

**EXITING THE EUROPEAN UNION: GIBRALTAR (GENERAL RULES)
INSTRUMENT 201[X]**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018;
 - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000;
 - (3) section 395 (The FCA's and PRA's procedures) of the Financial Services and Markets Act 2000; and
 - (4) regulation 120 (Guidance) of the Payment Services Regulations 2017.

Commencement

- B. This instrument comes into force on [29 March 2019 at 11 p.m.].

Amendments to the FCA Handbook

- C. The General Provisions (GEN) are amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Exiting the European Union: Gibraltar (General Rules) Instrument 201[X].

By order of the Board
[date]

[*Editor's note*: the text in this instrument takes account of changes made in CP18/28 'Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation' (October 2018) and CP18/36 'Brexit: proposed changes to the Handbook and Binding Technical Standards – second consultation' (November 2018) as if they were made.]

Annex

Amendments to the General Provisions

After GEN 2.2 (Interpreting the Handbook) insert the following new section, GEN 2.3. The text is not underlined.

2.3 General saving of the Handbook for Gibraltar

Continued application of the Handbook with respect to Gibraltar

- 2.3.1 R (1) The *FCA Handbook* shall, after *exit day*, be construed, unless the contrary intention appears, as conferring rights and imposing obligations in relation to or in connection with Gibraltar corresponding to those that existed immediately before *exit day*.
- (2) Accordingly, any provision of these *rules* which immediately before *exit day* applied in relation to or in connection with Gibraltar shall, with any necessary modifications to give effect to that corresponding right or obligation, continue to apply after *exit day*; and any provision which did not so apply shall continue not to apply, unless provision indicating the contrary intention is made.
- (3) In *GEN 2.3*, a reference to Gibraltar includes, but is not limited to, rights or obligations conferred or imposed in relation to or in connection with Gibraltar-based firms, public institutions established, *persons* resident and *body corporates* incorporated in Gibraltar, and activities of *firms* in Gibraltar.
- (4) In *GEN 2.3*, “Gibraltar-based firm” has the same meaning as in the *Gibraltar Order*.

Extent of guidance applying in relation to or in connection with Gibraltar

- 2.3.2 R (1) *Guidance* which, immediately before *exit day*, was *guidance* on or in connection with a *rule* to which, on and after *exit day*, *GEN 2.3.1R* applies, shall, with any necessary modifications, continue to apply on and after *exit day* in relation to or in connection with Gibraltar to the same extent as the *rule*, unless provision indicating the contrary intention is made.
- (2) *Guidance* which, immediately before *exit day*, was *guidance* on or in connection with an enactment other than a *rule*, shall continue to apply on and after *exit day* in relation to or in connection with Gibraltar to the same extent as the enactment continues to apply in relation to or in connection with Gibraltar.

Purpose of GEN 2.3.1R and GEN 2.3.2R

- 2.3.3 G (1) The purpose of *GEN 2.3.1R* and *GEN 2.3.2R* is to ensure that the *rules* and *guidance* that apply in relation to or in connection with Gibraltar before *exit day* continue to apply in the same way after *exit day*, notwithstanding amendments made to the *FCA Handbook* as a result of the *UK's* withdrawal from the *EU*.
- (2) Accordingly, any amendment to or deletion of a *rule* or *guidance* made to address a matter arising from the *UK's* withdrawal from the *EU* is to be disregarded to the extent it changed the application of a *rule* or *guidance* in relation to or in connection with Gibraltar.
- (3) For example, any *rule* or *guidance* that applied before *exit day* in relation to or in connection with a Gibraltar-based firm, a *person* resident in Gibraltar, a *body corporate* incorporated in Gibraltar, or the activities of a *firm* in Gibraltar will so apply after *exit day* with any necessary modifications, taking into account any other amendments made on *exit day*.
- (4) However, the approach in *GEN 2.3.1R* is a general one and it does not apply where a *rule* or *guidance* states explicitly that a different provision applies in relation to or in connection with Gibraltar or that a different position is explicitly stated in relation to a *rule* or *guidance*.
- (5) In *GEN 2.3.1R*, the contrary intention should be construed in light of regulations made under the *EUWA*. *GEN 2.3.1R* is not intended to apply where the application of a *rule* or *guidance* in the *FCA Handbook* in relation to or in connection with Gibraltar would be contrary to the intention of regulations made under the *EUWA*, or would have a result that is incompatible or inconsistent with the legislative scheme with which the *rule* or *guidance* is connected.
- (6) The *rules* and *guidance* are saved subject to any necessary modification to give effect to a right or obligation that corresponds to the right or obligation that existed before *exit day*. So, for example, where the removal of a reference to a matter in relation to Gibraltar could make it impracticable for a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order* to continue to comply with a *rule*, the *rule* should be construed as applying, to the extent necessary, as if it continued to refer to a matter in relation to Gibraltar.
- (7) An example of such a matter may be a *rule* which on *exit day* (as a result of an amendment made under the *EUWA*) then only refers to the membership of a *UK* professional body. Where this is the case, the *firm* may treat the *rule* as if it continued to refer to a Gibraltar-based professional body if that is necessary to correspond with the obligation that had effect in relation to a Gibraltar-based firm.

- (8) None of *GEN 2.3.1R* or *GEN 2.3.2R* prevents changes being made to *rules* and *guidance* that apply in relation to or in connection with Gibraltar after *exit day*.

Further guidance on *GEN 2.3.1R* and *GEN 2.3.2R* as they apply in relation to Gibraltar-based firms exercising market access rights by virtue of the *Gibraltar Order*

- 2.3.4 G (1) Where *GEN 2.3.1R* and *GEN 2.3.2R* apply in relation to a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order* and which carries on *regulated activities* outside of the scope of its entitlement, such as by virtue of a *Part 4A permission* (i.e. it has a top-up permission), *rules* and *guidance* will continue to apply to such a firm in respect of those activities by virtue of that *permission*.
- (2) Where *GEN 2.3.1R* and *GEN 2.3.2R* apply in relation to a Gibraltar-based firm exercising market access rights by virtue of the *Gibraltar Order*, in determining which *rules* and *guidance* could apply to them in the *UK*, such firms may, as a starting point, find it helpful to refer to the table in *SUP 13A Annex 1G* (Rules that applied to incoming EEA firms) as it applied immediately before *exit day*. However, the table will not apply in its entirety to each such firm, for example because such a firm may have a *Part 4A permission* for other activities.