

**Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))**

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

2.48 For changes made to IPRU(FSOC) by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

**Interim Prudential sourcebook for Investment Business (IPRU(INV))**

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

2.49 For changes made to IPRU(INV) by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

## **BUSINESS STANDARDS**

### **Conduct of Business sourcebook (COBS)**

*Legal Cutover (General Transitional and Miscellaneous Provisions)  
Instrument 2013 (FCA 2013/19 and PRA 2013/14)*

2.50 For changes made to COBS by this instrument, see paragraphs 2.25 to 2.27 of this Notice.

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2)  
Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

2.51 For changes made to COBS by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

*Conduct of Business Sourcebook (Key Features Illustrations for Personal Pensions) (Amendment) Instrument 2013 (FCA 2013/34)*

2.52 Following consultation in CP12/29<sup>8</sup>, the Board has made the following changes in the Handbook:

**Changes:    Changes to COBS 13 and TP 2**

2.53 In summary, the changes will mean that there is greater consistency between our point-of-sale illustration regime for personal pensions and the annual Statutory Money Purchase Illustrations required by the Department for Work and Pensions, as both will show the effect of inflation. Providing point-of-sale illustrations which take account of the effect of inflation will also enable consumers to plan more effectively for their retirement.

2.54 This instrument comes into force on **6 April 2014**, but transitional provisions mean that firms can comply with the new rules from 6 April 2013, if they so wish. Feedback to this consultation was published by the FSA in a separate policy statement.

### **Insurance: Conduct of Business sourcebook (ICOBS)**

*Legal Cutover (General Transitional and Miscellaneous Provisions)  
Instrument 2013 (FCA 2013/19 and PRA 2013/14)*

2.55 For changes made to ICOBS by this instrument, see paragraphs 2.25 to 2.27 of this Notice.

*Legal Cutover (Threshold Conditions) Instrument 2013 (FCA 2013/22)*

2.56 For changes made to ICOBS by this instrument, see paragraphs 2.18 to 2.20 of this Notice.

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<sup>8</sup> CP12/29, *Personal pensions – feedback to CP12/5 and final rules on disclosure by SIPP operators, and consultation on inflation-adjusted illustrations*, (November 2012).

*Employers' Liability Insurance: Disclosure by Insurers (No 3) Instrument 2013 (FCA 2013/38)*

- 2.57 Following consultation in Chapter 2 of CP13/5<sup>9</sup>, the Board has made the following changes to the Handbook:

**Changes:** **Changes to ICOBS TP 1**

- 2.58 In summary, these changes extend an existing Transitional Provision so that if a firm is unable to input the employer's reference number on their employers' liability register solely because of a failure by a third party outside the firm's control but they used best endeavours to collect it, the firm will not be deemed non-compliant with the current rule.
- 2.59 The instrument comes into force on **1 April 2013**. Feedback on this consultation is set out in Chapter 4 of this Notice.

**Mortgage and Home Finance: Conduct of Business sourcebook (MCOB)**

*Legal Cutover (General Transitional and Miscellaneous Provisions) Instrument 2013 (FCA 2013/19 and PRA 2013/14)*

- 2.60 For changes made to MCOB by this instrument, see paragraphs 2.25 to 2.27 of this Notice.

**Client assets sourcebook (CASS)**

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

- 2.61 For changes made to CASS by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

**Market Conduct (MAR)**

*Benchmarks Instrument 2013 (FCA 2013/33)*

- 2.62 Following consultation in CP12/36<sup>10</sup>, the Board has made the following changes to the Handbook:

**Changes:** **Changes to the Glossary**  
 .....  
**Changes to FIT 1**  
 .....  
**Changes to FEES 3 and 4**

<sup>9</sup> CP13/5, *Quarterly consultation (No. 35)*, (February 2013).

<sup>10</sup> CP12/36, *The regulation and supervision of benchmarks*, (December 2012).

- .....
- Addition of MAR 8***
- .....
- Changes to new SUP 10A and TP 4***
- .....
- Addition of BENCH***
- .....
- Changes to PERG 2***

- 2.63 In summary, these provisions set out the requirements on firms carrying out the activities of providing information to a specified benchmark, and administering a specified benchmark. For now, the only specified benchmark is LIBOR. This is in accordance with the recommendation by the Wheatley Review to bring LIBOR activities within the scope of statutory regulation.
- 2.64 This instrument comes into force on **2 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

## REGULATORY PROCESSES

### Supervision manual (SUP)

#### *Legal Cutover (Skilled Persons) Instrument 2013(FCA 2013/11 and PRA 2013/6)*

- 2.65 Following consultation in CP12/24<sup>11</sup>, the Board has made the following changes to the Handbook:

- Changes:***
  - Changes to the Glossary***
  - .....
  - Changes to FEES 3***
  - .....
  - Changes to SUP 5***

- 2.66 In summary, these changes align the Handbook with the regulators’ extended powers in the Financial Services Act 2012 to use Skilled Persons.
- 2.67 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

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11 CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012).

