



No.13

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# Handbook Notice

July 2014

Financial Conduct Authority





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## Handbook Notice 013

This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) under its legislative powers on 26 June 2014. It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

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

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

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

Tel: 0845 606 9966

Fax: 020 7066 0991

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

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

# 1. Overview

## Legislative changes

- 1.1** On 22 May 2014, the FCA made changes to the Financial Crime Guide (which sits outside the Handbook) in one instrument which is listed in the table below.

CP	Title of instrument	Instrument No.	Changes effective
N/a	Financial Crime Guide (Amendment No 2) Instrument 2014	2014/34	12.6.14

- 1.2** On 26 June 2014, in addition to the instruments listed in the last Handbook Notice, the FCA Board made changes to the Handbook in seven instruments which are listed in the table below.

CP	Title of instrument	Instrument No.	Changes effective
N/a	Handbook Administration (No 34) Instrument 2014	2014/37	1.7.14; 22.7.14; 1.12.14; 1.6.15
14/7	Fees (Consumer Credit No 3) Instrument 2014	2014/39	27.6.14
14/9	Client Assets Sourcebook (Amendment No 6) Instrument 2014	2014/40	1.7.14; 1.6.15
14/4, Ch 4	Supervision Manual (Performance Data Reports) (Amendment) Instrument 2014	2014/41	1.1.15
14/5	Integrated Regulatory Reporting (Amendment No 14) Instrument 2014	2014/42	1.7.14; 1.10.14
13/9	Collective Investment Schemes Sourcebook (Exchange Traded Funds) Instrument 2014	2014/43	1.7.14
14/4, Ch 2	Alternative Investment Fund Managers Directive and Undertakings for Collective Investment in Transferable Securities Directive (Miscellaneous Amendments) Instrument 2014	2014/44	1.7.14; 21.12.14

- 1.3** The FCA also approved FCA 2014/38 which will be published at a later date. The changes will be summarised in the next Handbook Notice.

### Summary of changes

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

### Feedback on responses to consultations

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

### Forthcoming FCA board meetings

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- 1.6** The table below contains a list of forthcoming FCA board meetings for 2014. These dates are subject to change without prior notice.

July	Thursday 24 July
September	Thursday 25 September
November	Wednesday 5 or Thursday 6 November (date TBC)
December	Thursday 11 December

## 2. Summary of changes

- 2.1** This chapter briefly describes FCA Handbook changes and changes outside the Handbook made by the FCA on 22 May 2014 and the FCA Board on 26 June 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 [www.bankofengland.co.uk/pr/Pages/publications/default.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/default.aspx)

### ***Financial Crime Guide (Amendment No 2) Instrument 2014 (FCA 2014/34)***

- 2.2** The FCA has made minor administrative changes to the Financial Crime Guide, 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 represent an alteration in FCA Policy.

#### **FC Parts 1 & 2**

- 2.3** The FCA updated Part 2 of the Financial Crime Guide to include examples of good and poor practice identified in the 2013 thematic review of 'Banks' control of financial crime risk in trade finance'. This review found that banks generally had effective controls to ensure they were not dealing with sanctioned individuals or entities. But most banks that were part of the sample had inadequate systems and controls over 'dual-use' goods (ie, those that can be used for both military and civilian purposes) and their anti-money laundering policies and procedures were often weak. The examples of good and poor practice are intended to help banks adopt more effective financial crime systems and controls.

- 2.4** This instrument came into force on **12 June 2014**.

