

Handbook Notice No 72

December 2019

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1 Overview

Legislative changes

- 1.1 On 21 November, the Board of the Financial Conduct Authority made the relevant changes to the Handbook as set out in the instrument listed below.

CP	Title of instrument	Instrument No	Changes effective
<u>N/A</u>	Conduct of Business (Speculative Illiquid Securities) Instrument 2019	<u>FCA 2019/99</u>	01.01.2020, 01.12.2020

- 1.2 On 12 December, the Board of the Financial Conduct Authority made the relevant changes to the Handbook as set out in the instruments listed below.

CP	Title of instrument	Instrument No	Changes effective
<u>CP19/12</u>	Conduct of Business Sourcebook (Platform Switching) Instrument 2019	<u>FCA2019/103</u>	31.07.2020
<u>CP19/27</u>	Alternative Investment Fund Managers Directive (Miscellaneous Amendments) Instrument 2019	<u>FCA 2019/104</u>	01.01.2020
<u>CP19/27</u>	Listing Rules and Disclosure Guidance and Transparency Rules (Miscellaneous Amendments No 2) Instrument 2019	<u>FCA 2019/105</u>	13.12.2019
<u>CP19/24</u>	Fees (Office for Professional Body Anti-Money Laundering Supervision) (No 3) Instrument 2019	<u>FCA 2019/100</u>	13.12.2019



Summary of changes

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

Feedback on responses to consultations

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

FCA Board dates for 2019/20

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

January	30	2020
February	27	2020
March	26	2020
April	30	2020
May	21	2020
June	25	2020
July	23	2020
September	30	2020
October	22	2020
November	26	2020
December	17	2020

2 Summary of changes

- 2.1 This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 21 November 2019 and



12 December 2019. 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 <https://www.bankofengland.co.uk/news/prudential-regulation>.

Conduct of Business (Speculative Illiquid Securities) Instrument 2019

2.2 The FCA did not consult on the changes to the FCA Handbook sections below:

Glossary COBS 4.7, 9.3, 9A.2 and 4.14

2.3 In summary, this instrument makes temporary rules restricting the marketing of speculative illiquid securities to retail investors, so these products can only be promoted to high net worth or sophisticated investors for whom they are likely to be suitable. The rules also require an enhanced risk warning and additional disclosures to be included in promotions. The measures will prevent mass-marketing of these high-risk investments to ordinary retail investors, and improve the information provided to 'eligible' investors. It should reduce the likelihood of consumers investing in unsuitable products and experiencing unexpected losses in the future.

2.4 The instrument comes into force on 1 January 2020 and lasts for 12 months. More information has been published in a temporary product intervention statement.¹

Conduct of Business Sourcebook (Platform Switching) Instrument 2019

2.5 Following consultation in CP19/12², the FCA Board has made changes to the FCA Handbook to add a new section to COBS:

COBS 6.1H

2.6 In summary, this instrument introduces new requirements for investment platforms, requiring them to:

- offer consumers the choice to transfer units in investment funds to a new platform without encashing them;
- request a conversion of unit classes, where this is necessary to enable a transfer to take place; and

¹ [Temporary intervention on the marketing of speculative mini-bonds to retail investors \(November 2019\)](#)

² [CP19/12 'Consultation on Investment Platforms including a discussion chapter on Exit Fees' \(March 2019\)](#)



- ensure that consumers moving onto a new platform are given an option to convert to discounted units, where available.

- 2.7 These changes form part of the Investment Platforms Market Study remedies, and aim to mitigate barriers for consumers when switching platforms.
- 2.8 This instrument comes into force on 31 July 2020. Feedback has been published in Policy Statement PS19/29³.