*Legal Cutover (Variation of Permission) Instrument 2013 (FCA 2013/12 and PRA 2013/7)*

2.68 Following consultation in CP12/24<sup>12</sup>, the Board has made the following changes to the Handbook:

**Changes:** **Changes to the Glossary**

.....

**Changes to SUP 6**

2.69 In summary, these changes align the Handbook with the respective roles and responsibilities of the FCA and PRA to vary, restrict or cancel a firm's permission at its request.

2.70 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Legal Cutover (Waiver and Modification of Rules) Instrument 2013 (FCA 2013/13 and PRA 2013/8)*

2.71 Following consultation in CP12/24<sup>13</sup>, the Board has made the following changes to the Handbook:

**Changes:** **Changes to SUP 8**

2.72 In summary, these changes align the Handbook with the respective roles and responsibilities of the FCA and PRA in respect of waivers and modifications of their rules.

2.73 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Legal Cutover (Controllers and Close Links) Instrument 2013 (FCA 2013/14 and PRA 2013/9)*

2.74 Following consultation in CP12/24<sup>14</sup>, the Board has made the following changes to the Handbook:

**Changes:** **Changes to SUP 11**

2.75 In summary, these changes align the Handbook with the respective roles and responsibilities of the FCA and PRA in respect of their consideration of changes in control and close links.

2.76 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

12 CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012).

13 CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012).

14 CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012).

*Legal Cutover (Passporting) Instrument 2013 (FCA 2013/15 and PRA 2013/10)*

2.77 Following consultation in CP12/24<sup>15</sup>, the Board has made the following changes to the Handbook:

**Changes:** *Changes to the Glossary*  
.....  
*Changes to SUP 13, 13A and 14*

2.78 In summary, these changes align the Handbook with the respective roles and responsibilities of the FCA and PRA in respect of inward and outward passporting under relevant EU Directives.

2.79 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Legal Cutover (Notifications) Instrument 2013(FCA 2013/16 and PRA 2013/11)*

2.80 Following consultation in CP12/24<sup>16</sup>, the Board has made the following changes to the Handbook:

**Changes:** *Changes to SUP 15*

2.81 In summary, these changes align the Handbook with the respective roles and responsibilities of the FCA and PRA in respect of notifications to be made by firms.

2.82 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Legal Cutover (Reporting Requirements) Instrument 2013 (FCA 2013/17 and PRA 2013/12)*

2.83 Following consultation in CP12/24<sup>17</sup>, the Board has made the following changes to the Handbook:

**Changes:** *Changes to SUP 16*

2.84 In summary, these changes align the Handbook with the roles and responsibilities of the FCA and PRA in respect of reports to be made by firms.

2.85 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

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15 CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012).  
16 CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012).  
17 CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012).



*Legal Cutover (Transfer of Business) Instrument 2013 (FCA 2013/18 and PRA 2013/13)*

**2.86** Following consultation in CP12/24<sup>18</sup>, the Board has made the following changes to the Handbook:

**Changes:**                      **Changes to SUP 18**

**2.87** In summary, these changes align the Handbook with the respective roles and responsibilities of the FCA and PRA in processing transfer of business applications.

**2.88** This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Legal Cutover (Supervision of Authorised Firms) Instrument 2013 (FCA 2013/23)*

**2.89** Following consultation in CP12/24<sup>19</sup>, the Board has made the following changes to the Handbook:

**Changes:**                      **Addition of SUP 1A**

**2.90** In summary, this instrument replaces SUP 1 with SUP 1A to provide an overview of the FCA's supervisory model.

**2.91** This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Legal Cutover (General Transitional and Miscellaneous Provisions) Instrument 2013 (FCA 2013/19 and PRA 2013/14)*

**2.92** For changes made to SUP by this instrument, see paragraphs 2.25 to 2.27 of this Notice.

*Legal Cutover (Fees) Instrument 2013 (FCA 2013/20 and PRA 2013/15)*

**2.93** For changes made to SUP by this instrument, see paragraphs 2.30 to 2.32 of this Notice.

*Legal Cutover (Approved Persons) Instrument 2013 (FCA 2013/21 and PRA 2013/16)*

**2.94** Following consultation in CP12/26<sup>20</sup>, the Board has made the following changes to the Handbook:

18 CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012).

19 CP12/24, *Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision*, (September 2012).

20 CP12/26, *Regulatory reform: the PRA and FCA regimes for Approved Persons*, (October 2012).

- Changes:**
- Changes to APER 1-4, TP 1 and Sch 2*
  - Deletion of APER Sch 4*
  - .....
  - Deletion of SUP 10*
  - Addition of SUP 10A and 10B*
  - Addition of SUP TP 3*

