


# Handbook Notice No 74

February 2020

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# 1 Overview

## Legislative changes

- 1.1 On 30 January 2020, 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
<a href="#"><u>CP19/10</u></a>	Pension Schemes (Disclosure of Transaction Costs and Administration Charges) (Amendment) Instrument 2020	<a href="#"><u>FCA 2020/2</u></a>	01/04/2020
<a href="#"><u>CP19/23</u></a>	Insurance: Conduct of Business Sourcebook (Access to Travel Insurance) Instrument 2020	<a href="#"><u>FCA 2020/3</u></a>	01/06/2020 for Annex A and Part 1 of Annex B; and 05/11/2020 for the remainder of the instrument.

- 1.2 On 27 February 2020, 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
<a href="#"><u>CP19/30</u></a>	Fees (Miscellaneous amendments) (No 15) Instrument 2020	<a href="#"><u>FCA 2020/8</u></a>	01/04/2020



## Summary of changes

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- 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 2020

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

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 30 January 2020 and 27 February 2020. 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>.



### ***Pension Schemes (Disclosure of Transaction Costs and Administration Charges) (Amendment) Instrument 2020***

- 2.2 Following consultation in Consultation Paper CP19/10<sup>1</sup>, the FCA Board has made changes to the FCA Handbook section listed below:

#### **COBS 19.5, 19.8 and TP 2**

- 2.3 In summary, this instrument makes changes to the Handbook to discharge the duty placed upon the FCA by FSMA, and ensure that scheme members can find the information about costs and charges they require to establish that they receive good value for money from their pension scheme, and their pension scheme will meet their needs for future retirement.
- 2.4 This instrument will come into force on 1 April 2020. Feedback has been published in a separate Policy Statement.<sup>2</sup>

### ***Insurance: Conduct of Business Sourcebook (Access to Travel Insurance) Instrument 2020***

- 2.5 Following consultation in Consultation Paper CP19/23<sup>3</sup>, the FCA Board has made changes to the FCA Handbook to add a new section to ICOBS: ICOBS 6A.4 and the sections listed below:

#### **Glossary ICOBS 1 Annex 1, 6A.4, 5.1, 6.1, 6.5**

- 2.6 In summary, this instrument makes changes to the Handbook to help consumers with more serious PEMCs find providers that specialise in covering their medical conditions.
- 2.7 This instrument will come into force on 1 June 2020 for Annex A and Part 1 of Annex B; and 5 November 2020 for the remainder of the instrument. Feedback has been published in a separate Policy Statement.<sup>4</sup>

### ***Fees (Miscellaneous Amendments) (No 15) Instrument 2020***

- 2.8 Following consultation in Consultation Paper CP19/30<sup>5</sup>, the FCA Board has made changes to the sections listed below:

#### **Glossary FEES 3 Annex 9, 4.2, 4 Annex 5R, 4 Annex 11R, 4 Annex 13G, 4 Annex 14R, 13.2 and App 3.1**

1 [CP19/10 'Publishing and disclosing costs and charges to workplace pension scheme members and amendments to COBS 19.8' \(February 2019\)](#)

2 [PS20/2 'Publishing and disclosing costs and charges to workplace pension scheme members and amendments to COBS 19.8' \(February 2020\)](#)

3 [CP19/23 'Signposting to travel insurance for consumers with medical conditions' \(July 2019\)](#)

4 [PS20/3 'Signposting to travel insurance for consumers with medical conditions' \(February 2020\)](#)

5 [CP19/30 'Regulatory fees and levies: policy proposals for 2020/21' \(November 2019\)](#)



- 2.9 In summary, this instrument makes changes to the Handbook to recover the FCA's costs in expanding their regulatory responsibilities, to improve the consistency and clarity of the fees manual and to improve the cost efficiency of the FCA's operational processes for recovering fees.
- 2.10 This instrument will come into force on 1 April 2020, except for Part 2 of Annex B which comes into force on 31 March 2020. 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.