Alternative Investment Fund Managers Directive (Miscellaneous Amendments) Instrument 2019

- 2.9 Following consultation in Consultation Paper CP19/27⁴, the FCA Board has made changes to the FCA Handbook sections listed below:
- SUP 15 Annex 6AR, 15 Annex 6CR, 15 Annex 6DR,
15 Annex 6ED and 15 Annex 6FG**
- 2.10 In summary, this instrument makes changes to the Handbook to help firms submit full and accurate information to us. In turn, this will allow more effective and efficient supervision of firms, which will help us to advance our consumer protection objective.
- 2.11 This instrument comes into force on 1 January 2020. Feedback has been published in Chapter 3 of this Handbook Notice.

Listing Rules and Disclosure Guidance and Transparency Rules (Miscellaneous Amendments No 2) Instrument 2019

- 2.12 Following consultation in Consultation Paper CP19/27⁵, the FCA Board has made changes to the FCA Handbook sections listed below:
- Glossary
COCON 3.1
APER 3.1
DEPP 6.2
LR 9.8, 15.6, Appendix 1.1, Appendix 2, TR 11 and TR 13
DTR 4.1, 7.1, 7.2, TP 1 and Appendix 1**
- 2.13 In summary, this instrument makes changes to the Handbook to update references to the UK Corporate Governance Code. This is to ensure the Handbook keeps pace with evolving best practice as set out in the latest Code. This instrument also introduces a new rule to the Disclosure Guidance and Transparency Rules Sourcebook (DTR) to ensure that the

3 [PS19/29 'Consultation on Investment Platforms Market Study Remedies' \(December 2019\)](#)

4 [CP19/27 'Quarterly Consultation Paper' \(September 2019\)](#)

5 [CP19/27 'Quarterly Consultation Paper' \(September 2019\)](#)



requirements for annual corporate reporting in the European Single Electronic Format (ESEF) are implemented in the UK as required by EU law.

- 2.14 This instrument comes into force on 13 December 2019. Feedback has been published in Chapter 3 of this Handbook Notice.

Fees (Office for Professional Body Anti-Money Laundering Supervision) (No 3) Instrument 2019

- 2.15 Following consultation in Consultation Paper CP19/24⁶, the FCA Board has made changes to the FCA Handbook section listed below:

FEES 4 Appendix 2

- 2.16 In summary, this instrument sets the fee-rate payable by professional body supervisors in 2019/20 at £37.60 per supervised individual.
- 2.17 This instrument comes into force on 13 December 2019. Feedback has been published in Chapter 3 of this Handbook Notice.

3 Consultation feedback

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

CP19/27: Quarterly Consultation Paper No 25

Alternative Investment Fund Managers Directive (Miscellaneous Amendments) Instrument 2019

Background

- 3.2 In CP19/27⁷, we consulted on several minor amendments related to some of the forms relating to the Alternative Investment Fund Managers Directive (AIFMD) in the Supervision manual (SUP). These forms are in SUP 15 Annex 6 (Notifications by UK AIFMs) and are what AIFMs (Alternative Investment Fund Managers), EuSEF (European

⁶ [CP19/24 'Recovering the costs of the Office for Professional Body Anti-Money-laundering Supervision \(OPBAS\): feedback on CP19/13 and consultation on fee-rate for 2019/20' \(July 2019\)](#)

⁷ [CP19/27 'Quarterly Consultation Paper' \(September 2019\)](#)



social entrepreneurship fund) managers and EuVECA (European venture capital fund) managers need to complete when notifying us of certain matters, under the requirements in SUP 15.3. We proposed to:

- Update data protection wording to reflect new legal requirements;
- Update hyperlinks to FCA guidance that are out of date;
- Remove a tick box for firms to confirm they have read and understood the declaration to make the process more efficient (firms would still have to complete and sign the form to confirm they have understood the declaration);
- Change the layout and general style of the forms to make them look similar to the other forms on the FCA portal; and
- Improve the EuSEF and EuVECA management and marketing form, to align it with changes to the EuSEF and EuVECA manager registration form.

Feedback

- 3.3 We received one response from a professional body agreeing to our proposal.

