



No.3

Handbook Notice

June 2013

Financial Conduct Authority



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Handbook Notice 003

This Handbook Notice introduces the Handbook and other material made by the Board under its legislative powers on 27 June 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:

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Email: 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 this month

- 1.1** On 27 June 2013 the FCA Board made changes to the Handbook in five instruments which are listed in the table below.

CP	Title of instrument	Instrument No.	Changes effective
NA	Handbook Administration (No 3) Instrument 2013	2013/48	1.7.2013
13/1	Periodic Fees (2013/2014) and Other Fees Instrument 2013	2013/49	1.7.2013
12/5 (Ch 8) and 13/5 (Ch 5)	Authorised Contractual Schemes (Handbook Amendments) Instrument 2013	2013/50	1.7.2013
12/32 and 13/9	Alternative Investment Fund Managers Directive Instrument 2013 (and related instruments)	2013/51	22.7. 2013 22.7.2014
12/32 and 13/9	Dispute Resolution: Complaints (Alternative Investment Fund Managers Directive) Instrument 2013	FCA 2013/52; FOS 2013/5	22.7.2013

- 1.2** The FCA also approved the following changes, as made by the Financial Ombudsman Service Board.

CP	Title of instrument	Instrument No.	Changes effective
NA	Dispute Resolution: Complaints (Amendment No 6) Instrument 2013	FOS 2013/4	22.7.2013

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 27 June 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 www.bankofengland.co.uk/pr/Pages/publications/default.aspx

Handbook Administration (No 3) Instrument 2013 (FCA 2013/48)

- 2.2** 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

SYSC 10

GEN 4

FEES 2-4 and TP 8

BIPRU 1-3 and 7

INSPRU 7

MCOB 6

MAR 2

SUP 6

CONRED 2

LR Appendix 1

BSOG 2 and 3

- 2.3** In summary, the following minor administrative amendments to various modules of the FCA Handbook have been made:
- changes in the Glossary of terms to bring it into line with the same terms in LR Appendix 1 (Definitions);
 - deletion from the definition of 'class' of the word 'broad' (as qualifying 'classes') to reflect the current model (which only has distinct classes), to correspond to the references to 'class' in FEES 6, and to match the PRA definition of this term;
 - deletion of the definition of 'financial adviser' which is no longer used in the Handbook;
 - change to the definition of 'investment trust' to add further statutory references;
 - changes to the definition of 'regulated activity' to incorporate the new regulated activities of 'providing information in relation to a specified benchmark' and 'administering a specified benchmark';

- changes to SYSC 10.2.3G to amend the statutory cross-references;
- minor corrections within FEES, including clarification within FEES 2.2.3G of its application to FCA regulated firms;
- amendment of a cross-reference within FEES TP 8;
- changes in certain BIPRU provisions to complement the changes to be made by the PRA for the same provisions;
- a correction, in INSPRU 7.1.3AG, to a defined term in this provision;
- change to the status disclosure requirement (in MCOB 6.5.6R) regarding distant contracts with retail customers, in accordance with previously published policy;
- changes to statutory cross-references in MAR 2.1.2G;
- changes to SUP 6.3.12G to delete two out-of-date cross-references;
- minor correction to CONRED 2 Annex 13;
- deletion of two expired transitional provisions within COMP;
- changes to certain defined terms in LR Appendix 1 to bring them into line with the same terms in the Glossary;
- minor corrections within BSOG to correspond with similar changes to be made by the PRA.

2.4 This instrument comes into force on **1 July 2013**.

Periodic Fees (2013/2014) and Other Fees Instrument 2013 (FCA 2013/49)

2.5 Following consultation in CP13/1¹, the Board has made the following changes to the FCA Handbook:

FEES 3-5, 7 and Appendix 1

2.6 In summary, these changes raise the:

- FCA annual funding requirement (AFR) for 2013/14;
- Financial Ombudsman Service (FOS) general levy to recover the costs of operating the FOS which are not funded by individual complaint case fees (case fees are consulted on separately by the FOS); and
- Money Advice Service (MAS) money advice and debt advice levies to recover the costs of MAS in meeting their statutory function as the consumer financial education body.

¹ CP13/1, *FCA Regulated fees and levies: Rates proposals 2013/14* (April 2014).

- 2.7** This instrument comes into force on **1 July 2013**. Feedback to this consultation was published by the FCA in a separate policy statement which includes the basis for related clarifications to these rules.

Authorised Contractual Schemes (Handbook Amendments) Instrument 2013 (FCA 2013/50)

- 2.8** Following consultation in CP12/5² and 13/5³, the Board has made the following changes to the FCA Handbook:

Glossary of definitions

PRIN Schedule 6

SYSC Schedule 6

TC Schedule 6

GEN 1 and schedule 6

IPRU(INV) 5 and Appendix 1

FEES 1, 3, 4, 6 and Schedule 6

UPRU Schedule 6

IPRU(FSOC) 7

COBS 14 and Schedule 6

ICOB Schedule 6

MCOB Schedule 6

BCOBS Schedule 6

CASS 7 and Schedule 6

MAR Schedule 6

SUP 6, 8, 13A, 16 and Schedule 6

DEPP 2

DISP Schedule 6

COMP 5 and Schedule 6

COLL 1-8, 11-12, Schedules 2 and 6

PROF Schedule 6

LR 9, Appendix 1 and Schedule 6

PR Schedule 6

DTR 5 and Schedule 6

EG 14, 15 and 19

PERG 2 and 8-13

- 2.9** These changes give effect to legislative changes made by HM Treasury that enable us to authorise another two legal forms of collective investment scheme (CIS): co-ownership schemes and limited partnership schemes. Their introduction aims to maintain the competitiveness of the UK's asset management industry by aligning our regulatory framework with those of other leading European fund domiciles.
- 2.10** This instrument comes into force on **1 July 2013**. Feedback to this consultation is set out in Chapter 3 of this Notice.

Alternative Investment Fund Managers Directive Instrument 2013 (FCA 2013/51)

Dispute Resolution: Complaints (Alternative Investment Fund Managers Directive) Instrument 2013 (FCA 2013/52; FOS 2013/5)

² CP12/5, *Quarterly consultation (No 32)* (March 2012).

³ CP13/5, *Quarterly consultation (No 35)* (February 2013).

Dispute Resolution: Complaints (Amendment No 6) Instrument 2013 (FOS 2013/4)

- 2.11** Following consultation in CP12/32⁴ and CP13/9⁵, the Board has made the following changes to the FCA Handbook:

Making of the Investment Funds sourcebook (FUND)

Glossary of definitions

PRIN 1 and 3

SYSC 1, 4, 6, 7, 10, 19A, 19B, 21 and TP 2

GEN TP 3

FEES 1, 3, 4, 5 and 6

GENPRU 1, 2 and TP16

BIPRU 1, 8 and TP 35

UPRU Part 1: 1, and Part 2

IPRU(INV) Contents, 1, 2, Appendix 1, 5, 11 and 14

COBS 1, 2, 4, 18 and TP 1

CASS 1, 6, 8, 9, 10, Schedules 2 and 6

SUP 3, 10A, 13, 13A, 14, 15, 16, Guidance notes on Forms FSA041, FIN066 and FIN067, and TP 1

DISP 1 and 2

COMP 1, 4, 5, 6 and 14

PERG 8 and 16

- 2.12** These changes implement the Alternative Investment Fund Managers Directive (AIFMD) for which we have created a new sourcebook, the Investment Funds sourcebook (FUND). We are also making changes to other modules of the Handbook in so far as this is necessary to transpose provisions of AIFMD.
- 2.13** AIFMD aims to create a comprehensive European framework for the regulation of managers of alternative investment funds (AIFs), to identify and mitigate systemic risks arising from the activities of those managers (AIFMs) and to improve investor protection by adopting common standards for the organisation and conduct of business of AIFMs.
- 2.14** Part of this instrument comes into force on **22 July 2013** and part on **22 July 2014**. Feedback to this consultation was published by the FCA in a separate policy statement.⁶

⁴ CP12/32, *Implementation of the Alternative Investment Fund Managers Directive Part 1* (November 2012).

⁵ CP13/9, *Implementation of the Alternative Investment Fund Managers Directive Part 2* (March 2013).

⁶ PS13/5 *Implementation of the Alternative Investment Fund Managers Directive* (27 June 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 8 of CP 12/5, Quarterly Consultation (No 32)
Chapter 5 of CP 13/5, Quarterly Consultation (No 35)

Authorised Contractual Schemes (Handbook Amendments) Instrument 2013 (FCA 2013/50)

Background

- 3.2** The purpose of this policy change is to give effect to legislative changes made by HM Treasury (the Treasury) that will enable the FCA to authorise another two legal forms of collective investment scheme (CIS): co-ownership schemes and limited partnership schemes. Their introduction aims to maintain the competitiveness of the UK's asset management industry by aligning our regulatory framework with those of other leading European fund domiciles.
- 3.3** The current legal and regulatory framework in the UK allows us to authorise two legal forms of CIS: authorised unit trusts (AUTs) or open-ended investment companies (OEICs), also known in the FCA Handbook as an investment company with variable capital (ICVC). Going forward, we will be able to authorise co-ownership schemes and limited partnership schemes, collectively referred to as 'authorised contractual schemes' or ACSs.
- 3.4** The main distinguishing feature of an ACS is its tax transparency, ie the scheme itself incurs no tax liability. This means that its investors are treated as if they had invested directly in the underlying assets of the scheme and are subject to personal taxation accordingly. So, whereas AUTs and ICVCs are opaque for fiscal purposes, ACSs allow any investor, including tax-exempt investors, to access their appropriate tax rate.
- 3.5** To support these legislative changes, numerous amendments (predominantly of consequential nature) are required to FCA rules. We consulted on these in Chapter 8 of CP12/5. Following substantial changes made by the Treasury to the features of ACSs, we proposed further amendments to COLL in CP13/5. This chapter provides feedback on both consultations.

Feedback

- 3.6** Each CP received three responses. In each case, two from trade associations and one from a regulated firm. Respondents generally supported our policy approach (ie applying COLL in its entirety to ACS) but also commented on a number of points, such as the need for the ACS to produce a solvency statement, the role of the nominated partner and the disclosure of restrictions on the transfer of units.
- 3.7** Our proposed rules for winding up ACS contained aspects of the current regime for both AUTs and ICVCs. This meant, as for ICVCs, our proposal required any ACS to produce a solvency

statement, which had to be signed by the authorised fund manager (AFM) and the auditor of the scheme. Respondents questioned its necessity and usefulness.

- 3.8** Another area of concern related to the role of the nominated partner in an authorised limited partnership. We were asked to comment on what a nominated partner would need to do to cease acting once he has entered into the partnership deed with the general partner.
- 3.9** Also, the original consultation proposed a requirement to state the restrictions on the terms of transfer of units in the fund's instrument, but did not require this information to be disclosed in the prospectus. Respondents noted that investors are more likely to refer to a scheme's prospectus than its instrument so, from an investor's point of view, disclosure in the fund's prospectus would be preferable.

Our response

- 3.10** Regarding our proposed rules for winding-up ACS: whilst we are able to handle the winding-up of insolvent AUTs, we can handle only solvent winding-ups for ACSs and ICVCs. The Treasury's regulations specify the court procedure for the insolvent winding up of either a co-ownership or limited partnership scheme. Requiring an ACS to produce a solvency statement will ensure that we operate within our legal powers.
- 3.11** On the formation of an authorised limited partnership scheme, the nominated partner is the first limited partner in the scheme. As outlined in CP13/5, the nominated partner's only role will be to enter into the contractual scheme deed with the operator. It will not be conducting regulated activity and so will not require FCA authorisation. We were asked to comment on what a nominated partner would need to do to cease acting. The nominated partner's role to enter into the deed with the operator is a one-off responsibility; no other role is foreseen for it by either the Treasury's regulations or FCA rules. While there is nothing to require the nominated partner to remain a limited partner, firms may wish to consider keeping it in place in case all other limited partners retire.
- 3.12** The Treasury's original proposal prohibited transfer of units, except where permitted by FCA rules. Although this blanket restriction on transfer of units has been dropped, transfer of units of an ACS from one person to another will still be subject to certain investor eligibility criteria. Given the comments received, we will require AFMs not only to state these criteria in the scheme's instrument but also to disclose them in the prospectus.
- 3.13** We have addressed numerous drafting points that we received in our final instrument. Examples can be found in:
- COLL 4.2.5R (11)(ca)(i), we have inserted 'if any';
 - COLL 3.2.6R (27F) and COLL 8.2.6R (2)(6)(a)(v), we have clarified that the requirement to redeem applies not just to the issue of units to persons who do not meet the eligibility criteria but also to the transfer of units between persons;
 - COLL 6.5.9R(1)(a), we have inserted 'as principal' for clarification purposes; and
 - COLL 8.2.6R (2)(6)(f), we have clarified that the limited partners, other than the nominated partner, are to be the participants in the scheme.
- 3.14** None of these changes depart, or are intended to depart, from our original policy position. However, we believe that they give greater clarity.

3.15 To assist the reader's understanding of the matter, our proposed amendments did not solely relate to the FCA Handbook but also to the Collective Investment Scheme Information Guide (COLLG). Taking into account that we intend to replace COLL with a new Handbook module, to be known as the Investment Funds sourcebook (FUND), we have decided to postpone our changes to COLLG for the time being.

3.16 Finally, and in anticipation of receiving applications for authorisation, we have developed application forms and forms for notification of certain changes for firms. These forms will not be made by FCA rules, which is why the formal consultation requirements in the Financial Services and Markets Act 2000 do not apply. Interested parties will find them on our website: http://fshandbook.info/FS/futureform_links.jsp. Please note this location is only temporary, once the ACS regime comes into force (after 1 July), the forms can be found on: http://fshandbook.info/FS/form_links.jsp.

Cost benefit analysis and compatibility statement

3.17 Both consultation documents contained a cost benefit analysis (CBA) setting out the costs and benefits of the proposals. There were no comments received on the CBA and no significant changes have been made to our final rules from those consulted on. The new requirement to disclose restrictions on the transfer of units in the scheme's prospectus will not result in any additional costs: to launch an ACS the AFM must produce a new prospectus anyway. As explained, ACSs constitute another legal structure firms can choose which will provide them with additional flexibility. As such, they will not impose costs on any existing firm.

3.18 As explained above, the Treasury is introducing the new legal forms of scheme to maintain the competitive position of the UK against other European fund domiciles. Fund managers will be able to offer new UK funds that are designed to compete with similar vehicles in other jurisdictions, thus attracting investment in the UK. Our rules allowing these schemes to function assist in this aim. Therefore, the introduction of ACSs supports our objective of promoting effective competition in the interests of consumers. As outlined in both CPs, we have applied common investor protection features to the new type of schemes and kept the existing investment powers and borrowing limits currently applicable to AUTs and ICVCs.

3.19 We received no comments on the compatibility statement, which remains as stated in the consultation papers.

Equality and diversity issues

3.20 We continue to believe that these changes do not give rise to discrimination and are of low relevance on the equality agenda. We received no comments during the two consultations on any equality issues that respondents could foresee.

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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