



No.34

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# Handbook Notice

June 2016

Financial Conduct Authority





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## Handbook Notice 34

This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative powers on 16 and 23 June 2016. 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 Contact Centre:

Tel: 0300 500 0597

Fax: 020 7066 0991

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

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All our publications are available to download from [www.fca.org.uk](http://www.fca.org.uk). If you would like to receive this paper in an alternative format, please call 020 7066 0790 or email [publications\\_graphics@fca.org.uk](mailto:publications_graphics@fca.org.uk) or write to Editorial and Digital Department, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

# 1. Overview

## Legislative changes

- 1.1** On 16 June 2016, the Board of the Financial Conduct Authority made changes to the Handbook in the instrument listed below.

CP	Title of instrument	Instrument No.	Changes effective
15/28	Disclosure Rules and Transparency Rules Sourcebook (Statutory Audit Amending Directive) Instrument 2016	2016/40	17.6.16

- 1.2** On 23 June 2016, the Board of the Financial Conduct Authority made changes to the Handbook in the instruments listed below.

CP	Title of instrument	Instrument No.	Changes effective
16/9	Periodic Fees (2016/2017) and Other Fees Instrument 2016	2016/41	1.7.16
16/11	Fees (Payment Systems Regulator) (No 2) Instrument 2016	2016/42	8.7.16
15/35	Market Abuse Regulation (No 2) Instrument 2016	2016/44	3.7.16
16/8	Supervision Manual (Reporting No 2) Instrument 2016	2016/45	30.6.16; 30.9.16; 31.10.16
16/8	Enforcement Guide (Warning Notices Publicity) Instrument 2016	2016/46	24.6.16

### 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

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- 1.4** Consultation feedback is published in Chapter 3 of this Notice or in separate Policy Statements.

### FCA Board dates for 2016

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

July	27
September	22
November	2 and 3
December	8

## 2. Summary of changes

- 2.1** This chapter briefly describes FCA Handbook changes made by the Board on 16 and 23 June 2016. 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>

### ***Disclosure Rules and Transparency Rules Sourcebook (Statutory Audit Amending Directive) Instrument 2016 (FCA 2016/40)***

- 2.2** Following consultation in CP15/28<sup>1</sup>, the FCA Board has made changes to the FCA Handbook as listed below:

#### **Glossary DTR 1B, 7, App 1 and TP 1**

- 2.3** In summary, this instrument amends the rules at DTR 7.1 and DTR 1B.1.3R to implement the requirements for audit committees set out in the SAAD.
- 2.4** This instrument came into force on **17 June 2016**. Feedback to this consultation is published in Chapter 3 of this Notice.

### ***Periodic Fees (2016/2017) and Other Fees Instrument 2016 (FCA 2016/41)***

- 2.5** Following consultation in CP16/9<sup>2</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

#### **Glossary FEES 3, 4, 5, 7, 10, 11 and App 1**

- 2.6** In summary, the amendments make changes to raise fees and levies in 2016/17 to provide funding the FCA requires to carry out its functions to meet its statutory objectives; funding for the Financial Ombudsman Service, Money Advice Service (MAS) money advice and debt advice services, and Department of Works and Pensions (DWP) for its Pension Wise Services; and to enable the FCA to recover its pensions guidance costs from the designated pensions guidance providers.
- 2.7** This instrument comes into force on **1 July 2016**. Feedback to this consultation will be published in a separate Policy Statement.

<sup>1</sup> CP15/28 *Quarterly Consultation Paper No 10* (September 2015)

<sup>2</sup> CP16/9 *FCA Regulated fees and levies: Rates proposals 2016/17* (April 2016)

### ***Fees (Payment Systems Regulator) (No 2) Instrument 2016 (FCA 2016/42)***

- 2.8** Following consultation in CP16/11<sup>3</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

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

- 2.9** In summary, this instrument makes changes to implement policy proposals regarding the 2016/17 PSR regulatory fees.
- 2.10** This instrument comes into force on **8 July 2016**. Feedback to this consultation will be published in a separate Policy Statement.