Our response

- 3.4 We propose to proceed with all the changes as consulted on as set out in CP19/27, Chapter 2. We are also taking the opportunity to amend the FCA address and data protection wording in another Handbook form (SUP 15 Annex 6ED), relating to small registered AIFM changes so as to make SUP 15 Annex 6ED consistent with the other AIFMD-related forms. We do not consider this change to the consultation proposals to be significant.

Cost benefit analysis and compatibility statement

- 3.5 The cost benefit analysis and compatibility statement from the consultation paper remains unchanged.

Equality and diversity issues

- 3.6 We continue to believe the changes do not give rise to discrimination as stated in Chapter 2 of the CP.

Listing Rules and Disclosure Guidance and Transparency Rules (Miscellaneous Amendments No 2) Instrument 2019

Minor Handbook amendments to update references to the UK Corporate



Governance Code

Background

3.7 In CP19/27⁸, Chapter 4, we consulted on some minor changes to the Handbook to update references to the UK Corporate Governance Code (Code):

- Listing Rules sourcebook (LR)
- Disclosure Guidance and Transparency Rules sourcebook (DTR)
- Statements of Principle and Code of Practice for Approved Persons sourcebook (APER)
- Senior Management Arrangements, Systems and Controls Sourcebook (SYSC)
- Code of Conduct Sourcebook (COCON)
- Decision Procedure and Penalties Manual (DEPP)

3.8 The amendments were proposed to ensure our requirements keep pace with evolving best practice and align with the latest edition of the Code that was published by the Financial Reporting Council (FRC) in July 2018. This edition applies to accounting periods beginning on or after 1 January 2019.

Feedback

3.9 The consultation closed on 1 November 2019. We received one response which generally agreed with our proposals. However, the respondent recommended further changes to the LR and identified a typographical error in the new transitional provisions in LR TR13.

3.10 The respondent disagreed with some of our proposed updates to the guidance provisions in DTR, suggesting they be deleted.

3.11 More detail of the feedback is incorporated in our response.

Our response

3.12 LR 9.8.10R(2) requires all issuers with a premium listing to ensure that the auditor reviews its 'comply or explain' statements in respect of a specified subset of Code Provisions. The respondent recommended this should apply only where the Provision is 'relevant' in the opinion of the issuer. They provided an example that the 'whistle-blowing' arrangements, now

8 [CP19/27 'Quarterly Consultation Paper' \(September 2019\)](#)

in Provision 6, are less relevant to close-ended investment funds that typically have no employees.

- 3.13 Having considered this feedback, we have decided to finalise the rule as consulted on. In our view, to make the suggested change would be a material departure from a long-standing safeguard for investors in LR.
- 3.14 LR 15.6.6R(2) modifies the requirements for closed-ended investment companies to disclose against Code Principles and Provisions on director remuneration. The issuer only needs to include details to the extent these items relate specifically to non-executive directors. The respondent recommended we also apply this approach to the new Provision 41 (which did not exist in the earlier edition of the Code), which sets out detailed disclosures on the workings of the remuneration committee.
- 3.15 We agree the additional detail in Provision 41 is not relevant for investment companies which have only non-executive directors. Therefore, we have amended LR 15.6.6R(2) such that closed-ended investment companies without executive directors are required to disclose against the new Provision 41 only to the extent that the Provision relates specifically to the non-executive directors.

Amendments to the DTR to implement ESEF

Background

- 3.16 In CP19/27⁹, Chapter 5, we proposed minor changes to the Disclosure Guidance and Transparency Rules sourcebook (DTR). The proposed changes were designed to implement requirements for annual corporate reporting in the European single electronic format under the Transparency Directive (TD)¹⁰. This consultation catered for the scenario that the UK remained subject to EU law on the 1 January 2020.
- 3.17 DTR 4.1 sets out our rules which implement TD requirements for annual financial reports. We proposed a new rule (DTR 4.1.14R) to implement Article 4(7) of the amended TD, which stipulates that issuers must prepare their annual financial reports in a single electronic reporting format in accordance with regulatory technical standards (RTS)¹¹ that came into force on 18 June 2019. In line with the RTS, we proposed that the new rule will apply to annual financial reports for financial years beginning on or after 1 January 2020.