- 2.95** In summary, these changes replace Chapter 10 of the Supervision manual with Chapter 10A (in the case of the FCA) and Chapter 10B (in the case of the PRA). Chapters 10A and 10B reproduce Chapter 10 with amendments and updating. The changes also amend and update the Statement of Principles and Code of Practice for Approved Persons and provide for appropriate transitional arrangements for Chapters 10A and 10B of the Supervision manual.
- 2.96** This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Legal Cutover (Variation of Permission (Amendment No 2)) Instrument 2013 (FCA 2013/24)*

- 2.97** Following consultation in CP12/34<sup>21</sup>, the Board has made the following changes to the Handbook:

- Changes:** *Changes to SUP 7*

- 2.98** In summary, these changes explain the FCA’s own initiative powers to vary, restrict or cancel a firm’s permission.
- 2.99** This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

- 2.100** The Board has made the following changes to the Handbook:

- Changes:**
- Changes to SYSC 2-5*
  - .....
  - Changes to FIT 1 and 2*
  - .....
  - Changes to TC 2*
  - .....
  - Changes to GEN 1 and TP 1*
  - .....
  - Changes to BIPRU 12*

<sup>21</sup> CP12/34, *Regulatory reform FCA Handbook*, (November 2012).

.....  
**Changes to MIPRU 2**

.....  
**Changes to IPRU(FSOC) Initial Guidance (3)G**

.....  
**Changes to IPRU(INV) 13**

.....  
**Changes to COBS 5 and 6**

.....  
**Changes to CASS 1**

.....  
**Changes to SUP 3, 4, 12, 16 and App 2**

.....  
**Changes to DISP 1**

.....  
**Changes to CREDS 5, 6, 8 and 10**

.....  
**Changes to PROF 5 and 7**

.....  
**Changes to EMPS 1**

.....  
**Changes to OMPS 1**

.....  
**Changes to SERV 1**

.....  
**Changes to PERG 13**

**2.101** In summary, this instrument makes necessary changes to cross-references to bring the Handbook up to date for the new regulators.

**2.102** This instrument comes into force on 1 April 2013.

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments)  
Instrument 2013 (FCA 2013/30 and PRA 2013/17)*

**2.103** The Board has made the following changes to the Handbook:

**Changes:**                      **Changes to SUP 6, 8, 10A, 10B, 12, 13, 13A and 15**  
   **Changes to PERG 7**

**2.104** In summary, these changes amend various authorisations and supervision forms for the new regulators.

**2.105** This instrument comes into force on 1 April 2013.

*Benchmarks Instrument 2013 (FCA 2013/33)*

2.106 For changes made to SUP by this instrument, see paragraphs 2.62 to 2.64 of this Notice.

*Over-the-Counter Derivatives, Central Counterparties and Trade Repositories Instrument 2013(FCA 2013/39)*

2.107 For changes made to SUP by this instrument, see paragraphs 3.7 to 3.10 of this Notice.

**Decision Procedure and Penalties Manual (DEPP)**

*Legal Cutover (Decision Procedure and Penalties Manual) Instrument 2013(FCA 2013/28)*

2.108 Following consultation in CP12/39<sup>22</sup>, the Board has made the following changes to the Handbook:

**Changes:**

***Changes to the Glossary***

.....  
***Changes to DEPP 1-7, TP 1, Sch 3 and 4***

2.109 In summary, these changes amend and update the Handbook to reflect FCA's powers, roles and obligations.

2.110 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Over-the-Counter Derivatives, Central Counterparties and Trade Repositories Instrument 2013(FCA 2013/39)*

2.111 For changes made to DEPP by this instrument, see paragraphs 3.7 to 3.10 of this Notice.

**REDRESS**

**Dispute Resolution: Complaints (DISP)**

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

2.112 For changes made to DISP by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

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<sup>22</sup> CP12/39, The PRA's approach to enforcement: consultation on proposed statutory statements of policy and procedure, (December 2012).

*Fees Manual (Financial Ombudsman Service Case Fees 2013/2014)  
Instrument 2013 (FOS 2013/1)*

- 2.113 For changes made to DISP by this instrument, see paragraphs 2.40 to 2.42 of this Notice.

*Financial Ombudsman Service (Miscellaneous Rule Amendments) Instrument  
2013 (FOS 2013/2)*

- 2.114 For changes made to DISP by this instrument, see paragraphs 2.43 to 2.45 of this Notice.

*Dispute Resolution: Complaints (Amendment No 5) Instrument 2013 (FOS  
2013/3)*

- 2.115 The Board approved the following changes to the Handbook:

**Changes: *Changes to DISP 3***

- 2.116 In summary, these amendments implement changes introduced by the Financial Services Act 2012 related to the Financial Ombudsman Service.
- 2.117 This instrument comes into force on 1 April 2013.

## **SPECIALIST SOURCEBOOKS**

### **Credit Unions New sourcebook (CREDS)**

*Legal Cutover (Fees) Instrument 2013 (FCA 2013/20 and PRA 2013/15)*

- 2.118 For changes made to CREDS by this instrument, see paragraphs 2.30 to 2.32 of this Notice.

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2)  
Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

- 2.119 For changes made to CREDS by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

### **Professional Firms sourcebook (PROF)**

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2)  
Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

- 2.120 For changes made to PROF by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

## **Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)**

### *Legal Cutover (Recognised Investment Exchanges and Recognised Auction Platforms) Instrument 2013 (FCA 2013/27)*

2.121 Following consultation in CP12/37<sup>23</sup>, the Board has made the following changes to the Handbook:

**Changes:**                                    ***Changes to REC 1 - 6A, TP 1, Sch 2***  
***Deletion of REC Sch 3 and 4***  
***Changes to REC Sch 6***

2.122 In summary, these changes amend Handbook to reflect new powers given to the FCA under the Financial Services Act 2012 in respect of Recognised Investment Exchanges and the transfer of responsibility for Clearing House supervision to the Bank of England.

2.123 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

## **LISTING, PROSPECTUS AND DISCLOSURE**

### **Listing Rules sourcebook (LR)**

### *Listing Rules (Cancellation and Suspension Notices) Instrument 2013 (FCA 2013/25)*

2.124 Following consultation in CP12/37<sup>24</sup>, the Board has made the following changes to the Handbook:

**Changes:**                                    ***Changes to LR 5***

2.125 In summary, these changes amend the content of FCA notices regarding the cancellation/suspension of an issuer's securities, where the request for suspension or cancellation was made by an issuer. The power to make these changes was provided for by the Financial Services Act 2012.

2.126 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

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23 CP12/37, *The Financial Services Bill: implementing markets powers, decision-making procedures and penalties policies*, (December 2012).

24 CP12/37, *The Financial Services Bill: implementing markets powers, decision-making procedures and penalties policies*, (December 2012).

*Listing Rules (Sponsors) (Amendment No 4) Instrument (FCA 2013/26)*

**2.127** Following consultation in CP12/37<sup>25</sup>, the Board has made the following changes to the Handbook:

**Changes:**

***Changes to the Glossary***

.....

***Changes to LR 8***

**2.128** In summary, these changes amend the Listing Rules to reflect new powers given to the FCA under the Financial Services Act 2012 in respect of persons acting as sponsors under the listing regime.

**2.129** This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

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<sup>25</sup> CP12/37, *The Financial Services Bill: implementing markets powers, decision-making procedures and penalties policies*, (December 2012).

# 3

## Changes outside the Handbook

### HANDBOOK GUIDES

#### Energy Market Participants (EMPS)

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

- 3.1 For changes made to EMPS by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

#### Oil Market Participants (OMPS)

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

- 3.2 For changes made to OMPS by this instrument, see paragraphs 2.100 to 2.102 of this Notice.



## Service Companies (SERV)

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

- 3.3 For changes made to SERV by this instrument, see paragraphs 2.100 to 2.102 of this Notice.

## General guidance on Benchmark Submission and Administration (BENCH)

*Benchmarks Instrument 2013 (FCA 2013/33)*

- 2.130 This instrument created the General guidance on Benchmark Submission and Administration. For other changes by this instrument, please see paragraphs 2.62 to 2.64 of this Notice.

## REGULATORY GUIDES

### Enforcement Guide (EG)

*Legal Cutover (Enforcement Guide) Instrument 2013 (FCA 2013/29)*

- 3.4 Following consultation in CP13/6<sup>26</sup>, the Board has made the following changes to the Handbook:

**Changes:** *Changes to EG Contents list*  
*Changes to EG 1 – 16, 18-19 and Annex 2*

- 3.5 In summary, these changes update the Enforcement Guide for the FCA.
- 3.6 This instrument comes into force on **1 April 2013**. Feedback to this consultation was published by the FSA in a separate policy statement.

*Over-the-Counter Derivatives, Central Counterparties and Trade Repositories Instrument 2013 (FCA 2013/39)*

- 3.7 Following consultation in Chapter 9 of CP12/27<sup>27</sup>, the Board has made the following changes to the Handbook:

<sup>26</sup> CP13/6, *Regulatory reform: FCA Handbook amendments relating to the Enforcement Guide*, (February 2013).

<sup>27</sup> CP12/27, *Quarterly consultation (No. 34)*, (October 2012).