### ***Handbook Administration (No 34) Instrument 2014 (FCA 2014/37)***

- 2.5** 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**

**FEES 3, 4 and 6**

**BIPRU 8**

**CASS 6 and 7**

**SUP 3 and 12**

**DISP 2**

**CONC 2, 3, 4, 6, 7, 8, 10, 12, 13, 15, App 1 and Sch 1**

**FUND 3 and TPs**

**PERG 1 and 13**

## 2.6 In summary, the amendments made this month are as follows:

- removal of part of the definition of 'trading day', since this wrongly indicates that the FCA publishes a list of trading days
- minor amendment to the defined term 'standard method of internal client money reconciliation'
- correction of a typographical error in FEES 3 Annex 1R (from an error in the *Fees (Consumer Credit) Instrument 2014* (FCA 2014/10)); this correction has already been made administratively, and this instrument confirms this change
- reinstatement of FEES 3 Annex 7R which was incorrectly deleted by the *Fees (Miscellaneous Amendments (No 7) Instrument 2014* (FCA 2014/18) (this instrument confirms this change, which has already been made administratively)
- correction, in FEES 4 Annex 11AR, of an error from FCA 2014/18
- correction, in FEES 4 Annex 13G, of errors from the *Fees (Consumer Credit No 2) Instrument 2014* (FCA 2014/19) where this annex is inconsistent with the policy in the FCA's Policy Statement (these corrections have already been made administratively)
- addition of a cross-reference within FEES 6.5.13R – this reporting provision already refers to an exemption available under FEES 6.2.1R (which is a PRA rule) and this instrument now adds a reference to the corresponding FCA rule (FEES 6.2.1AR)
- deletion of BIPRU 8.2.6G – this provision referred to BIPRU 8 Annex 2G but that annex has already been deleted by the *Capital Requirements Directive IV (GENPRU and BIPRU Amendments) Instrument 2013* (FCA 2013/76)
- minor corrections to various provisions in CASS which are intended to bring the Handbook text in the *Client Assets Sourcebook (Amendment No 5) Instrument 2014* (FCA 2014/36) into line with the policy in the Policy Statement published for that instrument
- amendment to SUP 3.8.4R to bring this provision into line with amendments being made by the PRA
- change to SUP 12.3.3G to remove the italics from a word which is not defined in the Glossary
- changes to DISP 2 Annex 1 (which sets out the regulated activities subject to the Financial Ombudsman Service's voluntary jurisdiction) to bring this list into line with changes recently made to the Glossary definition of 'regulated activities'
- changes to various provisions within CONC to correct errors and inconsistencies contained in the *Consumer Credit Instrument 2014* (FCA 2014/11) and in the *Handbook Administration (No 31) Instrument 2013* (FCA 2013/61) in respect of CONC
- change to FUND 3.11.4R to more accurately represent published FCA policy, and a new transitional provision for this amendment, and
- shortening of the title to PERG 13 and an amendment to a cross-reference to this title.

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

- 1.** the changes to DISP come into force on **1 July 2014** and on **22 July 2014**
- 2.** some of the changes to CASS come into force on **1 December 2014** and others on **1 June 2015** (together with one change to the Glossary)
- 3.** the remaining changes come into force on **1 July 2014**.

#### ***Fees (Consumer Credit No 3) Instrument 2014 (FCA 2014/39)***

**2.8** Following consultation in CP14/7<sup>1</sup>, the FCA Board has made changes to the FCA Handbook section listed below:

##### **FEES 8**

**2.9** These changes make a minor addition to the Fees manual to enable the FCA to charge interim permission fees from local authorities under government legislation to extend the interim permissions fee period for them for consumer credit licenses.

**2.10** This instrument came into force on **27 June 2014**.

#### ***Client Assets Sourcebook (Amendment No 6) Instrument 2014 (FCA 2014/40)***

**2.11** Following consultation in CP14/9<sup>2</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

##### **Glossary CASS 7**

**2.12** This instrument makes changes to the client money rules to bring them in line with changes to the Individual Savings Accounts (ISA) rules that were announced in the 2014 Budget. This softens the distinction between cash ISAs and stocks and shares ISAs.

**2.13** This instrument comes into force on **1 July 2014**.

#### ***Supervision Manual (Performance Data Reports) (Amendment) Instrument 2014 (FCA 2014/41)***

**2.14** Following consultation in Chapter 4 of CP14/4<sup>3</sup>, the FCA Board has made changes to the FCA Handbook section listed below:

##### **SUP 16**

**2.15** This instrument amends the new mortgage data collection regime that comes into effect on 1 January 2015. This will require regulated firms that own regulated mortgage contracts but do not have the 'entering into' permission to report the mortgage performance data element of product sales data.

