


Handbook Notice No.44

May 2017

Contents

1.	<u>Overview</u>	2
2.	<u>Summary of changes</u>	3
3.	<u>Consultation feedback</u>	6
4.	<u>Additional information</u>	7
	<u>Appendix 1</u>	8

How to navigate this document onscreen

 returns you to the contents list



1 Overview

Legislative changes

- 1.1 On 25 May 2017, 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
<u>N/A</u>	Handbook Administration (No 46) Instrument 2017	2017/29	26.5.17; 29.8.17
<u>16/37</u>	Conduct of Business Sourcebook (Pension Annuity Comparator) Instrument 2017	2017/30	1.3.18
<u>17/6</u>	Enforcement (Bank Recovery and Resolution Order 2016) Instrument 2017	2017/31	26.5.17

Summary of changes

- 1.2 The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.

Feedback on responses to consultations

- 1.3 Consultation feedback is published in Chapter 3 of this Notice or in a separate Policy Statement.



FCA Board dates

- 1.4 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

June	22
July	20
September	11 and 12
October	19
November	8 and 9
December	6 and 7

2 Summary of changes

- 2.1 This chapter briefly describes FCA Handbook changes made by the Board on 25 May 2017. 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 www.bankofengland.co.uk/pru/Pages/publications/default.aspx

Handbook Administration (No 46) Instrument 2017 (FCA 2017/29)

- 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 the previous consultations or as being so minor that they do not warrant consultation. None of these changes represents any alteration in FCA policy.

FEES 4 Annex 11R
IPRU(INV) Annex A.1
MCOB 4 and 14
SUP 10A Annex 4D, 10A Annex 8D, 10C Annex 2D, 11, 13A, 15 and 16
DISP App 3.7A
COLL 6
CONC TP 7
FUND 3

- 2.3 In summary the amendments made this month are as follows:



- correction of a drafting error in Part 3 of FEES 4 Annex 11R from FCA 2017/6
- deletion of outdated cross references in IPRU(INV) Annex A.1.5G to IPRU(INV) chapter 10 which was deleted by FSA 2007/27
- correction of a drafting error at MCOB 4.8A.11G(3) to ensure the meaning is clear
- updating of a cross reference at MCOB 14.1.3R(3)(c) to reflect the correct section heading
- updating of SUP 10A Annex 4D and SUP 10A Annex 8D to clarify the way the guidance notes refer to different regimes and criminal convictions; to bring them in line with the current applicable legislation and status of Approved Persons as reflected in the Handbook; and to convert the guidance notes to HTML to improve their accessibility
- update to SUP 10C Annex 2D to incorporate a link to the Form A guidance notes at SUP 10A Annex 4D
- updating of cross references at SUP 11.8.6G, SUP 13A Annex 1G, SUP 16.2.1G(2), COLL 6.6B.29G and FUND 3.11.32G which were not updated when the heading of SUP 2 was changed by FCA 2014/21
- updating of a cross reference at SUP 15.3.15R(2) to reflect the repeal of section 150 FSMA
- changes to DISP App 3.7A.3AE(3) to make clear that in computing the redress payable in connection with regulator premium PPI, firms should pay the excess of commission and profit share over 50% of the amount paid and not 50% of the total commission plus profit share
- updating of CONC TP 7 to mark TP 7.1 as expired

2.4 These changes come into force on 26 May 2017 except for the changes to DISP which come into force on 29 August 2017.

SUP 10A Annex 8D Form E Guidance notes: Internal transfer of an approved person

2.5 The Handbook Administration Instrument made by the Board this month restates the guidance notes at SUP 10A Annex 8D. These guidance notes have been omitted from the Handbook website because of a publishing error. We are restating them in their entirety, with amendments. The types of changes we have made are described in paragraph 2.3 above. These changes are not marked up in the Administration Instrument itself but we have included a version in an



Appendix to this Notice marked-up against the last publicly available copy of the guidance notes (see page 8 onwards) which will help users of the guidance notes see the changes.

Conduct of Business Sourcebook (Pension Annuity Comparator) Instrument 2017 (FCA 2017/30)

- 2.6 Following consultation in CP16/37¹, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary
COBS 14 and 19**

- 2.7 In summary, this instrument makes changes to our rules to require firms to inform consumers how much they could gain from shopping around and switching provider before a potential annuity purchase.
- 2.8 This instrument comes into force on 1 March 2018. Feedback to this consultation is published in a separate Policy Statement².