- Changes:**
- Changes to the Glossary*
  - .....
  - Addition of SUP 15A*
  - .....
  - Changes to DEPP Sch 3*
  - .....
  - Additions to EG 19*

- 3.8** In summary, these changes support the implementation of the European Market Infrastructure Regulation (EMIR) and reflect the powers that the FCA will have from 1 April 2013 under HM Treasury’s statutory instrument implementing EMIR (The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulation 2013). These include:
- the FCA’s power to specify the form and, where relevant, content of notifications and applications to be made to the FCA; and
  - the FCA’s supervisory and enforcement powers in respect of obligations placed on financial and non-financial counterparties under EMIR.
- 3.9** In relation to the latter, the Handbook changes also explain how the FCA intends to use such powers.
- 3.10** The instrument comes into force on **1 April 2013**. Feedback to this consultation is set out in Chapter 4 of this Notice.

**Perimeter Guidance manual (PERG)**

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments) Instrument 2013 (FCA 2013/30 and PRA 2013/17)*

- 3.11** For changes made to PERG by this instrument, see paragraphs 2.103 to 2.105 of this Notice.

*Legal Cutover (FCA and PRA Handbook Miscellaneous Amendments No 2) Instrument 2013 (FCA 2013/31 and PRA 2013/18)*

- 3.12** For changes made to PERG by this instrument, see paragraphs 2.102 to 2.105 of this Notice.

*Benchmarks Instrument 2013 (FCA 2013/33)*

- 3.13** For changes made to PERG by this instrument, see paragraphs 2.62 to 2.64 of this Notice.

# 4

## Feedback on responses to consultation

4.1 This chapter provides feedback on the following consultation:

- Chapter 9 of CP12/27, *Quarterly consultation (No. 34)*, (October 2012);
- Chapter 2 of CP13/5, *Quarterly consultation (No 35)*, (February 2013); and
- CP13/4, *Financial Services Compensation Scheme – management expenses levy limit 2013/14*, (January 2013).

### **Chapter 9 of CP 12/27, Quarterly Consultation (No. 34)**

*Over-the-Counter Derivatives, Central Counterparties and Trade Repositories Instrument 2013 (FCA 2013/39)*

**Glossary of definitions**

**Supervision manual (SUP)**

**Decision Procedure and Penalties manual ( DEPP)**

**Enforcement Guide (EG)**

## Background

### *Implementing the European Regulation on OTC derivatives, central counterparties and trade repositories (EMIR)*

- 4.2 In CP12/27 we consulted on a number of proposed Handbook amendments to implement the new powers that we anticipated to receive under EMIR. EMIR applies to any entity established in the EU that is a legal counterparty to a derivatives contract. This includes both non-financial and financial counterparties. EMIR aims to improve transparency and reduce the risks associated with the derivatives market by introducing requirements to:
- report any derivative contract entered into to a trade repository;
  - clear, via a central counterparty (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.
- 4.3 EMIR came into force on 16 August 2012 and the technical standards to implement EMIR, developed by the European Securities and Markets Authority (ESMA), came into force on 15 March 2013. 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.
- 4.4 Related changes to UK legislation will be introduced through the EMIR Statutory Instrument (EMIR SI), and to a lesser extent, the EU Qualifying Provisions Order, both of which will come into effect on 1 April 2013.

### **Further changes to the Handbook since consultation as a result of legislative changes**

- 4.5 In CP12/27, we proposed a number of changes to the following modules of the Handbook:
- Glossary of definitions;
  - Fees manual (FEES);
  - Decision Procedure and Penalties manual (DEPP);
  - Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC);
  - Enforcement Guide (EG); and
  - Perimeter Guidance manual (PERG).

- 4.6** A significant number of the changes proposed during the consultation were to reflect the replacement of the existing domestic Recognised Clearing House regime by the new EMIR regime for CCPs during 2013. These changes, which are no longer included, were proposed in anticipation of the EMIR changes coming into force ahead of legal cutover, when the FSA's responsibilities and legal powers will be assumed by the Prudential Regulation Authority (PRA), Financial Conduct Authority (FCA), and the Bank of England (BoE).
- 4.7** Since the consultation, HM Treasury has confirmed through the Financial Services Act 2012 (the 2012 Act) that the date for legal cutover is 1 April 2013. Responsibility for supervision and authorisation of CCPs and any remaining Recognised Clearing Houses will move to the BoE as of this date, and as a consequence, the Handbook amendments to be commenced on 1 April 2013 as FCA provisions, will not include any of the previously proposed changes relating to the EMIR regime for CCPs. This also reflects the approach to remove all existing rules and guidance relating to Recognised Clearing Houses from the FCA Handbook, which was the subject of a separate consultation in CP12/37<sup>28</sup>.
- 4.8** Separately, we flagged in the consultation that to the extent the final EMIR SI differed from our expectations, the final Handbook text might need to be amended accordingly. As anticipated, HM Treasury has further developed the EMIR SI since we consulted. This has led to some further consequential changes to the Enforcement Guide (EG) and additions to the Supervision manual (SUP) since consultation. These FCA provisions, which will commence on 1 April 2013, reflect the final EMIR SI and make firms aware of the FCA's powers under this SI.