<sup>1</sup> CP14/7 *Consumer credit interim permission fees for local authorities* (May 2014)

<sup>2</sup> CP14/9 *Client Money held in Individual Savings Accounts* (June 2014)

<sup>3</sup> CP14/4 *Quarterly Consultation (No 4)* (March 2014)

- 2.16** This instrument comes into force on **1 January 2015**.

***Integrated Regulatory Reporting (Amendment No 14) Instrument 2014 (FCA 2014/42)***

- 2.17** Following consultation in CP14/5<sup>4</sup>, the FCA Board has made changes to the FCA Handbook section listed below:

**SUP 16.12**

- 2.18** In summary, these changes involve removing the requirement for firms to report detailed consultancy charging data to the FCA through Section L of the RMAR and modify the content of the annual questionnaires for authorised professional firms (APFs).

- 2.19** The part of the instrument relating to consultancy charging comes into force on **1 July 2014**. The other part of the instrument relating to the annual questionnaire for APFs comes into force on **1 October 2014**.

***Collective Investment Schemes Sourcebook (Exchange Traded Funds) Instrument 2014 (FCA 2014/43)***

- 2.20** Following consultation in Chapter 10 of CP13/9<sup>5</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**COLL 4, 5 and 6**

- 2.21** In summary, this instrument brings the FCA Handbook into line with guidelines issued by the European Securities and Markets Authority (ESMA) on exchange traded funds and other undertakings for collective investments in transferable securities (UCITS) issues.

- 2.22** This instrument comes into force on **1 July 2014**.

***Alternative Investment Fund Managers Directive and Undertakings for Collective Investment in Transferable Securities Directive (Miscellaneous Amendments) Instrument 2014 (FCA 2014/44)***

- 2.23** Following consultation in Chapter 2 of CP14/4<sup>6</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary  
SYSC 19B  
SUP 13A, 14 and 15  
COLL 6  
FUND 3, 10 and App 1**

- 2.24** In summary, this instrument makes various minor amendments to the FCA Handbook to bring it in line with the Alternative Investment Funds Managers Directive (AIFMD) and Directive 2013/14/EU, which is part of the EU legislative package for regulating credit-rating agencies.

- 2.25** This instrument comes into force on **21 December 2014** for amendments relating to Directive 2013/14/EU and **1 July 2014** for the remainder of the instrument.

<sup>4</sup> CP14/5 *Changes to regulatory reporting: Advisor and consultancy charging, Authorised Professional Firms and Product Sales Data* (March 2014)

<sup>5</sup> CP13/9 *Quarterly consultation (No 2)* (September 2013)

<sup>6</sup> CP14/4 *Quarterly consultation (No 4)* (March 2013)

## 3. Consultation feedback

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

### Chapter 10 of CP13/9, Quarterly Consultation (No 2)

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#### COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (EXCHANGE TRADED FUNDS) INSTRUMENT 2014

##### **Background**

- 3.2** In September 2013, we consulted on several Handbook changes to ensure that ESMA's Guidelines on exchange traded funds (ETFs) and other undertakings for collective investments in transferable securities (UCITS) issues are considered, where appropriate, alongside the existing rules and guidance in the Collective Investment Schemes sourcebook (COLL).<sup>7</sup> The UK has confirmed to the European Securities and Markets Authority (ESMA) that it will comply with these guidelines.
- 3.3** The ESMA Guidelines set out the information that should be given to investors about index-tracking UCITS and UCITS ETFs, together with specific rules for UCITS when entering into over-the-counter (OTC) derivative transactions and efficient portfolio management techniques. The guidelines also set out the criteria for financial indices in which UCITS may invest.
- 3.4** There are some key provisions from the ESMA Guidelines that we particularly needed to consider.
- UCITS that fall under the definition of UCITS ETFs will have to carry the identifier 'UCITS ETF' in their name.
  - UCITS ETFs will have to ensure that there are appropriate redemption conditions for secondary market investors by opening the fund for direct redemptions when the liquidity in the secondary market is not satisfactory.
  - UCITS entering into efficient portfolio management techniques (EPM), such as securities lending activities, will have to inform investors clearly about these activities and the related risks. All revenues net of operating costs generated by these activities should be returned to the UCITS. When a UCITS enters into securities lending arrangements, it should be able at any time to recall any securities lent or terminate any agreement into which it has entered.