Enforcement (Bank Recovery and Resolution Order 2016) Instrument 2017 (FCA 2017/31)

- 2.9 Following consultation in CP17/6³, the FCA Board has made changes to the FCA Handbook section listed below:

DEPP 2 Annex 2

- 2.10 It also makes changes to **EG**.
- 2.11 In summary this instrument makes changes to provide a decision making mechanism for the use of new powers.
- 2.12 This instrument comes into force on 26 May 2017. Feedback to this consultation is published in Chapter 3 of this Notice.

1 CP16/37 'Implementing information prompts in the annuity market' (November 2016) www.fca.org.uk/publications/consultation-papers/implementing-information-prompts-annuity-market-cp16-37

2 PS17/12 'Implementing information prompts in the annuity market: Feedback on CP16/37 and final rules' (May 2017)

3 CP17/6 'Quarterly Consultation Paper No. 16' (March 2017) www.fca.org.uk/publications/consultation-papers/cp17-6-quarterly-consultation-paper-no-16



3 Consultation feedback

- 3.1 This chapter provides feedback on consultations that will not have a separate Policy Statement published by the FCA.

CP17/6 Quarterly Consultation Paper No. 16, Chapter 2

Enforcement (Bank Recovery and Resolution Order 2016) Instrument 2017

Background

- 3.2 The Bank Recovery and Resolution Order 2016 (the BRR Order) partly implements the Bank Recovery and Resolution Directive 2014/59/EU⁴. This Directive requires EEA states to have powers to manage the failure of their credit institutions, investment firms and group entities as an alternative to insolvency. Having these powers in place ensures that critical functions can still be performed.
- 3.3 The BRR Order amends FSMA (including by inserting new sections 71B to 71I) and gives us the following new powers:
- the power to remove directors and senior executives (sections 71B and 71C(2))
 - the power to appoint a temporary manager (section 71C(1))
 - where a temporary manager has been appointed, the power to require the directors not to exercise specified functions during the period of appointment and to consult the temporary manager, or obtain the consent of the temporary manager, before taking specified decisions or specified action (section 71C(8)), and
 - the power to require an authorised person to call a general meeting under section 55L(d) section (55PB(3))
- 3.4 The BRR Order also describes the procedure and conditions we need to follow to exercise this new set of powers over the relevant firms.
- 3.5 As proposed in CP17/6, we are changing the Decision Procedure and Penalties manual (DEPP) and the Enforcement Guide (EG) to account for the BRR Order.

4 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0059>



Feedback

- 3.6 We received no feedback.

Our response

- 3.7 No response was needed as no feedback was received.

Cost benefit analysis and compatibility statement

- 3.8 The cost benefit analysis and compatibility statement in our Quarterly Consultation Paper No. 16, Chapter 2, remain unchanged.

Equality and diversity issues

- 3.9 We continue to believe the changes do not give rise to discrimination as stated in our Quarterly Consultation Paper No. 16, Chapter 2.
- 3.10 The changes made by this instrument are listed in Chapter 2 of this Notice.

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, reference number or module at www.handbook.fca.org.uk/instrument. 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 www.handbook.fca.org.uk/. A print version of the Handbook is available from The Stationery Office's shop at www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/.
- 4.6 Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website.

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 section 138K(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 handbookproduction@fca.org.uk (or see contact details on the back cover).

Appendix 1

- 4.9 Please see next page for marked up changes to the guidance notes at SUP 10A Annex 8D (Form E - Internal transfer of an approved person).

Notes for Form E

Guidance notes: Internal transfer of an approved person

PLEASE NOTE: A *CANDIDATE* MUST NOT BEGIN PERFORMING ANY *CONTROLLED FUNCTIONS* UNTIL THE *FCA* ~~and/or~~ AND/OR *PRA* HAS GRANTED APPROVAL.

Full details of the *approved persons* regime including the Senior Managers Regime and the Senior Insurance Managers Regime can be found in *SUP 10A* and ~~*SUP 10B*~~ *10C* of the *FCA* and *PRA*'s Supervision Manuals. *FCA Handbook* and the Parts relating to the Senior Managers Regime and Senior Insurance Managers Regime in the *PRA Rulebook* (these include the Insurance – Senior Insurance Management Functions, Insurance – Fitness and Propriety, Insurance – Allocation of Responsibilities and Insurance – Conduct Standards parts of the *PRA Rulebook*). *Firms* should also refer for further information to the *PRA* supervisory statements - SS 28/15 for deposit takers, and SS 35/15 for insurers.

