



No.6

Handbook Notice

November 2013

Financial Conduct Authority



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Handbook Notice 006

This Handbook Notice introduces the Handbook and other material made by the Board under its legislative powers on 26 September 2013 and 7 November 2013. It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

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

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

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

Tel: 0845 606 9966

Fax: 020 7066 0991

Email: fcc@fca.org.uk

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

Legislative changes

- 1.1** On 26 September 2013, in addition to the instruments listed in the last Handbook Notice, the FCA Board made changes to the Handbook in two instruments which are listed in the table below.

CP	Title of instrument	Instrument No.	Changes effective
FSA CP13/8	Enforcement Guide (Warning Notices Publicity) Instrument 2013	2013/66	15.10.2013
FSA CP13/7	Consumer Credit (High-level Standards and Interim Regime) Instrument 2013	2013/68	1.4.2014

- 1.2** On 7 November 2013, 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
Ch 6 CP13/9	Referral Fees Regulations (Enforcement Guidance) Instrument 2013	2013/69	8.11.2013
Ch 5 CP13/9	Prospectus Rules (Amendment) Instrument 2013	2013/70	8.11.2013
Ch 3 CP13/3	Perimeter Guidance (Regulated Advice) Instrument 2013	2013/71	8.11.2013
Ch 7 CP13/9	Controllers and Close Links Reporting (Amendment) Instrument 2013	2013/72	31.12.2013 1.3.2014

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.

2. Summary of changes

- 2.1** This chapter briefly describes FCA Handbook changes and changes outside the Handbook made by the Board on 26 September 2013 and 7 November 2013. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the PRA please see <http://www.bankofengland.co.uk/pr/Pages/publications/default.aspx>

Enforcement Guide (Warning Notices Publicity) Instrument 2013 (FCA 2013/66)

- 2.2** Following consultation in FSA CP13/8¹, the FCA Board has made changes to the following sections of the FCA Handbook:

DEPP 3

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

EG 6

- 2.4** In summary, these changes set out the FCA's policy for publishing information about enforcement warning notices.

- 2.5** This instrument came into force on **15 October 2013**. Feedback to this consultation was published by the FCA in a separate Policy Statement.²

Consumer Credit (High-level Standards and Interim Regime) Instrument 2013 (FCA 2013/68)

- 2.6** Following consultation in FSA CP13/7³, the FCA Board has made changes to the following sections of the FCA Handbook:

Glossary of definitions

PRIN 1 and 3

SYSC 1, 4 and 6

GEN 1 and 4

CONC 12

- 2.7** In summary, these changes apply the high-level rules to consumer credit firms and disapply some of the new requirements for firms with interim permission.

- 2.8** This instrument comes into force on **1 April 2014**. Feedback to this consultation was published by the FCA in a separate Policy Statement (Part B to FCA CP13/10).⁴

¹ FSA CP13/8, *Publishing information about enforcement warning notices* (March 2013).

² PS13/9, *Publishing information about warning notices* (October 2013).

³ FSA CP13/7, *High-level proposals for an FCA regime for Consumer credit* (March 2013).

⁴ FCA CP13/10, *Detailed proposals for the FCA regime for consumer credit* (October 2013).

Referral Fees Regulations (Enforcement Guidance) Instrument 2013 (FCA 2013/69)

- 2.9** Following consultation in Chapter 6 of CP13/9⁵, the FCA Board has made changes to the following sections of the FCA Handbook:

**Glossary of definitions
DEPP 2 and Schedules 3 and 4**

- 2.10** The FCA Board also made the following changes outside the FCA Handbook:
EG 19

- 2.11** In summary, these changes set out our approach to using the enforcement powers given to the FCA by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635) (the Referral Fees Regulations).

- 2.12** This instrument comes into force on **8 November 2013**. Feedback to this consultation is set out in Chapter 3 of this Notice.

Prospectus Rules (Amendment) Instrument 2013 (FCA 2013/70)

- 2.13** Following consultation in Chapter 5 of CP13/9⁶, the FCA Board has made changes to the following sections of the FCA Handbook:

PR 3

- 2.14** In summary, these changes set out requirements for filing a prospectus with the FCA.

- 2.15** This instrument comes into force on **8 November 2013**. Feedback to this consultation is set out in Chapter 3 of this Notice.

Perimeter Guidance (Regulated Advice) Instrument 2013 (FCA 2013/71)

- 2.16** Following consultation in Chapter 3 of CP13/3⁷, the FCA Board has made the following changes outside the FCA Handbook:

PERG 1, 4 and 5

- 2.17** In summary, these changes clarify the boundary of mortgage information and advice, following the Mortgage Market Review.

