



No.17

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# Handbook Notice

December 2014

Financial Conduct Authority





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## Handbook Notice 017

This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative powers on 6 and 28 November and 11 December 2014. It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

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

General comments and queries on the Handbook can be addressed to

Saira Hussain

Tel: 020 7066 0334

Email: [saira.hussain@fca.org.uk](mailto:saira.hussain@fca.org.uk)

Melanie Purdie

Tel: 020 7066 9066

Email: [mel.purdie@fca.org.uk](mailto:mel.purdie@fca.org.uk)

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

Tel: 0845 606 9966

Fax: 020 7066 0991

Email: [firm.queries@fca.org.uk](mailto:firm.queries@fca.org.uk)

Post: Customer Contact Centre  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

# 1. Overview

## Legislative changes

- 1.1** On 6 and 28 November 2014, in addition to the instruments listed in the last Handbook Notice, the FCA Board made changes to the Handbook in the instruments listed below.

CP	Title of instrument	Instrument No.	Changes effective
14/10	Consumer Credit (Cost Cap) Instrument 2014	2014/56	2.1.15
N/A	Consumer Credit (Credit Broking) Instrument 2014	2014/58	2.1.15

- 1.2** On 11 December 2014, the FCA Board made changes to the Handbook in four instruments which are listed in the table below.

CP	Title of instrument	Instrument No.	Changes effective
N/A	Handbook Administration (No 36) Instrument 2014	2014/59	1.1.14, 1.6.15
14/18, Ch 4	Client Assets Sourcebook (Amendment No 7) Instrument 2014	2014/60	1.4.15
14/8, Ch 5	Immigration Regulations Instrument 2014	2014/61	12.12.15
14/18, Ch 2	Supervision Manual (Direction and Determination Process) (Amendment) Instrument 2014	2014/62	12.12.15

## Summary of changes

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

## Feedback on responses to consultations

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

**FCA Board dates for 2015**

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- 1.5** The table below contains a list of forthcoming FCA board meetings for 2015. These dates are subject to change without prior notice.

January	29
February	26
March	26
April	23
May	No Board
June	4 and 18
July	2 and 30
August	No Board
September	24
October	22
November	4 and 5
December	3

## 2. Summary of changes

- 2.1** This chapter briefly describes FCA Handbook changes and changes outside the Handbook made by the Board on 6 and 28 November 2014 and 11 December 2014. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the PRA please see <http://www.bankofengland.co.uk/pr/Pages/publications/default.aspx>

### ***Consumer Credit (Cost Cap) Instrument 2014 (FCA 2014/56)***

- 2.2** Following consultation in CP14/10, the FCA Board has made changes to the FCA Handbook sections listed below:

#### **CONC 5A**

- 2.3** In summary, the instrument introduces a price cap on what high-cost short-term credit lenders can charge.
- 2.4** This instrument comes into force on **2 January 2015**. Feedback to this consultation was published in a separate policy statement.

### ***Consumer Credit (Credit Broking) Instrument 2014 (FCA 2014/58)***

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

#### **SUP 16**

#### **CONC 3, 4, 11, 12 and Schedule 1**

- 2.6** In summary the instrument makes the following changes:

- to prohibit credit brokers from charging fees, and from requesting payment details from customers for that purpose, unless and until:
  - the broker has provided an explicit notice to the customer, in a durable medium (an 'information notice'), setting out:
    - the firm's legal name
    - a statement that the firm is a credit broker (not a lender) or, if it is both a credit broker and a lender, a statement that it is acting as a credit broker and not as a lender
    - a statement that a fee will, or (where relevant) may, be payable
    - the amount or likely amount of the fee, **and**

- when and by what means the fee will be payable, and
- the customer has acknowledged receipt of the notice, and awareness of its contents, in a durable medium (the 'customer confirmation')
- to require the firm's legal name (as it appears in the Financial Services Register) to be included in all financial promotions and communications by credit brokers
- to require financial promotions to make clear in a prominent way that the firm is a credit broker, not a lender, or (if it is both) that it is acting as a credit broker
- to require fee-charging brokers to notify the FCA quarterly of their domain names, and
- to extend to credit broking contracts entered into by distance means (for example, online) the 14-day right of cancellation required by the Distance Marketing Directive (owing to an oversight this was not included as part of transposition of the relevant regulations into FCA rules earlier this year)