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<sup>7</sup> Chapter 10 of CP13/9 *Quarterly Consultation (No 2)* (September 2013)

- UCITS receiving collateral to mitigate counterparty risk from OTC derivative transactions or EPM techniques should ensure that the collateral complies with very strict qualitative criteria and specific limits in relation to the diversification.
- UCITS investing in financial indices will have to ensure that investors are provided with the full calculation methodology of financial indices. Also, UCITS should only invest in financial indices which respect strict criteria regarding, among other factors, the rebalancing frequency and their diversification.

**3.5** Subsequent to the publication of the ESMA Guidelines, ESMA published a revision to the ESMA Guidelines regarding the diversification of collateral received in the context of OTC financial derivatives transactions and EPM techniques (the ESMA Guidelines Revision).

**3.6** The purpose of the ESMA Guidelines Revision is to provide a workable framework for the management of collateral received by UCITS in the context of OTC financial derivative transactions and EPM techniques. These guidelines complement the ESMA Guidelines. We have added links in the Handbook to the ESMA Guidelines Revision where appropriate.

**3.7** The ESMA Guidelines were published on 18 December 2012 and the ESMA Guidelines Revision was published on 24 March 2014. The FCA will comply with both of them and has a legal obligation to make every effort to comply. So we proposed integrating them into the Handbook.

#### ***Feedback and our response***

**3.8** The consultation closed on 6 November 2013. Two responses were received from industry trade bodies.

**3.9** Both agreed that the ESMA guidelines should be applied to UCITS in the proposed manner. However, both asked that we clarify in the Handbook whether the ESMA Guidelines apply to non-UCITS retail schemes (NURS). Additionally, they suggested that the ESMA Guidelines should not apply to NURS, which are not required to be regulated in accordance with the UCITS Directive.

**3.10** Additionally, one respondent raised concerns that some existing Handbook sections may conflict with the ESMA Guidelines.

**3.11** We recognise that the ESMA Guidelines apply to UCITS and we stated that the consultation would be of interest to managers of UCITS funds. We have extended UCITS rules to NURS for consistency purposes or where it was justified for investor protection. Because any extension to NURS would be discretionary, any extension would be subject to consultation, including a cost-benefit analysis. As we have not consulted on this issue here, we clarify in the relevant sections that the ESMA Guidelines apply only to UCITS and not to NURS, which are now regulated by the AIFMD. We may consider extending these guidelines to NURS in the future.

**3.12** In response to concerns about conflicts with existing COLL provisions, we have made consequential changes to COLL. The changes should assist firms in applying the ESMA guidance in the context of the Handbook's provisions.

**3.13** Because ESMA adopted the ESMA Guidelines Revision after our consultation was published, we have had to add references to it in the final instrument in order to make the full ESMA guidance accessible to users of the Handbook.

**3.14** The ESMA Guidelines Revision relates to the diversification of collateral received in the context of OTC financial derivatives transactions and EPM techniques. It is proportionate for us to add

it to this instrument without re-consulting because it is not controversial and is closely related to the ESMA Guidelines and other existing collateral diversification guidance.

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

- 3.15** CP13/9 contained a cost benefit analysis (CBA) setting out the costs and benefits of our proposal based on ESMA's analysis. There were no comments received on the CBA. Therefore, we believe that our original CBA remains valid.
- 3.16** In the final instrument, we have introduced references to the ESMA Guidelines Revision. This ESMA work was also subject to CBA as part of their consultation on the guidelines, which can be viewed on their website.<sup>8</sup>
- 3.17** We received no comments on the compatibility statement, which remains as stated in the consultation paper.

***Equality and diversity issues***

- 3.18** We received no comments in relation to our statement in Chapter 10 of CP13/9 and we continue to believe that these proposals have little impact on the equality agenda and do not give rise to discrimination.
- 3.19** The changes made by this instrument are listed in Chapter 2 of this Notice.