The purpose of this Form

This is Form E referred to in ~~*SUP 10A.14.4D*~~ and ~~*SUP 10B.12.4D*~~ of the *FCA* and *PRA*'s *Supervision Manuals*. ~~A firm should use this form when an approved person ceases to perform one or more controlled functions and the firm wishes to apply for approval for the individual in respect of other controlled functions. This Form should not be used for a qualified withdrawal (see *SUP 10A.14.10R* and *SUP 10B.12.12R*). This form may also be used for transfers between firms that are part of the same group:~~

1. ~~• A firm must use Form E where an approved person is both ceasing to perform one or more controlled functions and needs to be approved in relation to one or more controlled functions within the same firm or group. *SUP 10A* and *SUP 10C* in the *FCA Handbook*;~~
2. ~~• A firm must not use Form E if the approved person is to perform a significant-influence function for the first time or has ceased to have approval from the *FCA* or *PRA* to perform one more than six months ago. the Senior Managers Regime – Applications and Notifications Part of the *PRA Rulebook*; and~~
3. ~~• A firm must not use Form E if a notification has been made or should be made under *SUP 10A.14.17R* (Changes in fitness to be notified under Form D) or *SUP 10B.12.18R* (the equivalent *PRA rule*) in relation to any controlled functions that that person is ceasing to perform (as referred to in (1)) or any controlled function that he is continuing to perform in relation to that firm or a firm in the same group the relevant “Senior Insurance Managers Regime – Applications and Notifications” Parts in the “Solvency II firms” and “Non-Solvency II Firms” sectors of the *PRA Rulebook*.~~

A firm should use Form E when an approved person ceases to perform one or more controlled functions and the firm wishes to apply for approval for the individual in respect of other controlled functions. Form E should not be used for a qualified withdrawal (see *SUP 10A.14.10R* and *SUP 10C.14.7R* in the *FCA Handbook*, Chapter 5 of Senior Management Regime – Applications and Notifications and Chapter 4.2 of Solvency II firms: Senior Insurance Managers Regime – Applications and Notifications in the *PRA Rulebook*). Form E may also be used for transfers between firms that are part of the same group:

Form E should not be used in the circumstances set out in SUP 10A.14.4D(2)-(3) or SUP 10C.10.9D(2)-(4) of the FCA Handbook; or Senior Managers Regime – Applications and Notifications 2.4 & 2.5 or Senior Insurance Managers Regime - Applications and Notifications 2.4 & 2.5 of the PRA Rulebook.

Form C must be used if the individual is ceasing to perform a *controlled function* and the *firm* is not seeking approval in respect of another *controlled function*.

Form A must be completed in full if the *approved person* is seeking approval in respect of a *significant influence function* *controlled function* including a *senior management function* or *senior insurance management function* for the first time.

Completing this Form

~~The Form must be completed in black ink and (if in manuscript) in BLOCK LETTERS. If in manuscript, Form E must be completed in black ink and in BLOCK LETTERS.~~

All dates should be provided in numeric form (e.g. 29/02/2000 for 29 February 2000).

Indicate clearly if a question is not applicable. Tick the appropriate box where a yes/no answer is required. Further details should be given in section 5 (Supplementary Information) if there is insufficient space for a detailed answer.

Additional information can be attached to the Form. It must be securely attached to the rest of the Form and you must indicate at question 5.02 the number of additional sheets attached.

Do not assume that information is known to the *FCA* and/or *PRA* merely because it is in the public domain, or has been previously disclosed to the *FCA* and/or *PRA* or to another regulatory body. In all circumstances, disclosures should be full, frank and unambiguous. ~~If there is any doubt about the relevance of information, it should be included.~~ The information supplied by the *candidate* should be verified by the *firm* wherever possible. Should the *FCA* and/or *PRA* vetting checks reveal any matters that have not been disclosed, then applications will be delayed and, in some cases, possibly rejected. See SUP 10A.13.12G and SUP ~~10B.11.11G~~ 10C.10.30G of the *FCA Handbook*.

Expressions in Form E in italics have the meaning given in the *Glossary* to the *FCA Handbook* (or, if no meaning is given there, the expressions are to be interpreted in accordance with the related expression defined in the *Glossary*).

The *firm* is responsible for the completion of the Form E. If the Form E is not fully and correctly completed, the *FCA* and/or *PRA* may need to return it for proper completion. This could significantly delay the *FCA* and/or *PRA*'s decision on whether to grant approval to perform the requested *controlled functions* (see SUP 10A.13.12G and SUP ~~10B.11.11G~~ 10C.10.30G of the *FCA Handbook*).

The *FCA* and/or *PRA* may require the applicant to provide further information at any time after receiving an application and before determining whether it is to be granted or not (see SUP 10A.13.14G, SUP 10B.11.13G and SUP ~~10B.11.14G~~ 10C.10.28G in the *FCA Handbook*).