**2.7** This instrument comes into force on **2 January 2015**.

### ***Handbook Administration (No 36) Instrument 2014 (FCA 2014/59)***

**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**

**GEN Sch 4**

**IPRU(FSOC)**

**CASS 6 and 7**

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

- change to the definition of 'actuarial body' to reflect the change in name of the Institute and Faculty of Actuaries
- changes to the table of Powers exercised, in GEN, to reflect recently added legislative powers
- minor corrections within IPRU(FSOC) to correct some outstanding references to the FSA
- corrections within CASS and SUP in order to reflect more accurately and consistently the FCA's policy as set out in our policy statement Review of the client assets regime for investment business (PS14/9)
- removal of references (in MAR 1.2, MAR 2.1 and DEPP 6.5C) to section 118(4) of the Act, which expires on 31 December 2014 in accordance with section 118(9); the whole of MAR 1.5, and the definition of 'market abuse (misuse of information)', have also been deleted; these provisions reflect section 118(4), either by means of copy-out, guidance on this section or as evidential or consequential provisions regarding the behaviour described in section 118(4); for the avoidance of doubt, the Government has laid legislation which confirms the lapse of section 118(4), and this will come into force on 15 December 2014.



- 2.10** We have also removed from the Handbook all Transitional Provisions (TPs) which have expired, or will expire by the date of commencement of this instrument. The modules affected are as follows:

**SYSC  
APER  
GEN  
FEES  
MIPRU  
IPRU(INV)  
COBS  
ICOB  
MCOB  
CASS  
SUP  
DEPP  
COLL  
CREDS  
CONC  
FUND, and  
DTR**

- 2.11** In the course of this exercise we have taken the opportunity to clean up the layout of the TPs table in COLL to ensure a consistent presentation of information throughout the table.
- 2.12** The expired transitional provisions in CREDS will be deleted as part of the pending re-examination of this sourcebook in 2015, and those in LR will be dealt with in 2015 also.
- 2.13** These changes come into force on **1 January 2015**, apart from some of the changes in CASS and SUP which come into force on **1 June 2015** to coincide with the relevant commencements in the Client Assets Sourcebook (Amendment No 5) Instrument 2014 (FCA 2014/56).

***Client Assets Sourcebook (Amendment No 7) Instrument 2014 (FCA 2014/60)***

- 2.14** Following consultation in CP14/18, the FCA Board has made changes to the FCA Handbook sections listed below:

**CASS 1A, 6, 8 and 10  
SUP 16**

- 2.15** In summary this instrument ensures that
- a small authorised or a small registered UK AIFM is required to apply CASS 6 when, in connection with or for the purposes of managing an AIFM, it carries out activities that would have otherwise amounted to 'safeguarding and administering investments'
  - all assets held by a depositary of an authorised AIF are afforded protection under the custody rules
  - it is clear that small AIFMs who are subject to CASS 6 must complete the CMAR when also caught by the application provisions in SUP 16.14
- 2.16** These changes come into force on **1 April 2015**. Feedback to this consultation is provided in chapter 3 of this Notice.

***Immigration Regulations Instrument 2014 (FCA 2014/61)***

**2.17** Following consultation in CP14/8, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary**  
**SUP 16**  
**DEPP 2 Annex 1G, Sch 3 and Sch 4**

**2.18** The FCA Board also made the following changes outside the FCA Handbook:

**EG 19**

**2.19** Our intention is to establish a proportionate new regime to monitor and enforce compliance with the prohibition in section 40 of the Immigration Act 2014. This instrument makes the following changes:

- makes an annual reporting requirement that all banks and building societies confirm to us whether or not they are complying with the provisions of the IA
- amends the Enforcement Guide to explain that our approach to using our new powers would mirror the approach we take to using the enforcement powers given to us under FSMA, and
- confirms that the Regulatory Decisions Committee would make the decisions to issue any warning or decision notices.

**2.20** This instrument comes into force on **12 December 2014**. Feedback to this consultation is provided in chapter 3 of this Notice.

***Supervision Manual (Direction and Determination Process) (Amendment) Instrument 2014 (FCA 2014/62)***

**2.21** Following consultation in CP14/18, the FCA Board has made changes to the FCA Handbook sections listed below:

**SUP 8A**

**2.22** In summary, this instrument introduces:

- an annual reporting requirement for all banks and building societies to confirm to the FCA whether or not they are complying with the provisions of the IA
- amendments to the Enforcement Guide to explain that our approach to using our new powers would mirror the approach we take to using the enforcement powers given to us under FSMA, and
- confirmation that the Regulatory Decisions Committee would make the decisions to issue any warning or decision notices.

**2.23** This instrument comes into force on **12 December 2014**. Feedback to this consultation is provided in chapter 3 of this Notice.

## 3.

# Consultation feedback

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

### **Chapter 4 of CP14/18, Quarterly Consultation (No 6)**

#### ***Client Assets Sourcebook (Amendment No 7) Instrument 2014 (FCA 2014/60)***

#### **Background**

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- 3.2** In Chapter 4 of CP14/18, we proposed to amend CASS 6 (and certain related rules including SUP 16.14 and client money and asset return (CMAR) guidance in SUP 16 Annex 29R) to ensure that a small authorised or a small registered UK AIFM is required to apply CASS 6 when, in connection with or for the purposes of managing an AIF, it carries out activities that would amount to 'safeguarding and administering investments' but for article 72AA of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- 3.3** We also proposed to amend CASS 6 to ensure that all assets held by a depository of an authorised AIF are afforded protection under the custody rules.
- 3.4** We further proposed consequential changes to the CMAR guidance in SUP 16 Annex 29R to reflect the wording and terminology that are used in the proposed rules. The proposed changes ensure it is clear that small AIFMs who are subject to CASS 6 must complete the CMAR when also caught by the application provisions in SUP 16.14.

#### **Feedback**

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- 3.5** We received three responses to Chapter 4 of CP14/18, including two from industry associations. All respondents were broadly supportive of our proposals.
- 3.6** One respondent suggested amendments to CMAR reporting requirements in the SUP rules, proposing we make clear whether a full-scope UK AIFM is required to complete a CMAR.
- 3.7** Another respondent suggested a drafting clarification to make clear that a particular rule<sup>1</sup> applies only to depositaries of authorised AIFs. The respondent also queried whether the FCA had intended to widen the range of instruments for which depositaries of unauthorised AIFs are required to comply with CASS 6.

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<sup>1</sup> CASS 6.1.1BR(2)

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### Our response

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- 3.8** We are implementing the proposals in CP14/18 as consulted with only minor corrections and stylistic amendments to the final rules.
- 3.9** We have not made changes to the CMAR reporting requirements or changes to the CMAR guidance in SUP 16 Annex 29R in response to the feedback received. The feedback received related to the completion of the CMAR by certain full-scope AIFMs, which were not within the scope of this consultation. We will however take this as general feedback to feed into any future policy work relating to full-scope AIFMs.
- 3.10** The final rules ensure that all assets held by the depository of an authorised AIF are afforded protection under the custody rules. The range of instruments for which depositaries of unauthorised AIFs are required to comply with CASS 6 remains unchanged.
- 3.11** It is clear in the final rules which ones<sup>2</sup> are applicable to firms acting as trustee or depository of an AIF that is an authorised AIF.
- 3.12** The amendments will take effect on 1 April 2015.

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### Cost benefit analysis and compatibility statement

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- 3.13** As we are proceeding with the amended rules largely as consulted on, we believe the cost benefit analysis and compatibility statement, as set out in Chapter 4 of CP14/18, remain valid.

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### Equality and diversity issues

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- 3.14** We received no comments during consultation on any equality issues. As stated in CP14/18, we do not envisage any negative equality and diversity impacts as a result of the proposed changes.
- 3.15** The changes made by this instrument are listed in Chapter 2 of this Notice.

### Chapter 5 of CP14/8, Quarterly Consultation (No 5)

#### *Immigration Regulations Instrument 2014 (FCA 2014/61)*

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### Background

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- 3.16** In CP14/8 we consulted on changes to our Handbook as a result of the Immigration Act 2014 (IA). Section 40 of the IA prohibits banks and building societies from opening current accounts for certain types of person.
- 3.17** The prohibition applies to all banks and building societies that operate current accounts in the UK, including UK branches of EEA banks and non-EEA banks.

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<sup>2</sup> See CASS 6.1.16IAR(1) and (2)