**Chapter 2 of CP14/4, Quarterly Consultation (No 4)**

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**ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE AND UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES DIRECTIVE (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2014**

***Background***

- 3.20** We have consulted on changes to the Handbook and notification forms that are relevant to undertakings in collective investments in transferable securities (UCITS) managers, alternative investment fund managers (AIFMs) and certain custodians of alternative investment funds (AIFs). The majority of these changes are related to the implementation of the Alternative Investment Fund Managers Directive (AIFMD) in the UK.

***Issues raised in consultation***

- 3.21** The European Securities and Markets Authority (ESMA) has created guidelines for AIFMs and competent authorities on the subjects of AIFMD reporting and the scope of AIFMD, including further details about the definition of an AIF. Further, ESMA has provided technical guidance to the Commission on a definition of open- and closed-ended funds under the Directive, which is expected to become the basis for a commission delegated regulation. Because the FCA will comply with these measures, we have consulted on integrating them into the relevant sections of our Handbook.
- 3.22** By 21 December 2014, the FCA is required to implement Directive 2013/14/EU, which is part of the EU legislative package on credit-rating agencies. It adds new risk management obligations

<sup>8</sup> [www.esma.europa.eu/system/files/2014-294\\_final\\_report\\_revision\\_of\\_guidelines\\_etfs\\_and\\_other\\_ucits\\_issues.pdf](http://www.esma.europa.eu/system/files/2014-294_final_report_revision_of_guidelines_etfs_and_other_ucits_issues.pdf)

for both UCITS managers and AIFMs, which prohibit mechanistic reliance on credit ratings. We have consulted on transposing this directive's requirements into the Handbook.

**3.23** Besides the implementation of Directive 2013/14/EU, we consulted on the following amendments to our AIFMD implementation:

- incorporation in the Handbook of the ESMA Guidelines and the delegated regulation
- guidance on AIFMD reporting by AIFMs on their AIF portfolios
- clarification on how AIF portfolios are valued and how that valuation affects regulatory capital requirements
- clarification on the requirements governing article 36 custodians which provide services to certain non-EEA AIFs
- further detail on certain AIFMD remuneration requirements
- modification of the AIFMD notification forms, primarily related to changes to the conditions for initial authorisation or registration of an AIFM, and
- additional minor consequential changes to the Handbook as a result of AIFMD.

#### ***Feedback***

**3.24** The consultation closed on 6 May 2014. We received seven responses from trade associations, law firms and compliance consultancies. Most respondents agreed with the majority of proposals in our consultation.

**3.25** Three respondents agreed with our integration of the ESMA Guidelines and the delegated regulation into the Handbook. Another respondent would have liked us to explain in more detail the imposition of the ESMA reporting guidelines, even though this respondent also noted that the ESMA reporting guidelines are not likely to be burdensome to firms.

**3.26** Three respondents requested further guidance on what type of detailed portfolio information that non-EEA AIFMs marketing in the UK must report to us. In particular, these respondents were interested in the type of remuneration disclosure that these AIFMs must report and which type of AIFMs must report value at risk (VaR) calculations.

**3.27** Our proposal to implement Directive 2013/14/EU attracted one response and this respondent agreed with our approach.

**3.28** One respondent agreed to how we had modified the definition valuing the funds under management of an AIFM which, in turn, determines the calculation of an AIFM's regulatory capital. Another respondent noted that it had no objection to our proposal. Finally, another respondent asked us to consider an alternative method of valuing funds under management that takes into account duration netting.

**3.29** One respondent agreed with our approach to article 36 custodians. Another respondent asked us to provide more guidance on the AIF structures that require such custodians, such as for the master-feeder structure where the master fund is located in a non-EEA jurisdiction.

- 3.30** On our proposals concerning AIFMD remuneration, we received five responses, with two of them agreeing with our proposals. The other respondents raised concerns about the overlaps between the CRD and AIFMD remuneration regime, and the justification for the changes.
- 3.31** Four respondents commented on the AIFMD notification forms, primarily remarking on the delegation and marketing passport forms.
- 3.32** One respondent agreed with the additional minor changes to the Handbook as a result of the AIFMD, and we received no comments on the cost benefit analysis.
- 3.33** There were a number of concerns raised that did not specifically relate to the Handbook changes or the AIFMD notification forms, but rather more generally to our implementation of the AIFMD. We have noted these concerns, but do not respond further here.