### **Fees (Miscellaneous Amendments) (No 15) Instrument 2020**

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- 3.2 In November 2019, we published our annual consultation on fees policy. Set out below are the topics we consulted on, the feedback we received and our responses.

#### ***Proxy advisors – annual regulatory fee***

##### Background

- 3.3 The revised Shareholders Rights Directive (SRD II) creates a new regulatory regime for proxy advisors. Proxy advisors analyse corporate disclosures and other information of listed companies with a view to informing investors' voting decisions through research, advice or recommendations. SRD II came into effect on 10 June 2019, and firms will have to notify us from 1 April 2020 if they wish to continue trading.
- 3.4 Our powers are restricted to administering and enforcing SRD II disclosure provisions. We estimate our resources at around £35,000 per year. We proposed an annual charge of £5,000 as a fair basis for distribution of cost recovery between the 6–8 applicants we are expecting. We proposed that this would be a flat fee payable in advance when firms apply and then invoiced annually.

##### Feedback

- 3.5 We received no responses to consultation.



## Our response

3.6 We have implemented the proposal as consulted on.

### ***Introduction of income measure for remaining B fee-block market infrastructure providers***

#### Background

3.7 We consulted on introducing income as the basis for calculating periodic fees for the remaining market infrastructure provider sub-sets of the B fee-block:

- Multi-lateral Trading Facilities (MTFs)
- Organised Trading Facilities (OTFs)
- Recognised Overseas Investment Exchanges (ROIEs)

3.8 We believe that using income, from the regulated activities undertaken, as a measure of size (tariff base) increases transparency for fee-payers and represents an effective proxy for the impact risk firms pose to our objectives. Income as a measure of size ensures an equitable distribution of cost recovery between fee-payers in the same fee-block or sub-set fee-block.

3.9 MTFs, OTFs and ROIEs currently pay flat periodic fees which do not fully reflect the scale of the regulated activities they undertake. This was the first stage of our consultation focusing on the definition of the income measure. We set out the proposed definition of income for MTFs, OTFs and ROIEs in the CP through additions to the existing FEES 4 Annex 11AR. We also proposed applying the existing guidance in FEES 4 Annex 13G Table 1 to MTFs and OTFs.

#### Feedback – MTFs and OTFs

3.10 We received 4 responses relating to the proposals for MTFs and OTFs. Respondents' comments centred on the proposed income definition:

- It was suggested that the income definition is too broad and could therefore lead to inconsistent reporting by firms. One respondent suggested that income only from transaction fees would be more appropriate.
- Some firms operating MTFs and/or OTFs are also in the A.13 fee-block (Advisory arrangers, dealers or brokers) and one respondent questioned how firms would be able to split the two income streams if their internal systems are not designed to do so. Further, given firms



may not want to incur the costs to change those systems, this could lead to double counting.

- Other respondents requested clarity that income from provision of market data does not include that earned by separate centralised data sales departments and that income for services provided to other companies within the Group, such as cross-charging staff, should be excluded.
- One respondent proposed that certain rebates be added as exclusions from the calculation of annual income which are not currently covered by the existing guidance in FEES 4 Annex 13G Table 1. These were (a) rebate payments that are part of tariff structures; and (b) rebate payments resulting from trading incentive schemes. The respondent also proposed that revenue share agreements which result in a proportion of revenues being paid out to a third party, over a certain level but up to a cap, should be excluded from the calculation of annual income.

3.11 A respondent suggested we should also take account of a qualitative assessment of the relative business risk of individual MTFs/OTFs when setting their regulatory fees.

3.12 A respondent commented that some MTFs may be relatively small businesses with low profit margins. They therefore suggested that a minimum level of gross profit should be required to be attained before the annual income approach is applied. Where the gross profit threshold is not passed, a proportionate flat fee could be charged instead.

3.13 A respondent requested that we consider the implication to firms' portfolio categorisation – whether introducing an income-based approach for fees would lead to firms being moved from flexible (supervised by team of supervisors) to fixed (named supervisor) due to the revenue associated with the activities of the venues even though their risk remains the same.

#### Our response – MTFs/OTFs

3.14 Income definition:

- Our definition of MTF/OTF income is broad. However, we do not consider it is appropriate to provide an exhaustive list of income streams. Given the ever-changing nature of markets it is crucial that we can future proof our definition. We acknowledge the importance of all firms applying the definition of income consistently and therefore work closely with firms to ensure this happens.
- We use income as a measure of size of firms because it can capture all the ways a firm receives an economic benefit from carrying on the regulated activity covered by a particular fee-block. Using only the



income from transaction fees would be too narrow a definition. Firms structure their business models and how they generate income streams differently. Some may give greater or lesser focus on generating income from transaction fees. The broader definition captures all income regardless of how it is sourced and therefore represents a fairer distribution of the cost recovery across all firms within the fee-block.

- Key for firms is to report income that relates to the regulated activities covered by a particular fee-block. Income as a measure of size is already used in 8 separate fee-blocks or sub-set fee-blocks. Existing firms can be in several of these fee-blocks and our experience shows that they are readily able to identify separately the income streams from the different fee-blocks they are in. However, where a firm cannot separate income on the basis of activities, it may apportion the income on the basis of the proportionate split of business that the firm otherwise undertakes. 'Apportioning income' guidance under FEES 4 Annex 13G Table 1 is already provided which requires that the apportioning methodology firms use should be: proportionate (best efforts basis); have a sound rationale; be objective; is signed-off at an appropriate level; and is periodically reviewed.
- Therefore, income from the provision of market data should be included where that market data relates to the regulated activity of being a MTF/OTF. If that income is earned by a separate centralised data sales department then it still should be included.
- Further, income received from other companies within the Group that does not relate to the regulated activity of an MTF or OTF should be excluded. However, if it relates to the regulated activities covered by another fee-block eg A.13 then it should be reported as part of the income for that fee-block.
- Overall this approach should ensure that there is no double counting of income.
- We are considering the feedback relating to rebates and revenue share agreements. We will include our response in the April 2020 fees rates CP as part of the second stage consultation.

### 3.15 Include a qualitative assessment of risk:

- The allocation of our annual funding requirement (AFR) to fee-blocks including the MTF/OTF sub-set of the B fee-block represents the resources applied to the regulation of all the firms that make up the fee-block.





- A measure of size, in this case income from those MTF/OTF regulated activities, represents an objective and transparent proxy for the impact risk the individual firms pose to our objectives should they fail.
- The ~40 fee-blocks we use to target the recovery of our costs from the 56,000 firms we regulate is an operationally efficient way of raising fees.
- A qualitative assessment of the probability of failure is subjective and linking that to the level of fees firms pay would lead to firms challenging their fees which would be impractical given the number of firms we regulate.

### 3.16 Small MTFs:

- We generally use minimum size thresholds below which firms only pay a flat minimum fee to ensure that smaller firms are not making a disproportionate contribution to the recovery of the costs allocated to a particular fee-block. We plan to consult on the income level at which the minimum size threshold should be set and an indicative minimum fee level for MTFs/OTFs in our November 2020 annual fees policy CP.
- We do not believe it would be appropriate to use gross profit as a basis for setting the threshold. A firm operating on low profit margins or even at a loss may nevertheless be undertaking a large amount of business which represents the same impact risk as a firm with the same level of business but operating with higher profit margins.

3.17 Implications for firms' portfolio categorisation. The income tariff data will be used solely for the purposes of calculating periodic fees for MTFs/OTFs and will not have an impact on the categorisation of firms as to whether they are subject to flexible or fixed supervision.