- 2.18** This instrument comes into force on **8 November 2013**. Feedback to this consultation is set out in Chapter 3 of this Notice.

⁵ CP13/9, *Quarterly consultation (No 2)* (September 2013).

⁶ CP13/9, *Quarterly consultation (No 2)* (September 2013).

⁷ CP13/3, *Quarterly consultation (No 1)* (June 2013).

Controllers and Close Links Reporting (Amendment) Instrument 2013 (FCA 2013/72)

- 2.19** Following consultation in Chapter 7 of CP13/9⁸, the FCA Board has made changes to the following sections of the FCA Handbook:
SUP 11 and 16
- 2.20** In summary, the changes require controllers and close links reports to be submitted electronically through GABRIEL.
- 2.21** Part of this instrument comes into force on **1 March 2014** and the remainder comes into force on **31 December 2013**. Feedback to this consultation is set out in Chapter 3 of this Notice.

⁸ CP13/9, *Quarterly consultation (No 2)* (September 2013).

3.

Consultation feedback

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

Chapter 6 of CP13/9, Quarterly consultation (No 2)

Referral Fees Regulations (Enforcement Guidance) Instrument 2013 (FCA 2013/69)

Background

- 3.2** In Chapter 6 of CP13/9, we consulted on our approach to taking enforcement action under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635) (the Referral Fees Regulations). The Referral Fees Regulations came into force on 9 July 2013 and apply various provisions of the Financial Services and Markets Act 2000 (FSMA) to enable the FCA to enforce the rules against referral fees contained in sections 56 to 60 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the LASPO Act).
- 3.3** Section 56 of the LASPO Act prohibits the payment and the receipt of any fee for the referral to another person of claims or potential claims for damages in connection with personal injury or death. The prohibition applies to referral fees authorised persons (defined in the Schedule to the Referral Fees Regulations), which are primarily authorised persons conducting insurance and insurance mediation or in the same group as such authorised persons.
- 3.4** The Referral Fees Regulations give the FCA investigation and sanctioning powers in relation to the contravention of the section 56 prohibition and also in relation to the contravention of requirements imposed by or under the Referral Fees Regulations. As these investigation and sanctioning powers are (with modifications) those that the FCA has under FSMA, we proposed to include new paragraphs in chapter 19 of the Enforcement Guide (EG) to explain that our approach to using these powers would mirror our approach to using the enforcement powers given to us by FSMA. This is consistent with the approach we already take to using our powers to enforce requirements imposed under legislation other than FSMA, as described in EG 19.
- 3.5** Within the amendments to EG 19, we proposed to state that we would apply the existing policies in chapters 6 (penalties) and 6A (suspensions) of the Decision Procedure and Penalties manual (DEPP) to the powers given to us by the Referral Fees Regulations to impose penalties and suspensions or restrictions. We also proposed to amend DEPP 2 Annex 1 to reflect that decisions to issue warning and decision notices under the Referral Fees Regulations would be made by the Regulatory Decisions Committee (RDC).

Feedback and our response

- 3.6** No responses were received to our consultation and so we will proceed with the proposed amendments.

Cost benefit analysis and compatibility statement

- 3.7** The cost benefit analysis and compatibility statement in Chapter 6 of CP13/9 remain valid and do not require amendment.

Equality and diversity issues

- 3.8** The equality and diversity statement in Chapter 6 of CP13/9 remains valid and does not require amendment.

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

Chapter 5 of CP13/9, Quarterly consultation (No 2)

Prospectus Rules (Amendment) Instrument 2013 (FCA 2013/70)**Background**

- 3.10** In Chapter 5 of CP13/9, we explained that the EU Omnibus Directive (Directive 2010/78/EU) requires us to report certain data relating to our prospectus review operations to the European Securities and Markets Authority (ESMA). To help us comply with the Omnibus Directive, we proposed minor amendments to PR 3 (Filing and publication requirement in relation to prospectuses). These changes will make it clearer what 'filing' a prospectus with the FCA means and will implement a specific time limit for filing (in place of the current formulation 'as soon as practicable').

Method of filing a prospectus with the FCA

- 3.11** All issuers who have a prospectus or supplementary prospectus approved by the FCA are required under PR 3.2.1R to file the document with the FCA after approval and then publish it. These rules are derived from articles 14 and 16 of the Prospectus Directive (PD). PR 3.2.4R (Method of publishing a prospectus) then gives detail on what is meant by 'publish' the document but is silent on what is meant by 'filing' it. We proposed amending PR 3.2.1R so that it just deals with the 'filing' requirement and that a consequential amendment be made to PR 3.2.2R to include the requirement to publish the prospectus (previously in PR 3.2.1R). We also proposed a new provision at PR 3.2.1AR to make it clearer that the method for filing a prospectus with the FCA is to upload it to the FCA's national storage mechanism (NSM).