### ***Market Abuse Regulation (No 2) Instrument 2016 (FCA 2016/44)***

- 2.11** Following consultation in CP15/35<sup>4</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary**  
**MAR 1, 2, TP 1 and Sch 5**  
**SUP 13A**  
**LR 5, 14 and App 1**  
**EMPS 1**  
**OMPS 1**

- 2.12** In summary, this instrument makes changes to advance our statutory objective to protect and enhance the integrity of the UK financial system and also ensure that the domestic market abuse regime in the FCA Handbook conforms to EU MAR. The vast majority of the changes that were required to our Handbook as a result of the application of MAR were covered in PS16/13.<sup>5</sup> This instrument makes consequential amendments. Further amendments to MAR 2 are anticipated in due course, however due to relevant secondary legislation to be made under article 5(6) of MAR not yet being published in the Official Journal of the EU, the FCA Board has not yet been able to consider the changes.
- 2.13** This instrument comes into force on **3 July 2016**.

### ***Supervision Manual (Reporting No 2) Instrument 2016 (FCA 2016/45)***

- 2.14** Following consultation in CP16/8<sup>6</sup>, the FCA Board has made changes to the FCA Handbook sections listed below:

**SUP 15 and 16**

- 2.15** In summary, this instrument makes changes to improve the clarity of the Handbook text, improve the quality of the data we collect and lower the burden of reporting on firms.

<sup>3</sup> CP16/11 *PSR regulatory fees 2016/17* (April 2016)

<sup>4</sup> CP15/35 *Policy proposals and Handbook changes related to the implementation of the Market Abuse Regulation (2014/596/EU)* (November 2015)

<sup>5</sup> PS16/13 *Implementation of the Market Abuse Regulation, and Handbook Amendments* (April 2016)

<sup>6</sup> CP16/8 *Quarterly Consultation Paper No.12* (March 2016)

- 2.16** Part of this instrument comes into force on **30 June 2016**, part on **30 September 2016** and the remainder on **31 October 2016**. Feedback to this consultation is published in Chapter 3 of this Notice.

***Enforcement Guide (Warning Notices Publicity) Instrument 2016 (FCA 2016/46)***

- 2.17** Following consultation in CP16/8<sup>7</sup>, the FCA Board has made changes to the FCA Handbook section listed below:

**EG 6**

- 2.18** In summary, this instrument makes changes to reduce speculation as to the progress of specific cases with Warning Notice Statements and reduce the risk of unfairness towards subjects.
- 2.19** This instrument comes into force on **24 June 2016**. Feedback to this consultation is published in Chapter 3 of this Notice.

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<sup>7</sup> CP16/8 *Quarterly Consultation Paper No.12* (March 2016)

## 3. Consultation feedback

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

### CP15/28 Quarterly Consultation Paper No 10 – Chapter 8

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#### *Disclosure Rules and Transparency Rules Sourcebook (Statutory Audit Amending Directive) Instrument 2016*

##### **Background**

- 3.2** In Chapter 8 of CP15/28 Quarterly Consultation Paper No.10 (QCP)<sup>8</sup> we consulted on some proposed changes to the Disclosure Rules and Transparency Rules (DTR) to implement certain parts of the Statutory Audit Amending Directive 2014/56/EU (SAAD). The Prudential Regulation Authority (PRA) and the Financial Reporting Council (FRC) have also implemented parts of the SAAD in their rules and guidance.

##### **Feedback**

- 3.3** The consultation closed on 5 November 2015. We received six responses.
- 3.4** Proposed amendments to the DTR to implement SAAD were covered by questions 8.2 to 8.9 of the QCP. Respondents offered detailed responses to questions 8.2, 8.3, 8.7 and 8.8. One respondent provided drafting comments in relation to question 8.9. We have considered the feedback and have decided to proceed with the proposals outlined in the QCP.