#### ***Our response***

- 3.34** In response to the comments received, we have made some amendments to the Handbook and the accompanying notification forms. It is worth noting that, in some cases, our discretion is limited by European legislation such as the AIFMD and its commission delegated regulation.
- 3.35** We made no changes to our proposals incorporating the ESMA Guidelines. However, we have postponed adding the reference to the delegated regulation as it has not yet been adopted.
- 3.36** We have added to our guidance on what type of detailed portfolio information that non-EEA AIFMs marketing in the UK must report to us. We have clarified that non-EEA AIFMs must disclose remuneration in accordance only with the specific provisions listed in the AIFMD. This means that non-EEA AIFMs are not required to implement the AIFMD remuneration regime to make this disclosure and may rely on local remuneration rules or practice to define the categories of remuneration that must be disclosed.
- 3.37** We have also specified the timing for the first AIFMD-compliant annual report of an AIF. This annual report will be required for the financial year ending after the authorisation date of the AIFM or, for non-EEA AIFMs marketing in the UK, for the financial year ending after the notification date of the AIFM under the private placement regime.
- 3.38** To implement the ESMA Opinion on collection of information<sup>9</sup>, we have added rules to require risk measures linked to portfolio sensitivities to be reported to us. These risk measures are the VaR, FX delta and commodity delta, and are already included in the ESMA AIFMD reporting template. The reporting of these risk measures will only be required for firms that calculate these risk measures for other purposes. This should not be a significant burden for AIFMs and should still provide us with relevant risk data for supervisory purposes.
- 3.39** We have not modified our definition of funds under management in the context of the calculation of additional own funds. Our proposal is internally consistent with other parts of the Directive, such as with the calculation of own funds required for professional indemnity insurance, and the calculation method is simpler than using duration netting.
- 3.40** Regarding our proposals on AIFMD remuneration, we have modified our proposed guidance in line with the suggestion received to clarify that AIFMs complying with SYSC 19B, even if certain parts are not applied due to proportionality, will also comply with SYSC 19C. At this stage, we are unable to simplify the application of SYSC 19A and SYSC 19B for those firms to which both

<sup>9</sup> ESMA Opinion on collection of information for the effective monitoring of systemic risk under Article 24(5), first sub-paragraph of the AIFMD, ESMA/2013/1340, 1 October 2013.

remuneration codes apply. These rules transpose European legislation and we have limited discretion in implementing them. However, we expect that future European measures from the European Banking Authority (EBA) or EU Commission would mitigate such issues resulting from multiple remuneration regimes.

- 3.41** We have revised the AIFMD notification forms, taking into account concerns that were raised, and updated the formatting of several forms. Further, we have modified the accompanying provisions in the Handbook so that a notification is also required where an AIFM intends to manage a new investment compartment of an AIF.
- 3.42** We have implemented the following Handbook provisions without changes:
- a. rules implementing Directive 2013/14/EU, which will come into effect on 21 December 2014 and
  - b. rules relating to custodians of non-EEA AIFs managed by UK AIFMs (article 36 custodians).
- 3.43** In Chapter 15 of CP13/9 we consulted on changes to guidance in SUP 13A and SUP 14 to explain AIFMD passporting arrangements with Gibraltar. We were unable to make these changes when the rest of this consultation was finalised in February 2014 because the Government had not yet changed the law. Since then, the relevant law has come into force and we have now included these changes in this instrument.
- Cost benefit analysis and compatibility statement**
- 3.44** CP14/4 contained a cost benefit analysis (CBA) setting out the costs and benefits of our proposals where we were required to do so. There were no comments received on the CBA, and we have made limited changes to our final instrument from the one consulted on. We believe these limited changes will result in minimal costs to industry. Therefore, we believe that our original CBA remains valid.
- 3.45** We received no comments on the compatibility statement, which remains as stated in the consultation paper.
- Equality and diversity issues**
- 3.46** We received no comments in relation to our statement set out in CP14/4 and continue to believe that these proposals have little impact on the equality agenda and do not give rise to discrimination.
- 3.47** The changes made by this instrument are listed in Chapter 2 of this Notice.

