



No.26

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# Handbook Notice

October 2015

Financial Conduct Authority





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## Handbook Notice 26

This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative powers on 24 September 2015 and 22 October 2015. 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:

Emily How

Tel: 020 7066 2184

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

Emma Elder

Tel: 020 7066 0284

Email: [emma.elder@fca.org.uk](mailto:emma.elder@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 Customer Contact Centre:

Tel: 0300 500 0597

Fax: 020 7066 0991

Email: [firm.queries@fca.org.uk](mailto:firm.queries@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 24 September 2015, the FCA Board made changes to the Handbook in the instrument listed below.

CP	Title of instrument	Instrument No.	Changes effective
15/4	Accountability and Whistleblowing Instrument 2015	2015/46	7.3.16; 7.9.16

- 1.2** On 22 October 2015, the FCA Board made changes to the Handbook in the instruments listed below.

CP	Title of instrument	Instrument No.	Changes effective
N/A	Handbook Administration (No 39) Instrument 2015	2015/50	23.10.15; 1.11.15; 7.3.16; 21.3.16; 1.4.16
15/19	Corporate Governance Code and Miscellaneous Amendments Instrument 2015	2015/51	23.10.15; 1.12.15
15/26	Fees (Payment Systems Regulator) (Indirect Billing) Instrument 2015	2015/52	27.10.15
14/27	Reporting Requirements: Compliance Reports (Amendment) Instrument 2015	2015/53	23.10.15

## 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 published in Chapter 3 of this Notice or in a separate Policy Statement.

### FCA Board dates for 2015 and 2016

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**1.5** The tables below contain a list of forthcoming FCA board meetings. These dates are subject to change without prior notice.

**1.6** Board meetings scheduled for 2015:

December	3
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Board meetings scheduled for 2016:

January	28
February	25
March	17
April	21
May	26
June	23
July	21
September	22
October	20
November	2 and 3
December	8

## 2. Summary of changes

- 2.1** This chapter briefly describes FCA Handbook changes made by the Board on 24 September and 22 October 2015. 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 Prudential Regulation Authority (PRA) please see <http://www.bankofengland.co.uk/pr/Pages/publications/default.aspx>

### ***Accountability and Whistleblowing Instrument 2015 (FCA 2015/46)***

- 2.2** Following consultation in CP15/4<sup>1</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary**  
**SYSC 4, 18**  
**IFPRU 2**

- 2.3** In summary, this instrument makes rules to help uncover problems at the earliest opportunity and to protect whistleblowers.
- 2.4** Part of the instrument comes into force on **7 March 2016** and the remainder on **7 September 2016**. Feedback to this consultation was published in a separate Policy Statement.<sup>2</sup>

### ***Handbook Administration (No 39) Instrument 2015 (FCA 2015/50)***

- 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**  
**APER 4**  
**COCON 1**  
**FEES 4**  
**BIPRU 8**  
**MIPRU 1**  
**COBS 22**  
**MCOB 2, 5A and TPs**  
**CASS 1A, 6, 7, 7A, 10 and Sch 2**  
**SUP 10A, 15 and 16**

<sup>1</sup> CP15/4 *Whistleblowing in deposit-takers, PRA-designated investment firms and insurers* (February 2015)

<sup>2</sup> PS15/24 *Whistleblowing in deposit-takers, PRA-designated investment firms and insurers* (October 2015)

**CONC TPs**  
**LR 9**  
**PERG 1 and 15**

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

- correction of minor errors in the *Individual Accountability (Solvency II and Consequentials) Instrument 2015* (FCA 2015/43), in the Glossary of definitions ('accountable higher management function' and 'senior conduct rules staff member'), and in APER 4.1.2G, 4.1.8G, 4.5.7G, 4.5.9G, 4.6.1AG and 4.7.2G, COCON 1.1.10R, CASS 1A.3.1BG, and SUP 10A.4.4R and 10A.11.8G
- deletion of two defined terms ('actuarial function' and 'Lloyd's actuary function') which now only apply in respect of the PRA Handbook
- change to the definition of 'Handbook' following the uncoupling of the PRA Handbook from the former joint FCA/PRA Handbook
- correction of errors in the definition of 'IFPRU 730k firm' to remove erroneous references to BIPRU
- addition of a statutory instrument number to the definition of 'Immigration Regulations'
- removal of an unintended irregularity in BIPRU 8.4, by clarifying that the investment firms in a group must not be subject to consolidation under the EU CRR, on the basis that if they were consolidated under the EU CRR, the group cannot avail itself of the treatment in BIPRU 8.4
- correction of minor errors in the *Mortgage Credit Directive Instrument 2015* (FCA 2015/18) in MIPRU 1.3.3G(1) and MCOB 5A Annex 2 6.6R(6)
- correction to the sub-heading above MCOB 2.6A.1R by deleting 'regulated mortgage contracts' as the following provisions do not cover this activity
- extension to credit brokers of Mortgage Credit Directive-related transitional provisions in MCOB, reflecting recent legislative amendments
- a clarifying change to the heading of COBS 22
- in SUP 15.3.8G the removal of a reference to SYSC 3.2.4G as this provision does not apply to a bank, a building society and a dormant account fund operator
- correction of an error in SUP 16.12.12R by confirming the requirement that BIPRU firms need to report annually under data item FCA055
- minor correction and clarification to paragraph 26 of the Guidance notes in SUP 16 Annex 29AG
- a renumbering of CONC TP 7 (other transitional provisions) to TP 8
- change to the title of LR 7A to refer more properly to that section's contents
- removal of an out-of-date contact address in PERG 1.5.3G
- change to the flowchart in PERG 15 Annex 1, by removing reference to 'Flowchart 2' which was deleted in a previous instrument