If a *firm* has provided, or has information that reasonably suggests that it may have provided, the *FCA* and/or *PRA* with information which was or has become false, misleading, incomplete or inaccurate, in a material particular, it must notify the *FCA* and/or *PRA*

immediately (see SUP 15.6.4R in the *FCA Handbook*, Notification 6 in the *PRA Rulebook* and the equivalent Parts in the “Solvency II firms” and “Non-Solvency II Firms” sectors of the *PRA Rulebook*). Failure to notify the *FCA* and/or *PRA* may result in a delay in processing or rejection.

SECTION 4 – ARRANGEMENTS AND ~~CONTROLLED FUNCTIONS~~ CONTROLLED FUNCTIONS

The *firm* must tick the box in 4.01 that most accurately describes its *arrangement* with the *candidate*. For applications from a single *firm*, the *firm* should complete 4.02, 4.03 & 4.04 indicating the *controlled functions* required by selecting the appropriate box in 4.02. However, if the application is being made on behalf of a candidate who will carry out *controlled functions* for more than one *firm*, 4.05 must be used to describe the *controlled functions* and the relationships between the *candidate* and those *firms*. For *senior management functions*, *firms* should use 4.04 in the relevant Form E.

- 4.01 If this application relates to more than one *appointed representative*, provide details in section 5.
- 4.02 If the *controlled function* 28 or 29 is requested, the specific job title of the candidate should be included.
- 4.03 The effective date is the date on which the *firm* wishes the *candidate* to begin performing *controlled functions* (subject to approval). This should be left blank unless there is a reason for the effective date to be beyond the *FCA* and/or *PRA* published standard response times. For instance, a *firm* may wish to be sure that a candidate has been approved before they take up their post.

4.04 Insurance mediation

This is not a *controlled function* in its own right. However, every *firm* that carries on *insurance mediation activities* must appoint an *approved person(s)* who will be responsible for *insurance mediation activities* at the *firm* (as detailed at *MIPRU 2.2*)

This responsibility must be allocated to a member of the *governing body* of the *firm* or in certain circumstances, a *senior manager*. (i.e. an individual that is applying for approval as CF1, 3-8 or 29).

Where a *firm* has appointed an *appointed representative* to carry on *insurance mediation activity* on its behalf, the *person* responsible for the *firm's insurance mediation activity* will also be responsible for the *insurance mediation activity* carried on by an *appointed representative*.

Unless the *firm* indicates otherwise, the *FCA* and/or *PRA* assumes that the *arrangement* given on the application form includes all of the activities that fall within the description of the *controlled function*. This means that a *firm* may alter a *candidate's* responsibilities within the broad description of a *controlled function* without needing further approval from the *FCA* and/or *PRA*. However, they will be required to record this change on the scope/statement of responsibilities record (where applicable) that is maintained by the *firm* for each individual performing a *controlled function*.

SECTION 5 – SUPPLEMENTARY INFORMATION

This section provides extra space for any previous answer and for additional information relevant to this application.

The *firm* must include details of any other matter which the *firm* is aware of and which in its reasonable opinion is relevant in connection with the *approved person* ceasing to perform their *controlled function*. If there is insufficient space, additional sheets may be used.

SECTION 6 – DECLARATIONS AND SIGNATURES

This section contains declarations which must be signed by both an appropriate individual for the *firm* or applicant submitting the application and the *candidate*. The *FCA* and/or *PRA* considers that an appropriate individual would either be an individual approved for a *controlled function* described under section or 59(7B) of the Financial Services and Markets Act (the *significant influence functions – controlled functions 1 to 12B, 28, 29, 40 or 50*) [to perform a SIF, SMF or a PRA controlled function] or someone to whom the *firm* has delegated the authority to notify the *FCA* and/or *PRA*. If this authority has been delegated, the *firm* should keep records of those individuals authorised to sign on behalf of the *firm*.

N.B. Please keep these notes before returning the completed Form to the *FCA* and/or *PRA*.

If you have any questions or need additional information, please contact the *FCA* Customer Contact Centre on ~~0845 606 9966~~ 0300 500 0597 or PRA Firm Enquiries on 020 3461 7000 or e-mail iva@fca.org.uk or PRA.firmenquiries@bankofengland.co.uk.

PLEASE RETURN THE COMPLETED FORM TO:

Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS
United Kingdom

Prudential Regulation Authority
20 Moorgate
London
EC2R 6DA
United Kingdom

Handbook Notice 44

This Handbook Notice introduces the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative powers on 25 May 2017.

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

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: 0207 066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre

Financial Conduct Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

All our publications are available to download from 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 or write to Editorial and Digital Department, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS

