



No.9

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# Handbook Notice

February 2014

Financial Conduct Authority





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## Handbook Notice 009

This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative powers on 27 February 2014. It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant consultation papers and policy statements referred to in this Notice.

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

**Saira Hussain**

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

**Melanie Purdie**

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

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

Tel: 0845 606 9966

Fax: 020 7066 0991

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

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

# 1. Overview

## Legislative changes

- 1.1** On 27 February 2014, the FCA Board made changes to the Handbook in six instruments which are listed in the table below.

| CP                   | Title of instrument   | Instrument No. | Changes effective                  |
|----------------------|---|----------------|------------------------------------|
| 13/10 and Ch 2 13/18 | Consumer Credit Instrument 2014   | 2014/11        | 1.4.2014                           |
| 13/10 and Ch 2 13/18 | Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014              | 2014/12        | 1.4.2014                           |
| Ch 15 13/9           | Alternative Investment Fund Managers Directive (Consequential Amendments) Instrument 2014 | 2014/14        | 28.2.2014<br>1.4.2014<br>22.7.2014 |
| NA                   | Employers' Liability Insurance: Disclosure by Insurers (No 5) Instrument 2014             | 2014/15        | 1.4.2014                           |
| Ch 3 13/9            | Conduct of Business Sourcebook (Platforms) (Amendment No 2) Instrument 2014               | 2014/16        | 6.4.2014                           |
| Ch 12 13/9           | Designated Investment Exchanges (No 2) Instrument 2014                                    | 2014/17        | 1.3.2014                           |

- 1.2** The FCA Board also approved FCA 2014/13 which will be published at a later date. The summary of changes will be published in the March Handbook Notice.

## 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.

**Forthcoming FCA Board meetings**

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- 1.5** The table below contains a list of forthcoming FCA Board meetings for 2014. Please note that these dates are subject to change without prior notice.

|           |   |
|-----------|---|
| March     | Thursday 27 March                             |
| May       | Thursday 1 May                                |
| June      | Thursday 5 June                               |
|           | Thursday 26 June                              |
| 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 Board on 27 February 2014. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the PRA please see <http://www.bankofengland.co.uk/pr/Pages/publications/default.aspx>

### ***Consumer Credit Instrument 2014 (FCA 2014/11)***

- 2.2** Following consultation in CP13/10<sup>1</sup> and Chapter 2 of CP13/18<sup>2</sup>, the FCA Board has made changes to the following sections of the FCA Handbook:  
**CONC 1 – 15, TP 1 – 6, Schedules 1, 2, 5, 6**
- 2.3** In summary, these changes transfer the regulation of consumer credit from the Office of Fair Trading to the FCA.
- 2.4** This instrument comes into force on **1 April 2014**. Feedback to this consultation is set out in a separate policy statement.

### ***Consumer Credit (Consequential and Supplementary Amendments) Instrument 2014 (FCA 2014/12)***

- 2.5** Following consultation in CP13/10<sup>3</sup> and Chapter 2 of CP13/18<sup>4</sup>, the FCA Board has made changes to the following sections of the FCA Handbook and material outside the FCA Handbook:

#### **Glossary of definitions**

**PRIN 1**

**SYSC 1**

**COND 1, 2**

**GEN 1**

**COBS 4**

**MCOB 1, 3, 5, 6, 9, 10, 12**

**CASS 1, 8, 11, TP 1, Schedule 1, 2**

**SUP 3, 6, 8A, 10A, 11, 12, 13A, 15, 16, TP 1**

**DEPP 2, Schedule 3, 4**

**DISP 1, 2, 3, 4, Schedule 2, TP 1**

**CREDS 1, 2, 9, TP 1**

**CONC App 1**

**BSOG 1**

<sup>1</sup> CP13/10 *Detailed proposals for the FCA regime for consumer credit* (October 2013)

<sup>2</sup> CP13/18 *Quarterly Consultation (No 3)* (December 2013)

<sup>3</sup> CP13/10 *Detailed proposals for the FCA regime for consumer credit* (October 2013)

<sup>4</sup> CP13/18 *Quarterly Consultation (No 3)* (December 2013)

**EG 10, 19, 20**  
**FC Part 1**  
**PERG 1, 2, 4, 5, 8, 14, 17**  
**UNFCOG 1**

- 2.6** In summary, these changes make minor changes to the FCA Handbook in relation to the transfer of consumer credit regulation from the Office of Fair Trading to the FCA.
- 2.7** This instrument comes into force on **1 April 2014**. Feedback to this consultation is set out in a separate policy statement.