### Consultation responses

- 4.9** Paragraph 9.11 of CP12/27 proposed allocating the cost of processing notifications/applications for exemptions and oversight of EMIR requirements only to FSA authorised firms. One respondent was concerned that this approach might place a disproportionate level of the cost burden on authorised firms when FSA oversight in this area applies equally to both authorised and non-authorised firms. Further details were requested on the FSA's rationale and cost allocation mechanism with respect to particular fee blocks, including which fee blocks the FSA expected to allocate the greatest cost to. In addition, the respondent queried whether alternative methods had been considered that involved recovering costs from both sets of firms, and if so, why these alternative methods were not chosen.
- 4.10** As noted in our consultation, there is no requirement for non-authorised counterparties to register with the FSA under EMIR, which means the cost of processing notifications/applications for exemptions and oversight of EMIR

<sup>28</sup> CP12/37, *The Financial Services Bill: implementing markets powers, decision-making procedures and penalties policies*, (December 2012).

requirements will need to be recovered from the authorised firms. In addition, the costs of processing notifications/applications for exemptions and requirements under EMIR costs are not anticipated to be significant enough to justify an administrative approach other than to allocate them across the fee blocks (A.3, A.4 and A.12/13) made up of the firms that will benefit most from EMIR. This view also takes into account the changes made to the Handbook text since consultation in CP12/27 to reflect the EMIR SI. We have therefore decided that we will proceed with the approach consulted on.

- 4.11 A number of other comments and suggestions were made by the respondents with respect to certain concepts and definitions within the EMIR SI. These issues have been raised with HM Treasury, where relevant. Given that these comments related to the EMIR SI, we do not believe that it would be appropriate for the FSA to respond to these comments. In so far as the EMIR SI has been further developed by HM Treasury since consultation, the Handbook text has been amended accordingly to reflect the powers that the FCA will have under the EMIR SI.

### **Amendments to the Handbook**

- 4.12 Factoring in the responses to the consultation, and legislation commencing as of 1 April, the following sections of the Handbook will be amended as of 1 April 2013:
- the Glossary of definitions will be amended to introduce key EMIR definitions;
  - the Supervision manual (SUP) will be amended to include provisions which reflect the FCA powers that are set out in the EMIR SI. The provisions reflect the language in the EMIR SI, setting out powers for the FCA to specify the form and, where relevant, content of notifications, and to investigate levels of compliance;
  - the Enforcement Guide (EG) will be amended to include provisions which set out how the FCA intends to use the powers it has been given in respect of information gathering and sanctioning, which enable the FCA to investigate and take action for breaches of relevant EMIR requirements, including by non-authorised persons; and
  - the Decision Procedures and Penalties manual (DEPP) will be amended to include a provision to highlight that the FCA's power to impose financial penalties in respect of authorised firms and recognised bodies is also set out in the EMIR SI. This reflects the FCA's powers set out in the EU Qualifying Provisions Order which is to come into force on 1 April 2013.

### **Cost benefit analysis**

- 4.13** In CP12/27, we explained that there was not a requirement to publish a cost benefit analysis of the implications of the proposed amendments, where there is no increase in costs, or costs will be of minimal significance. We stated that our analysis was limited to changes to the Handbook arising from the additional impact of the rules and guidance that we were proposing, and did not consider the impact of the obligations and requirements imposed by EMIR or the EMIR SI. On that basis, we stated that we regarded the costs arising from the proposed Handbook changes to be of minimal significance, as most of the proposed changes are consequential in nature or describe processes or requirements in EMIR or the EMIR SI.
- 4.14** We consider the above conclusion in CP12/27 is still valid, also taking into account the changes to the Handbook text since consultation, which are largely consequential in nature or descriptive of processes or requirements in the EMIR SI.

### **Compatibility statement**

- 4.15** The overall objective of EMIR is to implement within Europe the G20 commitments to improve transparency in the derivatives markets, mitigate systemic risk, and protect against market abuse. As noted above, EMIR is an EU Regulation (not a Directive) and therefore has direct legislative effect in the UK.
- 4.16** The Handbook changes seek to support EMIR implementation in the UK, and are made up of guidance explaining the powers given to the FCA under the EMIR SI and how the FCA intends to use such power. There are no new rules being introduced which will give the FCA additional powers over and above those granted to the FCA under the EMIR SI.
- 4.17** We consider the limited Handbook changes to be compatible with the FCA's strategic objective of ensuring that the relevant markets (set out in Section 1F of the Act) function well. This is because 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 SI.
- 4.18** We consider that the limited changes, in supporting EMIR implementation, 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 and advance the consumer protection objective or the integrity objective. As such, we consider that we are not acting inconsistently with the FCA's duty under section 1B(4) of FSMA (as amended by the 2012 Act) 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.