##### *Comments on our proposed approach (Q8.2)*

- 3.5** We received five responses to question 8.2 on our proposed approach to the implementation of the SAAD. The amendments include extending the independence requirement to a majority of the members of the relevant body fulfilling the audit committee role; requiring that the chairman is independent; and broadening the scope of responsibilities of the relevant body. All respondents agreed with our approach.
- 3.6** One respondent queried the phrase ‘internal quality control’ with the concern that this was included in the SAAD in error. They noted that the SAAD (article 39(6)(c)) states that one of the functions of an audit committee is to ‘monitor the effectiveness of the undertaking’s internal quality control and risk management systems and, where applicable, its internal audit, regarding the financial reporting of the audited entity, without breaching its independence’. The respondent pointed out that other references to internal quality control in the SAAD are used in reference to an audit firm having an internal quality control system related to its audit

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<sup>8</sup> CP15/28 Quarterly Consultation Paper No. 10 (September 2015)

work. The respondent was therefore concerned that the extra word 'quality' in article 39 (6)(c) may have been inserted in error.

- 3.7** Another respondent asked for the links between the DTR and the FRC's Revised Guidance on Audit Committees to be clarified and cross references to be provided when references in guidance are SAAD requirements.

*No specific requirements on audit committee composition in DTR (Q8.3)*

- 3.8** We received five responses to question 8.3 on our proposal not to include specific requirements on audit committee composition. All respondents agreed with our approach. While agreeing with our approach, one respondent queried whether the draft DTR 7.1.1R fully implements the requirements of article 39(1) as set out in the SAAD, which requires the audit committee to be composed of non-executive members of the administrative body, members of the supervisory body and/or members appointed by the general meeting of the shareholders of the audited entity. The respondent also commented that the PRA, FRC and FCA should have a consistent approach to the implementation of the SAAD.

*Wider exemption already adopted caters for specific situations contained in article 39(2) as set out in the SAAD (Q8.4)*

- 3.9** In the QCP, we set out our arguments for not taking up a Member State exemption (under article 39(2)) from having an audit committee for small and medium sized entities or companies with reduced market capitalisation where the administrative or supervisory body as a whole performs that function. We also set out arguments for not taking up an additional Member State option to exempt an issuer from having a separate audit committee if the administrative or supervisory body performs its function. Further, we asked whether respondents felt that this was the correct approach given the wider exemption we have already adopted (which is now in article 39(4)) and that already caters for these specific situations. All those who responded to this question agreed with our approach. We therefore consider it unnecessary to adopt the two Member State options contained in article 39(2) of the SAAD.

*No requirement for annual election of chairmen of audit committees by shareholders (Q8.5)*

- 3.10** Respondents unanimously agreed with our proposal.

*AIFs and UCITS to be exempt from the requirement to have an audit committee (Q8.6)*

- 3.11** Again, all respondents agreed with our proposal.

*Chairman and members of the audit committee should not be exempt from the revised independence requirements set out in the SAAD (Q8.7)*

- 3.12** We received five responses to question 8.7 on our proposal not to exempt the chairman and members of the audit committee from the revised independence requirements set out in the SAAD. Four of the respondents agreed with our approach. One respondent commented that current UK best practice is contained in the UK Corporate Governance Code published by the FRC, which is a 'comply or explain' regime. This respondent said that enshrining in the DTRs the requirement for a majority of the members and the chairman of the audit committee to be independent would make this requirement compulsory which the SAAD did not intend and would therefore constitute gold plating. The respondent went on to say that the UK Corporate Governance Code provides flexibility for companies which are unable to comply, for example, because of some short term or unexpected issue. The respondent also stated that the UK Corporate Governance Code is widely followed and therefore there was no specific need to gold plate in this area, even if the UKLA's proposed approach is consistent with that previously followed.

*Proposed transitional provisions in DTR (Q8.8)*

**3.13** We received five responses to question 8.8 on our proposed DTR transitional provisions coming into effect. Four respondents agreed, subject to some suggested drafting changes. One respondent argued that there should also be transitional provisions for DTR 1B.1.3R for financial reporting periods beginning prior to 17 June 2016. The respondent argued that transitional provisions are particularly important given the interplay of the various requirements around audit committee composition (independence, sector experience, and accounting/auditing experience) and the FRC's proposals for restrictions on the appointment of partner alumni from audit firms, which could mean that certain audit committees may not be able to comply with the various requirements immediately. This respondent also stated that the membership of the audit committee needs to be considered in the wider context of the composition of the entire board as well as alongside other changes/events occurring in the company.