## Chapter 4 of CP14/4, Quarterly consultation (No 4)

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### SUPERVISION MANUAL (PERFORMANCE DATA REPORTS) (AMENDMENT) INSTRUMENT 2014

#### **Background**

- 3.48** PS13/12 set out the final rules for our new mortgage data collection regime following introduction of the Mortgage Market Review (MMR).<sup>10</sup> These rules, which are due to come into

<sup>10</sup> PS13/12 *Mortgage Market Review – Data Reporting* (December 2013)

force on 1 January 2015, will help us monitor and supervise conduct in the mortgage market. It has always been our policy intention for all regulated firms that act as a first charge lender to report this data to us, but this was not sufficiently clear when we originally consulted.

- 3.49** The rules we originally consulted on only require home finance providers to report product sales data (PSD) - ie, those firms with permission for entering into a home finance transaction. We noted in PS13/12 that we would clarify the position for regulated firms that own regulated mortgage contracts but do not have the 'entering into' permission. This could include, for example, firms we otherwise regulate and that purchase regulated mortgage contracts.
- 3.50** In Chapter 4 of CP14/4, we proposed amending our rules in SUP 16.1 and SUP 16.11 to make it clear that firms in which the rights and interests of the lender under a regulated mortgage contract are vested must report the mortgage performance data element of PSD.<sup>11</sup> We proposed bringing this amendment into force at the same time as the MMR data reporting rules on 1 January 2015.

#### ***Feedback and our response***

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

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

- 3.52** Both the cost benefit analysis and compatibility statement published in CP14/4 remain valid.

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

- 3.53** In CP14/4 we proposed that the requirement on firms to report PSD performance data does not give rise to any equality or diversity issues, but invited views on this aspect. We received no feedback and our view is unchanged.
- 3.54** The changes made by this instrument are listed in Chapter 2 of this Notice.

### **CP14/5 Changes to regulatory reporting: Adviser and consultancy charging, Authorised Professional Firms (APFs) and Product Sales Data (PSD)**

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## **INTEGRATED REGULATION REPORTING (AMENDMENT NO 14) INSTRUMENT 2014**

### ***Background***

- 3.55** Following the introduction of the Retail Distribution Review (RDR) on 31 December 2012, we started collecting data on adviser charging and consultancy charging from investment advice firms through the Retail Mediation Activities Return (RMAR).
- 3.56** In March 2014, we consulted on changes to adviser and consultancy charging reporting. Two sets of proposals, relating to Section K of the RMAR (adviser charging) and product sales data (PSD), remain in consultation but the consultation period for another two, relating to Section L of the RMAR (consultancy charging) and the annual questionnaire for authorised professional firms (APFs), has now finished.

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<sup>11</sup> CP14/4 Quarterly Consultation Paper (No 4) (March 2014)

**3.57** Our proposals were as follows:

- to retire section L of the RMAR, and
- to revise the content of the annual questionnaire for APFs and bring it into our GABRIEL (GATHERING Better Regulatory Information ELECTRONICALLY) reporting system.

### **Feedback**

#### *Section L of the RMAR – Consultancy charging*

**3.58** The consultation period ended on 7 April 2014. We received eight responses to our proposal to retire Section L of the RMAR. All respondents agreed that we should stop collecting consultancy charging data. Those respondents that commented on our cost-benefit analysis agreed that retiring Section L would result in a small cost saving for firms.

**3.59** One respondent sought to clarify whether the FCA intended to collect consultancy charging data through another source.

**3.60** A number of respondents raised wider queries about the RMAR or responded to questions related to Section K of the RMAR. These responses will be considered when reviewing the consultation questions specifically related to Section K. This consultation closes on 6 June 2014.

#### *FIN-APF – Annual questionnaire for authorised professional firms (APFs)*

**3.61** The consultation period ended on 7 April 2014. We received 10 responses to our proposals to revise the APF questionnaire and integrate it into GABRIEL. All respondents agreed with our proposals.