Feedback

9 [CP19/27 'Quarterly Consultation Paper' \(September 2019\)](#)

10 [Directive 2004/109/EC of the European Parliament and of the Council \(December 2004\)](#)

11 [Commission Delegated Regulation \(EU\) 2018/815 \(December 2018\)](#)



- 3.18 We received 2 responses to our consultation. Neither commented specifically on our proposed rule change. Instead, both commented on broader issues, primarily concerning the practical implementation of the amended TD and RTS. Comments included concerns about:
- the preparedness of firms to comply from 1 January 2020;
 - potential adverse impacts on the 'human' readability of annual financial reports; and
 - the additional complexities/burdens that could arise if the annual financial report prepared in the single electronic format is the version required to be approved by a company's Board.

- 3.19 Additional guidance to clarify expectations on these matters was requested.

Our response

- 3.20 We are proceeding with the proposed rule change set out in Chapter 5 of CP19/27. The final rule will come into force on 13 December 2019, and apply to annual financial reports for the year beginning 1 January 2020.
- 3.21 The scope of our consultation was limited to ensuring that the TD and related RTS requirements could be properly implemented in the UK. It did not extend to the TD and related RTS requirements themselves, or matters relating to the practical implementation of these requirements by companies.
- 3.22 However, we note the comments made by respondents and we will consider them further as we take forward the implementation of the RTS. If we conclude that additional rules and guidance are needed as a result, we will consult on our proposals.

Fees (Office for Professional Body Anti-Money Laundering Supervision) (No 3) Instrument 2019

Background

- 3.23 The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) was set up in 2018 under the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2018. It has oversight over the professional body supervisors (PBSs) listed in Schedule 1 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs). It is housed within the FCA and we recover its costs from the PBSs that it supervises.

3.24 In CP19/24¹², we consulted on the variable fee-rate for 2019/20. We consulted on a rate of £44.36 per individual supervised under the MLRs, but we have set the final rate at £37.60. The reduction is the result of the OPBAS budget estimate for 2019/20 being revised down from £1.5m to £1.25m because not all staff will have been in post for the full year. We are also recovering the balance of the OPBAS set-up costs, which comes to £0.25m. This means the total to be recovered is now £1.5m, compared with £1.75m when we consulted.

Feedback

3.25 We received 16 responses to consultation. As well as consulting on the fee-rate for 2019/20, we explained in CP19/24 that, following consultation, we were maintaining the minimum fee threshold of £5,000 supervised individuals and we provided feedback on our decision. PBSs pay a minimum fee of £5,000 if they supervise up to 6,000 individuals under the MLRs. If they supervise more than 6,000, they pay the minimum fee plus a variable rate per individual supervised above the threshold. In responding to CP19/24, several PBSs made a point of confirming that they accepted our decision on the minimum fees structure even though they disagreed with it.

3.26 The key points raised in feedback on CP19/24, with our responses, were:

3.27 Greater transparency is still needed on OPBAS costs and its business plan. Without this, it is not possible to give an informed opinion on the fee-rate. The 2019/20 fee is more than double the indicative fee quoted in 2017 and no reason is given for the increase in costs between 2018/19 and 2019/20.

Our response

3.28 We explained in CP19/24 that we do not disclose detailed information on the costs of individual teams within the FCA.

3.29 The indicative fee-rate we quoted in 2017 was based on a population of 218,000 supervised individuals reported by PBSs to the Treasury, compared with only 80,000 reported to us by PBSs under our tighter definition of supervised individuals. Inevitably, the original rate per individual was lower, but the pattern of distribution was much the same and the fees paid would have been higher since we had quoted a figure for cost recovery of £2.5m in 2018/19. In practice, we recovered £1.45m. The fee rate we have set for 2019/20 is, at £37.60, lower than the rate of £44.36 we consulted on in CP19/24.