**3.14** We agree with the argument that there should be transitional provisions for DTR 1B.1.3R and have revised the new DTR TP 1(27) and DTR Appendix 1 accordingly.

*Other comments relating to audit committees (Q8.9)*

**3.15** One respondent submitted some detailed drafting comments. These related to DTR 1B.1.3R, DTR 7.1.2AR, DTR 7.1.3R(4), DTR 7.1.5R and DTR 1B.1.2R. We have considered these comments and adopted the suggested drafting changes where appropriate.

***Our response***

**3.16** In relation to the insertion of the word 'quality' in 'internal quality control', we are of the opinion that the wording of the Directive text is intended. We have therefore retained the wording of the SAAD.

**3.17** We do not consider it practical for us to clarify the links between the DTR and the FRC's Revised Guidance on Audit Committees when the latter is regularly reviewed and may change out of sequence with our own rules. We have therefore not provided cross-references between our rules and the FRC's Revised Guidance on Audit Committees.

**3.18** As we pointed out in the QCP, we have no evidence that the decision not to implement specific rules on audit committee composition has disadvantaged issuers or led to problems. We have therefore concluded it is not necessary to implement specific rules on audit committee composition. In response to the request to harmonise our approach with that of the FRC and PRA we note that the Public Interest Entities which are required to comply with DTR 7.1 are not necessarily the same as those that comply with the FRC and PRA requirements (although there is some overlap).

**3.19** We agree that there is a new Member State option to exempt the chairman and members of the audit committee from the revised independence requirements set out in the SAAD. However we believe granting this derogation would be a retrograde step as the UK Corporate Governance Code requires all members of the audit committee to be independent and the existing DTR 7.1 requires at least one member of the committee to be independent. We will therefore not exempt the chairman and members of the audit committee from the revised independence requirements set out in the SAAD, because we do not consider that implementing a full exemption from the independence requirements is in the interests of investors in the UK.

*Update on BIS's changes*

**3.20** The SAAD makes changes to article 45 of the Statutory Audit Directive 2006/43/EU (SAD) which sets out requirements for the registration and oversight of auditors of third country

issuers. The most significant change is to raise the denomination threshold for defining an issuer of debt securities of large denomination, above which the issuer is outside the scope of the EU regulatory requirement to use a registered third country auditor. The SAAD brings the definition of a large denomination debt securities issuer in line with the Prospectus Directive 2003/71/EC and the Transparency Directive 2004/109/EC.

**3.21** BIS has replaced regulation 43 of the Statutory Auditors and Third Country Auditors Regulations 2007 (SI 2007/3494) with a new provision in the new Statutory Auditors and Third Country Auditors Regulations 2016 (SI 2016/649) to reflect the revised denomination threshold for a large debt securities issuer. Regulation 43 of the 2007 Regulations provides an exclusion from the definition of 'UK-traded non-EEA company' (as set out in section 1241 of the Companies Act 2006) for issuers of only debt securities where the denomination of each unit was at least 50,000 euro or the equivalent at time of issue. The new provision at regulation 21 of the Statutory Auditors and Third Country Auditors Regulation 2016 reflects the revised threshold for large denomination debt issuers in EU law. The new threshold is 100,000 euro or equivalent at time of issue. The new threshold means that fewer issuers will qualify as large debt securities issuers and more will fall within the definition of 'UK-traded non-EEA company', and, in turn, the scope of DTR 4.1.7R(4) will change. However, the changes are in respect only of securities that were admitted to trading on or after 31 December 2010.

**3.22** It is our understanding that BIS intends in due course to amend the application of Part 42 of the Companies Act 2006 so that further entities may be brought into the statutory requirement for their auditors to be regulated under that Part of the Act. If those entities have transferable securities admitted to trading on a regulated market then DTR 7.1 will also apply to them. Subject to any applicable exemptions, those entities will then be required to appoint an audit committee or have a body performing equivalent functions, so the scope of issuers to which DTR 7.1 relates may be extended as a result of BIS's proposals. We will review whether we need to make further changes to DTR as and when BIS makes further amendments to the application of Part 42.