- corrections of cross references in FEES 4 Annex 2AR, CASS 6.1.12R, CASS 6.6.57R, CASS 7.11.34R, CASS 7.19.1G, CASS 7.19.12R, CASS 7A.1.1AR, CASS 7A.2.7AG, CASS 10.1.9E, CASS 10.3.1R and CASS Sch 2, and SUP 10A Annex 9R Form G

**2.7** This instrument comes into force on **1 November 2015** except as follows:

- the changes to the MCOB TPs come into force on **23 October 2015**
- changes resulting from corrections to the *Individual Accountability (Solvency II and Consequentials) Instrument 2015* (FCA 2015/43) which come into force on **7 March 2016**; these are changes to the Glossary, APER, COCON, CASS and SUP
- changes resulting from corrections to the *Mortgage Credit Directive Instrument 2015* (FCA 2015/18) which come into force on **21 March 2016**; these are changes to MIPRU and MCOB
- the change to the CONC TPs comes into force on **1 April 2016**

### ***Corporate Governance Code and Miscellaneous Amendments Instrument 2015 (FCA 2015/51)***

**2.8** Following consultation in CP15/19<sup>3</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary**  
**SYSC 2, 4 TP 4**  
**APER 3, TP 1.1**  
**LR 6, 9, 16, Appendix 1, TP 13**  
**DTR 7, 8, TP 1**

**2.9** In summary, this instrument amends the Handbook to align it with the 2014 version of the Corporate Governance Code.

**2.10** Part of the instrument comes into force on **23 October 2015** and the remainder on **1 December 2015**. Feedback to this consultation is published in Chapter 3 of this Notice.

### ***Fees (Payment Systems Regulator) (Indirect Billing) Instrument 2015 (FCA 2015/52)***

**2.11** Following consultation in CP15/26<sup>4</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary**  
**FEES 1, 9, 9 Annex 1, TP 12**

**2.12** In summary, this instrument makes revised rules to allow us to implement 'indirect billing' for PSR regulatory fees. This approach will minimise our regulatory burden.

**2.13** This instrument comes into force on **27 October 2015**. Feedback to this consultation will be published in a separate Policy Statement.

<sup>3</sup> CP15/19 *Quarterly Consultation No.9* (June 2015)

<sup>4</sup> CP15/26 *PSR regulatory fees 2015/16* (August 2015)

***Reporting Requirements: Compliance Reports (Amendment) Instrument 2015 (FCA 2015/53)***

- 2.14** Following consultation in CP14/27<sup>5</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:
- Glossary**  
**SUP 16**
- 2.15** In summary, this instrument makes rules to reduce the burden on OPS firms as they will no longer need to provide the FCA with information that can be accessed from alternative data sources.
- 2.16** This instrument comes into force on **23 October 2015**. Feedback to this consultation is published in Chapter 3 of this notice.

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<sup>5</sup> CP14/27 *Quarterly Consultation No.7* (December 2014)

## 3. Consultation feedback

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

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### **CP14/27 Quarterly Consultation (No.7) Chapter 2**

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#### ***Reporting Requirements: Compliance Reports (Amendment) Instrument 2014***

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

- 3.2** In December 2014 we proposed removing the requirement on OPS firms to provide us with compliance reports, as set out in SUP 16.6. We stated that it was no longer necessary for the FCA to receive these returns to effectively supervise OPS firms as the information could be accessed from alternative sources.

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

- 3.3** We received one consultation response. This was from the Society of Pension Professionals and stated support for our proposal.

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

- 3.4** We intend to proceed with the proposal as set out in CP14/27 (Chapter 2) as we received positive feedback on the proposal.