Feedback

¹² CP19/24 'Recovering the costs of the Office for Professional Body Anti-Money-laundering Supervision (OPBAS): feedback on CP19/13 and consultation on fee-rate for 2019/20' (July 2019)



3.30 Although we were not consulting on the minimum fee or threshold, we received further comments.

3.31 Several reiterated their support for the structure of the minimum fee and threshold because it mitigates the unfairness which would arise from treating all supervised individuals as if they were equal.

3.32 Other PBSs restated their disagreement with the structure of minimum fee and threshold. It is unfair that large fee-payers should subsidise smaller ones. It results in large PBSs paying considerably more than their share of the supervised population. PBSs have not yet passed their costs on to their members because of the uncertainty over fees. When they do, the members of larger PBSs will pay more than members of smaller PBSs. There should instead be a risk-based approach to fees.

Our response

3.33 We note the strength of feeling on both sides and have provided extensive feedback in earlier consultations.

Feedback

3.34 The minimum fee of £5,000 is unfair for PBSs with few or no supervised individuals.

Our response

3.35 There is a cost to being supervised, regardless of the scale of an individual PBS's activity. This is in line with our standard practice. Firms authorised by us pay a minimum fee for participation in the market even if they are not trading.

Feedback

3.36 Not treating supervised individuals equally contradicts the objective in the compatibility statement that cost recovery should be distributed fairly between fee-payers.

Our response

3.37 Fairness should not be confused with equal treatment. We discussed at length in earlier consultations the argument that it would be unfair to give individuals operating on a small scale equal weight with supervised individuals with wider accountabilities. A partner in a large accountancy practice, accountable for other staff members who are not included in the fees data reported to us, has a greater impact, and therefore potential for harm, in comparison to a sole trader in the high street.

Feedback



- 3.38 Lengthy consultation over the threshold was unnecessary because it was always predictable that the PBSs above the threshold would object to the structure and those below would support it.

Our response

- 3.39 That is not a fair characterisation of the responses we received, most of which were extremely thoughtful. Some of the strongest arguments in favour of removing the minimum fee threshold were made by two PBSs who were aware that it would have raised their own charges. Both reminded us in response to CP19/24 that they had been willing to pay the higher fee.

Feedback

- 3.40 Consultations on the annual fee-rate should be aligned with the planning cycles of PBSs – consultation in the spring will be too late for them to set their budgets for the coming year. It would be helpful to have estimated fees the previous March.

Our response

- 3.41 Our established annual cycle of fees consultation may be more convenient for some individual fee-payers than for others, but has the advantage that all know when the consultations will take place so can plan accordingly.

Feedback

- 3.42 Will the minimum fee be adjusted in the future to reflect budget increases, or will the costs all be passed to the variable rate fee-payers?

Our response

- 3.43 As with all our fees, we will keep this under review.

Cost benefit analysis and compatibility statement

- 3.44 Although OPBAS fees are not charged under the FSMA regime, we must make sure our proposals are compatible with the FCA's wider statutory duties. Section 138I of FSMA exempts the FCA from the requirement to carry out and publish a cost benefit analysis regarding proposals for rules regarding FCA fees and levies. A cost benefit analysis of OPBAS was conducted in Guidance consultation GC17/7, 'Office for Professional Body Anti-Money Laundering Supervision: a sourcebook for professional body supervisors', published in July 2017.

- 3.45 The compatibility statement we published in CP19/24 remains unchanged.

Equality and diversity issues



- 3.46 We continue to believe that the rules we have made will not have a negative impact on any of the groups with protected characteristics under the Equality Act 2010 and no concerns were raised during consultation.

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 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 <https://www.handbook.fca.org.uk/instrument>. The definitive version of the Handbook that the FCA amends 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/>. A print version of the Handbook is available from The Stationery Office's (TSO) shop at <https://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 1.5 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 at the front of this Notice).

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This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 21 November 2019 and 12 December 2019.

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:

Ayesha Dayaji

Tel: 020 7066 0575

Email: Ayesha.Dayaji@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

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