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

**3.23** The cost benefit analysis and compatibility statement published in Chapter 8 of CP15/28 remain unchanged.

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

**3.24** We continue to believe these changes do not give rise to any equality and diversity issues, nor do they give rise to unfair discrimination against protected groups as set out in Chapter 8 of CP15/28.

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

### **CP16/8 Quarterly Consultation Paper No 12 – Changes to the Supervision manual**

#### ***Supervision Manual (Reporting No 2) Instrument 2016***

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

**3.26** In March 2016 we consulted on proposed amendments to parts of Chapters 15 and 16 of the Supervision manual (SUP). These changes sought to improve the clarity of guidance notes, amend existing returns and remove redundant text.

**Feedback**

- 3.27** We received one response to our proposals to amend conduct breach reporting requirements. The feedback expressed concerns that it might be misleading for firms to report that a breach was by a material risk taker (MRT), even if they were not an MRT at the time of the breach. The feedback also noted that, in general, late changes to reporting requirements can cause complications.

**Our response**

- 3.28** We do not believe it is misleading to report if the breach was by someone who was an MRT at any point during the reporting period because it may raise interesting questions about the Certification process in these firms, and so is of use to FCA supervisors. We have not changed our proposal as a result of this feedback.
- 3.29** We are aware that changes to reporting requirements at a late stage can cause complications. For this reason we try to avoid introducing changes at a late stage where possible.

**Cost benefit analysis and compatibility statement**

- 3.30** The cost benefit analysis and compatibility statement published in CP16/8 Chapter 5 have not changed as a result of this feedback.

**Equality and diversity issues**

- 3.31** We continue to believe these changes do not give rise to any equality and diversity issues nor do they give rise to unfair discrimination against protected groups as set out in CP16/8 Chapter 5.
- 3.32** The changes made by this instrument are listed in Chapter 2 of this Notice.

## **CP16/8 Quarterly Consultation Paper No 12 – Warning Notice Statements: Amendments to the Enforcement Guide**

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**Enforcement Guide (Warning Notices Publicity) Instrument 2016****Background**

- 3.33** Warning Notices are notices we give to firms and individuals of action we propose to take. In October 2013 we obtained, and said we would use, the power to publish Warning Notice Statements following the substitution of a new section 391(1)(1ZB) for the previous section 391(1) by the Financial Services Act 2012. This power only applies to Warning Notices listed under this sub-section and which are disciplinary outcomes; it does not apply to non-disciplinary outcomes.
- 3.34** We had previously outlined our proposals for publishing information about the matter to which a Warning Notice relates in the March 2013 Consultation Paper (CP13/8)<sup>9</sup>, and the following Policy Statement (PS13/9).<sup>10</sup> In CP13/8 we also consulted on proposed changes to Part 6 of the Enforcement Guide (EG).
- 3.35** We indicated that Warning Notice Statements contain a brief summary of the facts and are published so that consumers, firms and market users have more information about the

<sup>9</sup> CP13/8 *Publishing information about enforcement warning notices* (March 2013)

<sup>10</sup> PS13/9 *Publishing information about enforcement warning notices* (October 2013)

nature of the regulator's concerns. We also stated that Warning Notice Statements promote early transparency of enforcement proceedings. Specific firms are usually identified but, as stated in PS13/9, individuals are treated differently from firms, and the presumption is not to name individuals but to publish anonymous details instead. The same Policy Statement also indicated circumstances where publication of details would be necessary.

- 3.36** On 18 March 2016 we consulted on proposed changes to EG to address the situation where a Final Notice is issued following the prior publication of a Warning Notice Statement.

***Feedback***

- 3.37** We received no feedback on our proposals.

***Our response***

- 3.38** No response is needed.

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

- 3.39** The cost benefit analysis and compatibility statement published in CP16/8 Chapter 4 remain unchanged.

***Equality and diversity issues***

- 3.40** We continue to believe these changes do not give rise to any equality and diversity issues nor do they give rise to unfair discrimination against protected groups as set out in CP16/8 Chapter 4.

- 3.41** 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 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's 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 1.4 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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