##### ***Cost benefit analysis (CBA) and compatibility statement***

- 3.5** The cost benefit analysis and compatibility statement remain unchanged from those published in CP14/27.

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

- 3.6** We continue to believe these changes do not give rise to any equality and diversity issues and that they do not give rise to unfair discrimination against protected groups as set out in CP14/27 (Chapter 2).

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

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### **CP15/19 Quarterly Consultation (No.9) Chapter 2**

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#### ***Corporate Governance Code and Miscellaneous Amendments Instrument 2015***

### **Background**

**3.8** In June 2015, we consulted on some minor changes to Listing Rules (LR), Disclosure and Transparency Rules (DTR), Senior Management Arrangements, Systems and Controls sourcebook (SYSC) and the Statements of Principle and Code of Practice for Approved Persons (APER). The proposed amendments are to revise LR in line with the revision of the UK Corporate Governance Code (the Code) in 2014. These revisions concern:

- the requirement for premium listed issuers to report on the extent to which they comply or do not comply with the provisions of the revised Code
- the requirement for directors to make disclosures relating both to the going concern basis of accounting and to the long-term viability of the entity in line with the relevant provisions of the revised Code
- various changes to the LR relating to the numbering and revised content of the Code

We are also amending references to the code in SYSC and APER.

### **Feedback**

**3.9** The consultation closed on 5 August 2015. We received seven responses.

**3.10** All responses received in relation to Q2.5 supported our proposed change so we have made the amendment set out in the consultation.

**3.11** With the exception of the amendments to DTR 8, the final rules will come into force on 23 October 2015. The amendments to DTR 8 (headline codes) will come into force on 1 December 2015 in order to give primary information providers an appropriate amount of time to adjust their operations.

### **Our response**

#### **Updating our definition of the UK Corporate Governance Code (Q2.1)**

**3.12** The FCA Handbook contains various references to the Financial Reporting Council's (FRC's) UK Corporate Governance Code (the Code). These mainly relate to provisions that apply to premium listed companies within Listing Rules (LR), but there are also references made to Disclosure Rules and Transparency Rules (DTR), and the Statements of Principle and Code of Practice for Approved Persons (APER) and Senior Management Arrangements, Systems and Controls (SYSC) sourcebooks. In the consultation paper (CP) we proposed to update the definition of the Code so that it applies across all sections of the Handbook. This proposal received strong support.

**3.13** Some respondents commented that Handbook provisions relating to the Code could be future-proofed by using an ambulatory reference to define it, i.e. to the Code as amended from time to time. However, as we previously said in Handbook Notice 19 (January 2015), we are not able to include open-dated references to the Code, as this would enable the scope of some of our rules to be determined by external bodies without the FCA being able to assess whether such changes were appropriate. This would be an unauthorised sub-delegation of the rule-making powers of the FCA Board.

## Going concern (Q2.2)

- 3.14** In CP15/19 we proposed modifying the LR requirements on going concern to refer to the reformulated requirements under the Code and the associated and updated FRC guidance. These changes reflect the findings of the Sharman Panel of Inquiry on Going Concern and Liquidity Risks<sup>6</sup> which reported in 2012. A key change recommended by the Panel's report was to distinguish between different aspects of reporting on 'going concern': on the one hand, the decision on the appropriateness of adopting the going concern basis of accounting and, on the other, the provision of information to shareholders about the economic and financial viability of the entity and the directors' stewardship and governance of the entity in that respect. As we noted in the CP, the Sharman report recognised that both the narrow going concern accounting decision and the wider issue of the provision of information about viability of the entity were relevant to the purpose of the LR provision. Accordingly, we proposed that the current reporting requirement in LR regarding 'going concern' should be amended so that it is explicit that both aspects of going concern should continue to be addressed in the annual financial report disclosures. As per current LR, statements should continue to be prepared in accordance with FRC guidance. However, we proposed requiring that statements be prepared in accordance with the latest FRC guidance.
- 3.15** Respondents from the corporate, advisory and legal communities registered various concerns on the changes related to going concern reporting. Some did not agree with retaining any specific reporting requirements in LR regarding 'going concern'. Others believed that requiring companies to include a viability statement by the directors, which goes beyond confirming the appropriateness of the decision to adopt the going concern basis of accounting, is outside the 'comply or explain' principle of the Code. One respondent did not consider it necessary to retain reporting requirements in LR for either aspect of going concern, but did believe that if the reporting requirement for the going concern basis of accounting was retained, a reporting requirement relating to the viability statement should also be included. In addition, there were concerns expressed regarding additional liability risk for issuers. One respondent suggested that companies should not be required to prepare the statements in accordance with the FRC's latest guidance. Other responses, including that from investors, fully supported the proposed changes.
- 3.16** We considered carefully the responses received and have concluded that, while some affected constituencies may perceive that the changes extend the scope of the LR reporting requirements, this is a manifestation of the 'expectation gap' that prompted the FRC's decision to revise its Code provisions in this area. In relation to the feedback that the proposed LR goes beyond the 'comply or explain' principle of the Code, we note that LR provisions regarding going concern are longstanding, and already constitute a mandatory disclosure requirement. We do not agree that we are imposing substantively new requirements or introducing a new liability regime. We continue to see the FRC as the arbiter of best practice for its Code provisions and believe that our requirement to prepare the relevant statements in accordance with the FRC's guidance is appropriate. We are therefore, and in line with other aspects of the rationale we provided in the CP, proceeding with the substantive changes that we proposed.
- 3.17** One respondent suggested modifying the wording of our proposed LR 9.8.6R(3) to achieve closer comparability with the equivalent provision in the Code. They also suggested amending the introductory text of the transitional provision to describe more accurately the scope of the provision. We have adopted both suggestions.