***Alternative Investment Fund Managers Directive (Consequential Amendments) Instrument 2014 (FCA 2014/14)***

- 2.8** Following consultation in Chapter 15 of CP13/9<sup>5</sup>, the FCA Board has made changes to the following sections of the FCA Handbook and material outside the FCA Handbook:

**Glossary of definitions**  
**SYSC 1**  
**COND 2**  
**GEN Schedule 4**  
**FEES 1, 3, 4, 6**  
**COBS 1, 4, 5, 11, 16, 18, Schedule 1**  
**SUP 2, 3, 6, 8, 13, 13A, 14, 16, App 3**  
**DEPP 2**  
**COMP 4**  
**COLL 3 - 9, 11,12**  
**LR App 1**  
**EMPS 1**  
**OMPS 1**  
**SERV 1**  
**EG 8 – 11**  
**PERG 1, 2, 4, 5, 8, 9, 11, 12, 13**

- 2.9** In summary, these changes make all sections of the FCA Handbook consistent with the Alternative Investment Fund Managers Directive.
- 2.10** Part of this instrument comes into force on **28 February 2014**, another part on **1 April 2014** and the remainder on **22 July 2014**. Feedback to this consultation is set out in Chapter 3 of this Notice.

***Employers' Liability Insurance: Disclosure by Insurers (No 5) Instrument 2014 (FCA 2014/15)***

- 2.11** The FCA Board has made changes to the following section of the FCA Handbook:  
**ICOBS TP 1**
- 2.12** Our rules require insurers to include all UK commercial lines employers' liability (EL) policies, entered into or renewed on or after 1 April 2011, on employers' liability registers (ELRs), to enable employees to trace their previous employer in the event of a claim. The requirements include entering Employer Reference Numbers (ERNs) on the insurer's ELRs in order to help future tracing of employer liability insurance.
- 2.13** Currently, firms must use 'best endeavours' to obtain the ERN until 1 April 2014, when the current TP expires.

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



- 2.14** In summary, the changes made by this instrument extend the TP for a further 6 months until 1 October 2014 as firms continue to experience practical difficulties in collecting ERNs. This will enable us to make the appropriate changes to our rules.
- 2.15** This instrument comes into force on **1 April 2014**.

***Conduct of Business Sourcebook (Platforms) (Amendment No 2) Instrument 2014 (FCA 2014/16)***

- 2.16** Following consultation in Chapter 3 of CP13/9<sup>6</sup>, the FCA Board has made changes to the following section of the FCA Handbook:  
**COBS 6**
- 2.17** In summary, these changes clarify how the rules FCA 2013/43<sup>7</sup> apply to legacy business held by retail clients in respect of cash rebates to consumers.
- 2.18** This instrument comes into force on **6 April 2014**. Feedback to this consultation is set out in Chapter 3 of this Notice.

***Designated Investment Exchanges (No 2) Instrument 2014 (FCA 2014/17)***

- 2.19** Following consultation in Chapter 12 of CP13/9<sup>8</sup>, the FCA Board has made changes to the following sections of the FCA Handbook:  
**Glossary of definitions**  
**PRIN 1**  
**COBS 18**  
**CASS 6**  
**SUP 11**
- 2.20** In summary, these changes remove references to Designated Investment Exchanges (DIEs) from the sourcebooks listed above. This will be the first stage of a wider removal of the references from the Handbook, which we plan to carry out over the next few years.
- 2.21** This instrument comes into force on **1 March 2014**. Feedback to this consultation is set out in Chapter 3 of this Notice.

<sup>6</sup> CP13/9 *Quarterly consultation (No 2)* (September 2013)

<sup>7</sup> FCA 2013/43 *Conduct of Business Sourcebook (Platforms) (Amendment) Instrument 2013*

<sup>8</sup> 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.