- 3.18** The FCA will be responsible for monitoring and enforcing compliance with the new prohibition above.
- 3.19** The IA prohibits banks and building societies from opening current accounts for people who are in the UK but who do not have leave to remain in or to enter the UK, unless they have undertaken a status check which indicates that the individual concerned is not a 'disqualified person'. A 'disqualified person' is a person who is in the UK, who does not have the required leave to enter or remain in the UK, and whom the Home Secretary considers should not be permitted to open a current account.
- 3.20** The prohibition applies to the opening of a new current account operated by or for a consumer, a micro-enterprise or a charity (with an annual income under one million pounds). It also applies to the opening of a joint current account for a disqualified person and others, opening a current account where the disqualified person is a signatory or is identified as a beneficiary, or adding any disqualified person as a current account holder, signatory or identified beneficiary to an existing current account.
- 3.21** To ensure they are complying with the IA, banks and building societies will be able to carry out an immigration 'status' check with CIFAS, who have been specified as an anti-fraud organisation for the purposes of the IA. Where the check identifies that the applicant is a disqualified person the firm must refuse to open the account. Where the check identifies that the signatory or beneficiary being added to an account is a disqualified person then the firm must refuse to add that person to the account.
- 3.22** Banks and building societies that refuse to open (or provide new access to) a current account for someone who is disqualified must tell that person the reason for refusal, provided that doing so does not conflict with their duties under other legislation.
- 3.23** The Immigration Act 2014 (Bank Accounts) Regulations 2014 (the Regulations) have been made under the IA. These Regulations come into force on 12 December 2014 and place new responsibilities on banks and building societies. These include five year record-keeping requirements for firms to show compliance with the IA and a reporting requirement for firms to tell the FCA as soon as reasonably practicable if it is unable to comply with the IA. The IA also makes it an offence to knowingly or recklessly give the FCA information which is false or misleading.
- 3.24** In CP14/8, we set out our approach to monitoring and enforcing compliance with this legislation and we proposed a new reporting requirement that all firms, subject to section 40 of the IA, should confirm to us each year that they have complied (or not) with the IA.
- 3.25** We explained that we would make arrangements for our new role of monitoring compliance with the IA as part of our normal regulatory functions. Our approach to enforcement would mirror the approach we take to using enforcement powers under FSMA. The Regulations give us new investigation and sanctioning powers based on those in FSMA. They require us to issue a statement of our procedure for giving warning notices and decision notices under the regulations. We proposed that these notices would be made by the Regulatory Decisions Committee (RDC).

### Feedback and our response

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- 3.26** The consultation closed on 6 August 2014. We discussed it with trade bodies and member firms.
- 3.27** We did not receive any feedback which suggested any change to our approach for monitoring and enforcing the requirements of the IA, so our policy remains the same.
- 3.28** We will make arrangements for monitoring compliance with the IA as part of our normal regulatory functions. As part of these functions, we will receive information from CIFAS.
- 3.29** Our approach to enforcement will mirror our approach to using enforcement powers under FSMA. We will exercise our powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publically stated objectives. The RDC will make warning notice and decision notice decisions on behalf of the FCA in respect of the disciplinary powers we have under the Regulations.
- 3.30** We received one written response to the consultation which suggested that we clarify that the proposed reporting direction does not apply to branches of UK banks which are situated outside the UK. We agree with this suggestion and have amended the direction in SUP 16.19.1D.
- 3.31** We did not receive any objections to our proposals that banks and building societies confirm to us each year that they are complying with the provisions of the IA. From 1 January 2015 this information will be collected from firms via GABRIEL in the new FIN A form (that was discussed in Handbook Notice 15). This information is required when a firm submits its annual report and accounts. Firms that are not required to provide us with their annual report and accounts must still report compliance with the IA within four months of their accounting reference date.
- 3.32** The instrument included in this Handbook Notice does not differ significantly from the draft that we consulted on.

### Cost benefit analysis and compatibility statement

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- 3.33** We did not receive any feedback that suggested that our new proposals represent anything more than minimal costs for firms. We believe our CBA remains valid. We did not prepare a compatibility statement as our responsibilities under the IA sit outside our main responsibilities under FSMA.

### Equality and diversity issues

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- 3.34** Our new reporting requirement and approach to monitoring and enforcement do not pose any equality or diversity issues for protected groups.
- 3.35** The changes made by this instrument are listed in Chapter 2 of this Notice.

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## Chapter 4 of CP14/18, Quarterly Consultation (No 6)

### *Supervision Manual (Direction and Determination Process) Instrument 2014 (FCA 2014/62)*

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#### Background

- 3.36** In March 2014, we made changes to SUP 8.3.5G, concerning the procedure for processing waiver applications, removing our stated aim of giving waiver decisions within 20 business days as we did not believe this usefully served firms. SUP 8A.3.5G mirrors the provisions outlined in SUP 8 and concerns consumer credit waivers. As changes have been made SUP 8.3.5G, we intend to implement the same change to SUP 8A.3.5G.

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#### Feedback and our response

- 3.37** We did not receive any responses and will proceed with implementing the proposed changes to remove the stated aim of giving a waiver decision within 20 business days for consumer credit waivers, as consulted on.

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#### Cost benefit analysis and compatibility statement

- 3.38** As stated in the consultation paper, we are not required to publish a cost benefit analysis for our proposal as it relates to guidance under section 139A of the Financial Services and Markets Act 2000.
- 3.39** The compatibility statement as outlined in the consultation paper also remains unchanged.

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#### Equality and diversity issues

- 3.40** We continue to believe that the proposed amendment does not give rise to discrimination and is of low relevance to the equality agenda.
- 3.41** The changes made by this instrument are listed in Chapter 2 of this Notice.

## 4. Additional information

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### 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.

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### 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.

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### 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 section 138K(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).