- 4.19 In preparing the final Handbook changes, we have had regard to the regulatory principles in section 3B of FSMA (as amended by the 2012 Act):

*The need to use our resources in the most efficient and economic way*

The Handbook changes only seek to support the implementation of EMIR and do not introduce new rules which will give the FCA additional powers over and above those granted to the FCA under the EMIR SI. In only making the limited changes to reflect the EMIR SI, we consider that we are using our resources in the most efficient and economic way.

*The principle that a burden or restriction should be proportionate to the benefits*

As above, the Handbook changes only seek to support the implementation of EMIR and do not seek to add any additional burdens or restrictions over and above those contemplated under the EMIR SI and EU Qualifying Provisions Order. We continue to consider that the Handbook changes do not undermine this principle.

*The general principle that consumers should take responsibility for their decisions*

The Handbook changes do not undermine this principle.

*The responsibilities of senior management*

The Handbook changes provide greater clarity around how the FCA will use the powers given under the EMIR SI and EU Qualifying Provisions Order. This will assist senior managers of relevant persons subject to EMIR requirements to understand their responsibilities and comply with EMIR requirements.

*The desirability of publishing information relating to persons*

The Handbook changes reflect the requirement under the EMIR SI to publish a statement where we impose a penalty, unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage. In going no further than this, we think that the Handbook changes do not undermine this principle.

*The principle that we should exercise of our functions as transparently as possible*

The Handbook changes help to clarify and increase the transparency of the manner in which the FCA will exercise the powers given to it under the EMIR SI.



*The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term*

As stated above, we believe that our Handbook changes will generally help to ensure that relevant markets function well. This will in turn support this principle.

### **Equality and Diversity Issues**

- 4.20 We continue to believe that these changes do not give rise to discrimination and are of low relevance to the equality and diversity agenda. In the four consultation responses that we received, two agreed with our assessment and two did not comment.
- 4.21 The changes made by this instrument are listed in paragraphs 3.7 to 3.10 of this Notice.

## **Chapter 2 of CP13/5, Quarterly consultation (No 35)**

*Employers' Liability Insurance: Disclosure by Insurers (No 3) Instrument 2013 (FCA 2013/38)*

### **Insurance: Conduct of Business sourcebook (ICOBS)**

#### **Background**

- 4.22 In Chapter 2 of CP13/5 we consulted on the extension of a transitional provision (TP) and related guidance for one year. Our proposal was based on the continuing difficulties firms were experiencing in collecting the Employer's reference number (ERN).

#### **Feedback**

- 4.23 We asked:

*Q2.1: Do you agree with our proposal to extend TP 9AR(1), TP9AR(2) and TP9G for one year until 1 April 2014?*

We received 7 responses. Five were supportive of our proposals, agreeing that our proposal suitably reflected the continuing difficulties of insurers in obtaining ERNs. Some respondents observed that in order to effectively capture ERN information there needs to be access to the HMRC database. Others welcomed our exploration of other options and requested that sufficient time is factored into the implementation of any necessary changes

### Our response

Our proposal is based on the continuing difficulties firms are experiencing in collecting the Employer's reference number (ERN). We have been advised that employers are not providing the information, especially smaller employers and there appears to be uncertainty about why the information is necessary. The extension of the TP allows more time for the requirement to become imbedded into the business as standard information firms are required to collect, it allows time to explore options around the collection of the ERN. We cannot comment on the options or pre-empt developments in the coming months. However, this does not necessarily mean there will be a change to the underlying requirement to collect the ERN once the TP expires.

- 4.24 One respondent raised concerns that by providing an extension, the impetus that had been created in the market will be lost and we will be in the same position in 12 months-time. Another respondent noted that this was only a temporary solution and does not address the underlying issue of employers not being willing to provide the information or understanding why the insurer requires it. One respondent suggested that third parties could be encouraged to do more to make policyholders aware of what information is required.

### Our response

We do not consider that extending the TP will take away the impetus to collect the ERN, and as stated in our CP11/27 in our view 'best endeavours' is a high standard and will not detract from the momentum to collect ERNs. We agree the extension is a temporary solution but the next 12 months will help us explore solutions. We are aware that a lot of work has been done and is continuing to be done in educating policyholders about the ERN and firms are working with their broker partners to improve the collection rates.