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### **Chapter 15 of CP13/9 Quarterly consultation (No 2)**

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#### ***Alternative Investment Fund Managers Directive (Consequential Amendments) Instrument 2014 (FCA 2014/14)***

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

- 3.2** In September 2013, we consulted on making a large number of consequential changes to various sections of the FCA Handbook to complete the implementation of the Alternative Investment Fund Managers Directive (AIFMD). The changes are needed to make all sections of the Handbook consistent with the way that we have implemented the Directive – for example, by adjusting the terminology we use or to reflect changes to the types of regulated activity for which a firm requires a Part 4A permission.
- 3.3** The consultation included some changes to the reporting requirements for capital adequacy set out in SUP 16, and to the perimeter guidance in PERG 13.5 on the scope of the Markets in Financial Instruments Directive (MiFID) and Capital Requirements Directive (CRD IV). As we did not receive feedback on those specific proposals, it was convenient to include most of them in the wider set of changes implementing CRD IV. Those changes came into force on 1 January 2014.<sup>9</sup> However, they represented only a small proportion of the changes in the instrument we consulted on.

##### ***Feedback***

- 3.4** We received two responses from trade associations. One response made no comment, the other made two substantive comments: a proposed clarification of the application table in COBS 18.5 (which sets out how the conduct of business rules apply to each type of alternative investment fund (AIF) manager); and a request to clarify how the guidance in SUP 3.1.10G, about the requirements relevant to auditors, applies to internally-managed AIFs.

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

- 3.5** In response to the feedback, we have modified COBS 18.5 as suggested. We did not think there was a need to amend the guidance relating to auditors, so we will proceed with the proposed change to SUP 3.1.10G.

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<sup>9</sup> See FCA 2013/77 Capital Requirements Directive IV (AIFMD and UCITS Consequential Amendments) Instrument 2013 for the SUP 16 changes and FCA 2013/79 Capital Requirements Directive IV (Consequential Amendments) Instrument 2013 for the PERG 13 changes

- 3.6** We have made some further minor adjustments to drafting, none of which have any material impact on Handbook users. We proposed changes to the guidance in SUP 13A and 14 explaining passporting arrangements with Gibraltar, relating to both AIFMD and other EU directives but the Government has not yet changed the law to give effect to the relevant passporting rights in relation to AIFMD. Therefore, we have made only the changes in these chapters that do not relate to AIFMD.

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

- 3.7** The cost benefit analysis and compatibility statement published in CP13/9 remain unchanged.

***Equality and diversity issues***

- 3.8** 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 the changes do not give rise to unfair discrimination against protected groups.

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

**Chapter 3 of CP13/9 Quarterly consultation (No 2)**

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***Conduct of Business Sourcebook (Platforms) (Amendment No 2) Instrument 2014 (FCA 2014/16)***

***Background***

- 3.10** From 6 April 2014, rules published with PS13/1<sup>10</sup> will ban product providers from maintaining retail investment product charges at a level which enables a cash rebate, other than a nominal amount, to be paid to a retail client. The ban applies to advised sales of these products, so advisers are not permitted to recommend them. In addition, the platform rules prevent platforms from accepting a share of the Annual Management Charge from providers and passing it on to retail clients, unless the amount passed on is a nominal cash amount or in the form of units, for both advised and execution-only sales. The combined effect of these rules is that products structured to allow cash rebates can only continue for execution-only sales where the product is not held on a platform.
- 3.11** In Chapter 3 of CP13/9, we consulted on a new rule and guidance clarifying the treatment of legacy business in relation to cash rebates. Following queries from firms on how the rules made in April 2013 would apply to legacy business, we took the decision to consult.
- 3.12** We have now made this rule and guidance, to come into force on 6 April 2014. The rule and guidance make clear that cash rebates can continue for legacy business in certain circumstances:
- if the legacy investment (or part of it) stays unchanged, cash rebates to retail clients can continue indefinitely on the unchanged part;
  - if the client pays additional money into a fund held on a platform, or increases his regular contributions, the new money (or increase in contributions) would not be treated as legacy business and would need to go into a clean version of the same fund, or a version of the fund with unit rebates (or the very small cash rebates permitted by the platform rules – £1 or less per month per fund); and

<sup>10</sup> PS13/1 *Payments to platform service providers and cash rebates from providers to consumers* (April 2013)

- in the same way, if there is a fund switch involving all or part of the legacy investment, the new funds purchased as a result of the switch could not allow for cash rebates (other than very small ones). So cash rebates could only continue on any part of the legacy investment that continues to be held unchanged.

**3.13** We also consulted on minor amendments to the rules on platform charges to bring these in line with the definition of a platform charge and clarify the exceptions to the ban on platforms receiving payments from other firms.

#### ***Feedback***

**3.14** We received eleven responses, mostly from platforms but also from three trade bodies (Association of British Insurers (ABI), Association of Professional Financial Advisers (APFA) and the Investment Management Association (IMA)). Eight respondents, including the three trade bodies, broadly supported our proposals.

**3.15** Two platforms went beyond the scope of the consultation in their comments and wanted changes to the transitional rules we made in April 2013 requiring payments from providers to platforms to end for legacy business by April 2016. One platform wanted greater flexibility than currently permitted under the transitional rules for re-registration of assets to another platform and cases where the beneficial owner of assets in a nominee account changes (eg as the result of the death of the original owner or the gift of the assets to another person). The other wished to see parity of treatment between cash rebates paid to consumers and payments from providers retained by the platform, which would have involved removing the April 2016 end date for 'undisturbed' legacy retained rebate business. The second firm also asked that re-registration should not count as a disturbance event, in the same way as proposed in the draft guidance for cash rebates.

**3.16** We also received the following comments or requests for clarification:

- one trade body suggested extending the examples in the guidance to include schemes of arrangement such as mergers of one fund into another;
- a firm asked us to clarify the position regarding self-invested personal pensions (SIPPs), given that we had said in PS13/1 that non-platform adjacent markets such as SIPP operators are not covered by the platform rules;
- another firm wanted clarification that small residual cash amounts left after purchase of shares in investment trust products would not count as cash rebates if held until further shares could be purchased;
- a platform asked us to make clear that payments by providers to customers via platforms would not be banned; and
- a firm asked us whether 'pipeline' business (eg where orders for new investments into ISAs for the 2014/15 tax year have already been placed but the transaction will be executed shortly after the rules come into force on 6 April) could be placed in share classes which pay cash rebates.

**3.17** There were no comments on the minor changes to the rules on platform charges, other than to point out that the change to COBS 6.1E.8R was unnecessary, as this rule only applies to new business from 6 April 2014 and not to legacy business.

**Our response**

- 3.18** We have not amended the rules made in April 2013, bearing in mind that most platforms are well advanced with their preparations for complying with them from 6 April 2014. And we did not wish to have a more extensive list of examples of cases where cash rebates would be allowed to continue indefinitely. There were some helpful detailed comments on the draft rule and guidance we consulted on, and we have amended the wording to reflect these, in particular:
- following the consultation, a firm asked whether the wording of the rule and guidance would allow a firm to start paying cash rebates to a client on or after 6 April 2014 where a 'right' to such a rebate existed before that date. It is not our intention to allow payment of cash rebates to begin on or after 6 April 2014 if the platform had previously retained these rebates instead of passing them on to the retail client and there was no arrangement to pass them on to the client before 6 April 2014. We have added guidance on this point. In addition, a new platform to which assets have been re-registered on or after 6 April 2014 cannot pay rebates as cash, where the previous platform paid them as units (with the exception of the small cash rebates permitted by COBS 6.1E.10R and 6.1E.11G). This is because re-registration will involve a change to the product, as explained in the next indent;
  - the wording of the guidance we consulted on included re-registration of assets to another platform as an example of 'no change'. However, we now understand that the level of rebate will vary from platform to platform because it is agreed between the provider and platform concerned. So there will be a change to the product as a result of re-registration, and we have removed this indent;
  - a new indent has been added to the guidance to make clear that rebates can continue to be paid where the level of the rebates is reduced. For example, following conversion of the assets to a clean share class. However, an increase in the level of rebates would be regarded as a change to the product, and so would not be permitted; and
  - we have amended the rule to cater for pipeline business. This requires a transaction agreed with the retail client before 6 April 2014 to be executed within a reasonable time of being agreed with the retail client.
- 3.19** We have not made the proposed change to COBS 6.1E.8R, as we agree that this is not needed. We have also deleted the reference to a personal recommendation at the end of the new COBS 6.1B.7AR, as we have concluded this is not necessary.
- 3.20** In CP13/9, we explained that the combined effect of the rules in Chapter 6 of the Conduct of Business sourcebook (COBS 6.1A, 6.1B and 6.1E) is that new business with cash rebates sold on or after 6 April 2014 is only possible where there is no personal recommendation and the product is held off-platform. This applies equally to self-invested personal pensions (SIPPs), as SIPPs are defined in legislation as products, even though non-platform adjacent markets such as SIPP operators are not covered by the platform rules. We said in PS13/1 that we intended to consult on rules covering these firms at a later date where necessary.
- 3.21** We confirm that, in relation to investment trust products, residual cash amounts held by the firm (and not paid into the individual client's cash account) would not count as cash rebates if they are being held until further shares are purchased.
- 3.22** We also confirm that, where payments are permitted under the rules – whether cash rebates to consumers, or payment of trail commission to adviser firms – it is irrelevant for the purpose of the rules whether the payments are made directly to the consumer or firm, or via a platform.