Timing of filing a prospectus with the FCA

- 3.12** We are required to make notifications to ESMA in relation to approvals of prospectuses and supplementary prospectuses within 24 hours of us notifying the applicant that their document has been approved. Therefore, we proposed inserting a new requirement in the Prospectus Rules (within PR 3.2.1R) for a prospectus or supplementary prospectus to be filed with the FCA at the same time as it is made available to the public in accordance with the Prospectus Rules or, if earlier, within 24 hours of being notified that we have approved the prospectus.

Feedback and our response

- 3.13** We did not receive any responses to our consultation.

- 3.14** We intend to proceed with the amendments as proposed. Additionally, we have made a small consequential change by updating the cross-reference in PR 3.2.4R so that it correctly refers to the amended text.

Cost benefit analysis and compatibility statement

- 3.15** The cost benefit analysis and compatibility statement in CP13/9 remain valid.

Equality and diversity issues

- 3.16** As stated in CP13/9, we continue to believe the changes do not give rise to discrimination and are of low relevance to the equality agenda.

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

Chapter 3 of CP13/3 Quarterly consultation (No 1)

Perimeter Guidance (Regulated Advice) Instrument 2013 (FCA 2013/71)

Background

- 3.18** When we published the final Mortgage Market Review rules in October 2012⁹, we committed to reviewing the Perimeter Guidance (PERG) on mortgage advice, with the aim of providing further clarity about where the boundary lies between giving information and providing regulated advice.

- 3.19** We consulted on amending the existing guidance to try and make the distinction clearer and provided some further examples to provide more clarity for firms.

Feedback

- 3.20** We received eight responses to the consultation from trade associations, firms, the FCA statutory panels and consumers. Respondents were generally supportive of the proposals.

- 3.21** One respondent was concerned about the impact of the changes on firms who currently rely on providing 'generic' advice or information as an unregulated firm and asked whether we had considered the impact of the changes on these firms. Some respondents were also concerned about the impact of the changes on tied intermediaries offering general insurance products and thought that they would not be able to offer non-advised sales as a result.

- 3.22** All respondents supported the additional examples we proposed to include. However, one respondent questioned whether the examples could equally apply to intermediaries as well as lenders.

Our response

- 3.23** The changes we proposed to the existing guidance are designed to remove the ambiguity about whether recommending a firm could be regulated advice. We specifically sought views, in the consultation, on whether this would have an impact on firms. No respondents suggested the change would pose any significant issues.

⁹ PS12/16, *Mortgage Market Review: Feedback on CP11/31 and final rules* (October 2012).

- 3.24** We do not agree that the changes to PERG will impact on tied arrangements for general insurance providers. The existing PERG guidance on pre-purchase questions (PERG 5.8.15G), gives guidance on providing information to customers without it being considered advice and this guidance remains unchanged. Firms should also refer to ICOBS 4 and 5 for our existing requirements on the disclosure and selling requirements for general insurance, which include our rules on non-advised sales.
- 3.25** We do agree that the new examples could also apply to intermediaries, so we have amended the guidance to apply to 'firms' rather than just lenders.
- Cost benefit analysis and compatibility statement***
- 3.26** As we are proceeding with the changes as consulted on, we believe the cost benefit analysis and compatibility statement as set out in CP13/3 remain valid.
- Equality and diversity issues***
- 3.27** There are no expected positive or negative impacts on a particular group or protected characteristic as a result of these changes.
- 3.28** The changes made by this instrument are listed in Chapter 2 of this Notice.

Chapter 7 of CP13/9, Quarterly consultation (No 2)

Controllers and Close Links Reporting (Amendment) Instrument 2013 (FCA 2013/72)

Background

- 3.29** In CP13/9, we consulted on bringing the reporting of close links and controllers into the GABRIEL system in reporting forms REP001 - Close Links Report (annual), REP001a - Close Links Notification (monthly) and REP002 - Controllers Report. This was intended to take effect for any returns with a reporting period ending on or after 31 December 2013.
- 3.30** Bringing these reports into GABRIEL provides a number of benefits for firms and the FCA including a reduction in submission errors and, through automation, a reduction in issues with reports not logged as received.