- 4.25 Some respondents sought clarification on the application of the TP. The TP is to apply exactly as before, we have not altered the wording or the intent of the original TP. The TP applies to the extent that a firm is unable to include information required under ICOBS 8.4.4R(2)(b)(ii) solely because of a failure by a third party outside the firm's control, then provided the firm has used and continues to use, best endeavours to obtain that information, they can rely on the TP. It is for a firm to decide who is a third party and whether a third party is outside of their control.
- 4.26 One respondent believes that the TP applies to policies written (as new or renewing business) in the 12 months from 1/4/2012 and equally to those written in the forthcoming year from

1/4/2013. To confirm, the TP commenced 1 April 2012 and will expire 1 April 2014 and it applies to new or renewing policies.

- 4.27 The majority of responses were supportive of our proposal and we are proceeding with our proposal unchanged.

### **Cost benefit analysis**

- 4.28 The cost benefit analysis for the proposal remains unchanged from that published in Chapter 2 of CP13/5.

### **Compatibility statement**

- 4.29 The compatibility statement for the proposal remains unchanged from that published in Chapter 2 of CP13/5.

### **Equality and diversity issues**

- 4.30 We did not receive any comments on this, and continue to consider that the extension of the TP and related guidance does not give rise to any issues in this respect.
- 4.31 The changes made by this instrument are listed in paragraphs 2.57 to 2.59 of this Notice

## **CP13/4, Financial Services Compensation Scheme – management expenses levy limit 2013/14**

*Financial Services Compensation Scheme (Management Expenses Levy Limit 2013/2014) (FCA) Instrument 2013 (FCA 2013/36 and PRA 2013/19)*

### **Fees manual (FEES)**

#### **Background**

- 4.32 In CP13/4 we proposed setting the FSCS management expenses levy limit (the MELL) at £94.4m for 2013/14 and set out an indicative breakdown of this figure. The management expenses of the FSCS are the non-compensation costs that the FSCS incurs – or expects to incur – in connection with delivering its functions. From 1 April 2013, under FSMA as amended by the Financial Services Act 2012, the FCA and the PRA each have responsibility for making the rule that sets this limit each year.
- 4.33 We consulted on behalf of the PRA and the FCA on a proposed MELL for 2013/14 of £94.4m. This included FSCS management expenses of £74.4m and a contingency reserve of £20m that allows the FSCS to levy additional funds without formal consultation by the FCA and the PRA to meet contingencies that were not foreseen when the annual levy was raised.

## Feedback

4.34 We asked:

**Q1:** Do you have any comments on the proposed 2013/14 FSCS management expense levy limit figure?

4.35 We received responses from five trade bodies and firms. Respondents were concerned about the increase in the FSCS's management expenses. There was particular concern about the cost of investment in changes to improve the operation of the scheme, the cost of exceptional/new activities and the cost of recoveries.

4.36 Respondents also questioned the level of the contingency reserve and how the sum was calculated and monitored. It was also suggested that a pre-approved contingency reserve was a step towards a pre-funded model.

4.37 There were a number of concerns about transparency. Concern was expressed about the labelling of some costs that appeared to be on-going operating expenses as change investments or new/exceptional activities. Respondents also wanted greater clarity about the allocation of costs to their class.

### Our response

Having considered the responses received, we have decided to set the limit on the FSCS's management expenses levy for 2013/14 at £94.4m as consulted on. CP13/4 and the FSCS's 2013/14 Plan and Budget explained the benefits the FSCS sought from its investment in changes and from seeking recoveries and the reasons for the expenditure on exceptional/new activities.

We continue to believe that the contingency reserve of £20m is appropriate, for the reasons we explained in CP13/4. In practice the FSCS is unlikely to levy for more than its budgeted expenses, unless there is a specific event or events that require it to do so. So the reserve is not prefunding. The FSCS would liaise with the PRA, the FCA and trade bodies before raising a levy for its contingency reserve.

However, we propose to work with the FSCS to improve clarity in relation to the FSCS's management expenses, particularly with regard to the funding classes to which expenses relate.

## Cost benefit analysis and compatibility statement

4.38 The Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services Act 2012 requires the FCA to carry out and publish a cost benefit analysis when proposing draft rules. FSMA also requires the FCA to include in any consultation an explanation of

the FCA's reasons for believing that making the proposed rules is compatible with its duties under FSMA. There is no change to the cost benefit analysis or compatibility statement to that set out in CP13/4.

- 4.39** The instrument's provisions do not differ from those proposed in CP13/4. We did not receive any feedback which led us to amend the cost benefit analysis and compatibility statement that we published in that consultation paper.

### **Equality and diversity issues**

- 4.40** The subject matter of the rule change is outside the ambit of the Equality Act 2010. We did not therefore conduct an equality impact assessment. We received no comments during consultation on any equality issues that respondents could foresee.
- 4.41** The change to the Handbook made by this instrument is set out at paragraphs 2.37 to 2.39 of this Notice.

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