**Cost benefit analysis and compatibility statement**

- 3.23** As we are making only minor changes to the rule and guidance we consulted on, we consider that the cost benefit analysis and compatibility statement in Chapter 3 of CP13/9 are still valid. Our conclusion, as set out in our consultation, was that our proposals simply clarified the rules published with PS13/1, so did not give rise to any significant new costs or increase in costs.

**Equality and diversity**

- 3.24** We did not receive any comments on the statement we made in our consultation. This said that the clarifications to the PS13/1 rules we were proposing did not affect our previous assessment, as set out in CP12/12<sup>11</sup> and PS13/1, that the rules we had made did not give rise to any issues for equality and diversity.

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

**Chapter 12 of CP13/9 Quarterly Consultation (No 2)**

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**Designated Investment Exchanges (No 2) Instrument 2014 (FCA 2014/17)****Background**

- 3.26** In CP13/9, we consulted on the removal of the legacy concept of Designated Investment Exchanges (DIEs) from the non-prudential Handbook modules of the Handbook. This will be the first stage of a wider removal of the list from the Handbook, which we plan to carry out over the next few years.
- 3.27** This multi-stage approach is driven by the fact that many of the prudential provisions referring to DIEs relate to European legislation which are expected to be subject to further review and possibly further amendments over the next few years, and it makes sense to move in line with any EU changes.
- 3.28** Our Recognised Investment Exchange (RIE) and Recognised Overseas Investment Exchange (ROIE) regimes will remain in place and will be unaffected by the proposed Handbook changes.

**Feedback and our response**

- 3.29** We received no substantive responses to this consultation and those that did respond welcomed our changes. Therefore, we will make the changes consulted on.
- 3.30** We will also take this opportunity to correct some typographical errors and amend the definition of 'listed' to clarify that, for the purposes of SUP 11 (as per INSPRU and IPRU(INS)), it also includes shares 'in respect of which facilities for dealing on a regulated market have been granted', as well as those included in an 'official list' (ie the UKLA list or any corresponding list kept by an EEA competent authority). This is to address the possibility that the term 'official list' may not include shares traded on all EEA stock exchanges which are regulated markets because it only covers shares included on lists held by another EEA competent authority and not those held by stock exchanges.
- 3.31** Theoretically, this will increase the set of shares in respect of which a fund manager could use the SUP 11 procedure to give the FCA advance notification of an intention to acquire or dispose control. However, the FCA has in practice considered shares of UK firms admitted to trading

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<sup>11</sup> CP12/12 *Payments to platform service providers and cash rebates from providers to consumers* (June 2012)

on regulated EEA exchanges as being eligible for pre-notification using the SUP 11 procedure (pursuant to our power to direct the form of a notice under s179 of the Financial Services and Markets Act 2000), so this change will merely ensure that the Handbook reflects existing practice.

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

- 3.32** The above change does not affect the substance of what was proposed and it merely reflects current practice. As such, we continue to believe that the cost will be minimal and that these changes are in accordance with our statutory objectives.

***Equality and diversity issues***

- 3.33** We continue to believe that the proposed changes do not give rise to any issues.
- 3.34** The changes made by this instrument are listed in Chapter 2 of this Notice.

## 4. Additional information

### Making corrections

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

### Publication of Handbook material

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

### Obligation to publish feedback

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



**PUB REF: 004869**

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