**3.62** One respondent suggested that the guidance notes could be clarified to specify that income from regulated activities includes non-mainstream regulated activities.

**3.63** One respondent highlighted that some firms are able to carry on investment management subject to limitations. It was suggested that inclusion of this business in the reported figures may distort the data.

**3.64** One respondent noted that some firms hold client money and assets in connection with non-regulated activities and that the guidance could be clarified on the reporting obligations on this point.

**3.65** Two respondents commented on the professional indemnity insurance (PII) reporting requirements within the revised questionnaire. One questioned whether the granularity of the data was necessary and the other noted that the PII requirements of more complex firms may require additional contextual information.

### **Our response**

**3.66** As all respondents supported our proposal to retire Section L of the RMAR, we have proceeded to remove the requirement for firms to complete this section. As such, firms will not be required to regularly report detailed consultancy charging data to us. However, firms should continue to report consultancy charging revenues in Section B of the RMAR.

**3.67** In response to the feedback on the APF questionnaire proposals, we have made some amendments to the guidance to remove ambiguity around non-mainstream regulated activities and client money and assets reporting.

- 3.68** In the guidance notes for the new APF form we have specified that investment business subject to limitations should still be included in the data requested. The data captured about the volume of business generated from regulated activities is important to the FCA's assessment of whether an APF can benefit from the regime provided for firms of this type.
- 3.69** We acknowledge that the PII requirements of the more complex firms may require more contextual information and, where firms feel it necessary, contextual information may be provided through the FCA's Customer Contact Centre or to the firm's regulatory contact at the FCA.
- 3.70** We appreciate that PII information is commercially sensitive and this data will be subject to the same protections as our other sensitive regulatory data. This data is valuable for supervisory purposes, including risk analysis, and brings the reporting in line with other authorised firms. More recently, we have become aware of increased risk around firms operating without PII, due to changes in the provider market used by professional firms. The data requested will help us ensure that APFs have adequate cover in place for their regulated activities.
- Cost benefit analysis, compatibility statement and equality and diversity issues***
- 3.71** The cost benefit analysis and compatibility statement published in CP14/5 remain unchanged.
- 3.72** We did not receive any feedback on our initial assessment that the proposals do not pose any equality or diversity issues. We continue to believe that the changes do not rise to unfair discrimination against protected groups.

### CP14/7 Consumer credit interim permission fees for local authorities

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#### FEES (CONSUMER CREDIT NO 3) INSTRUMENT 2014

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

- 3.73** In May 2014, we published consultation paper CP14/7<sup>12</sup> which proposed a small amendment to our fees rules (FEES). These changes aimed to facilitate the charging of interim permission (IP) fees to local authorities, under proposed government legislation extending the IP period for local authorities. The amendment would allow us to charge an IP fee of £350 on the same basis as we would have done before the original deadline of 14 April 2014. This rule would lapse on 30 September 2014. Because we need to introduce the fees at the end of June when the Government's statutory instrument comes into effect, we asked for responses by 12 June 2014.

##### ***Feedback and our response***

- 3.74** We received no responses to the consultation and so we are proceeding with our proposals as originally consulted on. We have made no changes to the instrument.

##### ***Cost benefit analysis, compatibility statement and equality and diversity issues***

- 3.75** Under section 138I of the Financial Services and Markets Act 2000 (FSMA), we are exempt from the requirement to carry out and publish a cost benefit analysis of changes to our regulatory fees and levies.
- 3.76** In CP14/7 we explained that we considered our proposed amendments did not affect the compatibility statement and equality impact assessment we carried out when we presented

<sup>12</sup> CP14/7 *Consumer credit interim permission fees for local authorities* (May 2014)

our original proposals for the IP regime. Since our proposal is unchanged and we received no comments, that position stands.

## 4. Additional information

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### Making corrections

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

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### Publication of Handbook material

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

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### Obligation to publish feedback

- 4.7** This Notice, and the feedback to which paragraph 1.5 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost-benefit analysis and a statement under s138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

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### Comments

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

Financial Conduct Authority



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