<sup>6</sup> *The Sharman Inquiry – Going Concern and Liquidity Risks: lessons for companies and auditors – Final report and recommendations of the Panel of Inquiry* (June 2012)

### **Other code changes (Q2.3)**

- 3.18** We proposed amendments to relevant references to code provisions that auditors are required to review under LR 9.2.10R(2) which correspondents agreed with. We also proposed transitional provisions in both LR and DTR.
- 3.19** A suggestion was made that, for the purposes of transitional provisions, the Code should be identified by reference to the beginning rather than the end of the accounting period for which it is effective. However, we consider that our approach is appropriate.
- 3.20** In reviewing the proposed transitional provisions, we have decided to simplify our approach. We consider that it is not necessary to provide transitional provisions in relation to the DTR. We have also deleted the transitional provisions relating to the 2010/2012 Code as, due to the lapse of time, these are now only relevant for reference purposes and can be accessed using the timeline function in the online Handbook.

### **SYSC and APER (Q2.4)**

- 3.21** In CP15/19 we proposed changing references to the Code in APER and SYSC to refer to the 2014 version of the Code and 'premium listing rather than 'firms listed on the London Stock Exchange' with which respondents agreed. On transitional arrangements, one respondent referred to the point made in reference to transitional provisions in the other code changes (3.19 above). All other responses made to these aspects of the changes supported our proposals.
- 3.22** We intend to proceed with our proposals as drafted. However, having reconsidered our approach to transitional provisions, we have decided it is not necessary to provide transitional provisions in relation to SYSC and APER.

### **Regulated information (DTR 8, Annex 2) (Q2.6)**

- 3.23** In CP15/19 we proposed amendments to the headline codes that must be used by FCA-approved primary information providers when disseminating regulated information. As a result of one of the proposed changes, one respondent requested that LR 9.6.11R(3) be made more explicit or that guidance be published to make clear which board committee changes are regarded as important. In addition, some detailed suggestions to further improve clarity on headline codes were received.
- 3.24** We have refined our proposed changes to incorporate the suggestions on improving clarity. We have noted the feedback that current requirements in LR 9.6.11R(3) are not explicit regarding disclosure of changes of membership of board committees. We may release further guidance in the future if it is appropriate.

### **Electronic settlement compatibility (Q2.7)**

- 3.25** We proposed to delete the requirements regarding electronic settlement for premium listed companies (LR 6.1.23R, LR 6.1.24G, LR 6.1.24AG and LR 9.2.3R). One respondent pointed out that LR 16.2.1R should also be amended in line with these proposals.
- 3.26** We will also amend LR 16.2.1.R to make it compatible with the proposed changes in LR 6 and LR 9.

### ***Cost benefit analysis (CBA) and compatibility statement***

**3.27** The cost benefit analysis and compatibility statement remain unchanged from those published in CP15/19.

***Equality and diversity issues***

**3.28** We did not receive any feedback on our statement in CP15/19 that these proposals are of low relevance to the equality and diversity agenda. We continue to believe that this is the case.

**3.29** 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.
- 4.3** The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, reference number or module at <https://www.handbook.fca.org.uk/>. 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 <https://www.handbook.fca.org.uk>.
- 4.6** Copies of the FCA's consultation papers are available on the FCA's website.

### Obligation to publish feedback

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- 4.7** This Notice, and the feedback to which paragraph 1.6 refers, fulfil the FCA Board's obligations under 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 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 section 138K(4) of the Act if a proposed rule applies to authorised persons, including mutual societies.

### Comments

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- 4.8** We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, please use the contact details at the front of this Notice.





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25 The North Colonnade Canary Wharf  
London E14 5HS  
Telephone: +44 (0)20 7066 1000  
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