Feedback

- 3.31** The consultation closed on 6 October 2013 and we received five responses, all of which were broadly supportive but asked for clarification around certain specifics.
- 3.32** Of the comments received, three were from larger firms, who highlighted that the change in submission method would have a greater impact, particularly on larger monthly submitters.
- 3.33** One respondent noted that the GABRIEL form requires monthly submitters to state their close links in full each month, whereas the Excel form asked only for those close links which were new and ceased.
- 3.34** Two respondents noted that the proposed text in SUP 16.5.4R did not clearly state that firms with no close links did not have to submit an organisation chart.

- 3.35** Two respondents noted that reporting of controllers and close links was undertaken by an unregulated parent holding company on behalf of regulated firms within the group. As a consequence of being unregulated, these holding companies do not have a GABRIEL account and would be unable to fulfil the reporting requirement.
- 3.36** One respondent wanted clarification on whether firms could still meet the controllers reporting requirement by providing an organisation chart and whether firms are required to submit a nil return.
- 3.37** One respondent enquired whether the new forms have the capability to satisfy the reporting requirement for all firms in a group. We can confirm that they do, as long as the reporting period dates align. All three of the new forms allow firms to enter a list of firm reference numbers (FRNs) that the report is intended to cover, which the system will then cross-reference to the firms in the group.

Our response

- 3.38** We recognise that for more complex groups the change in submission method is a significant change and may require system changes in a short period of time.
- 3.39** To address this, we have delayed the implementation of the new monthly close links form until 1 March 2014, which pushes back the due date of the first REP001a submission to 31 March 2014. In the period between 31 December 2013 and 1 March 2014, monthly close links reports should continue to be submitted using the current Excel form.
- 3.40** This period is designed to provide firms additional time to implement technical solutions where manual entry is not feasible due to group size or complexity. Such solutions may include direct communications or XML upload; the schemas for which we will provide shortly.
- 3.41** We have not delayed the implementation of REP001 or REP002, which are submitted on an annual basis. This is because firms have four months from the end of the reporting period in which to complete these reports. In practice, this means that annual submitters will not have a report due before 30 April 2014.
- 3.42** Furthermore, for REP002, an organisation chart can be uploaded within the GABRIEL form satisfying the majority of the reporting requirement. For larger firms this will reduce the impact of the change to the new submission method.
- 3.43** We acknowledge that the new REP001a – Close Links (monthly) re-aligns the form with the existing and correct policy in SUP 11.9 and SUP 16.5.4R(4) which requires firms that have elected to report monthly to list all (and not just new and ceased) close links. This is also reflected in our delay of the implementation date for this report.
- 3.44** Text in the form in SUP 16 Annex 36AR reflects that firms with no close links do not have to submit an organisation chart. This text reads: 'Firms must provide an organisation chart unless no close links exist'.

- 3.45** While we understand the reasons behind the reporting of group structure by a holding company, the reporting requirement falls on the regulated firms individually. If holding companies wish to continue reporting controllers and close links on behalf of the regulated entities within the group then there are practical ways in which this can be done. A regulated firm can add relevant staff from the holding company to their GABRIEL account and give them permissions to submit the relevant items. An alternative option, if using XML, is for the holding company to provide the regulated entity with the XML file and for this entity to upload it and submit it on behalf of the group.
- 3.46** We can confirm that firms can submit an organisation chart which they will be able to attach to the GABRIEL form to meet the controllers reporting requirement in GABRIEL and that nil returns are required from firms with no controllers or close links. The nil return should also be submitted using the form in GABRIEL.
- 3.47** We can also confirm that the system provides the facility to submit a group report for the individual controllers and close links requirements, as long as the reporting period dates align. All three of the new forms allow firms to enter a list of FRNs that the report is intended to cover, which the system will then cross-reference to the firms in the group.
- 3.48** ***Cost benefit analysis and compatibility statement***
Section 155 of the Financial Services and Markets Act 2000 requires us to publish a cost benefit analysis of the implications of the proposed amendments. The requirement does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance. We received no comments in respect of the cost benefit analysis or the compatibility statement.
- 3.49** Since we are only making minor changes to our proposals we believe the cost benefit analysis and compatibility statement remain valid.
- 3.50** ***Equality and diversity issues***
We received no comments in relation to our statement set out in CP13/9 and continue to believe that these proposals have little impact on the equality agenda and do not give rise to discrimination.
- 3.51** The changes made by this instrument are listed in Chapter 2 of this Notice.

4. Additional information

Making corrections

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

Publication of Handbook material

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

Obligation to publish feedback

- 4.7** This Notice, and the feedback to which paragraph 1.3 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 ('the Act'). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost benefit analysis and a statement under s138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

Comments

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

Financial Conduct Authority



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