3.18 We have implemented our proposals for the definition of income for MTFs and OTFs as consulted on.

3.19 We will now move on to the second stage consultation. We do not currently have the income data that MTFs and OTFs derive from these activities, the total of which we need to propose and consult on a size threshold for the minimum fee and calculate indicative minimum fee and variable fee-rates. At the second stage, we will therefore consult on a requirement for MTFs and OTFs to provide us with their income data for periodic fees purposes (tariff data) by September 2020. We propose to consult on this reporting requirement in our April 2020 annual fees-rates CP. Details of the full consultation timetable were set out in chapter 3 of CP19/30.



### Feedback – ROIEs

- 3.20 We received responses from 7 exchange groups relating to the proposals for ROIEs. Several respondents pointed out that reporting income will not be operationally practical for ROIEs. UK Recognised Investment Exchanges (RIEs) are likely to be able to report their income for fees purposes in the normal course of their business because they derive their income from all market participants.
- 3.21 In contrast, an ROIE would have the additional complexity of separately identifying the income from a sub-set of its market participants. Some respondents therefore proposed to retain the current flat fee structure. Other respondents proposed alternative ways to measure the size of ROIEs, for example number of UK market participants.
- 3.22 Five respondents posed a question over a balance between FCA's responsibilities for ROIEs and the current fee level. One respondent proposed the FCA to stay relying substantially on the supervisory and regulatory arrangements in the home country of ROIEs.
- 3.23 A respondent pointed out that some ROIEs have multiple trading venues under their ROIE status and others have only one. They proposed that the fee structure should allow for lower fees where ROIEs share the same corporate and infrastructures.

### Our response – ROIEs

- 3.24 Our annual funding requirement (AFR) allocated to ROIEs has taken account of the split of responsibilities between us and the overseas regulator. This consultation only related to the distribution of the allocated AFR among ROIEs.
- 3.25 We acknowledge the issues, particularly those caused by the additional complexity of separately identifying the income from a sub-set of a ROIEs' market participants, raised by respondents.
- 3.26 We have therefore decided not to proceed with our proposals for using size measured by income as the basis for recovering our AFR allocated to ROIEs at this stage. The definition of income for ROIEs proposed in CP19/30 has not been included in the final instrument published alongside this Handbook Notice.

### **Special project fees**

#### Background

- 3.27 Special project fees (SPFs) are charged to recover our exceptional supervisory costs where a firm undertakes certain restructuring transactions as set out in FEES 3 Annex 9R. These include mergers or



acquisitions, reorganising their group structure, a significant change to their business model or a significant internal change programme or raising additional capital.

3.28 SPFs are calculated based on the number of hours individuals work on the specific restructuring transactions, plus external costs of professional advisers we need to engage. The hourly rates are based on the costs we use for funding our projects internally. SPFs are charged only where our additional costs exceed £25,000 where the firm is dual-regulated by us and the Prudential Regulation Authority and £50,000 for firms that are solo-regulated by us.

3.29 We consulted on three proposals:

- Updating who SPFs apply to – we proposed applying the existing SPF rules to consumer credit firms, claims management companies and large electronic money institutions.
- Adding a restructuring transaction – we proposed adding as a SPF restructuring transaction to cover firms entering into a Scheme of Arrangement under the Companies Act 2006 (a proposal to compromise its liabilities to its creditors).
- Introducing guidance to cover using relieving provisions where a SPF and authorisation application fees are also payable – We proposed expanding the existing guidance (which covers the potential for double charging for Part VII insurance transfers and SPFs) to address the potential for double charging in the case of authorisation/variation of permission application fees and SPFs.

### Feedback

3.30 We received one response supporting the proposal to apply SPFs to consumer credit firms and claims management companies. However, the respondent believed there could have been greater transparency over how complex a restructuring transaction might have to be to exceed the minimum size thresholds, when in practice SPFs are applied and how the additional costs were controlled.

### Our response

3.31 We have implemented the proposal as consulted on. The thresholds provide the mechanism to determine whether the cost of the restructuring transaction is exceptional. This may not always be due to complexity. We set out in CP19/30 the types of restructuring transactions that come within the scope of SPFs. SPFs do not seek to recover additional costs but are aimed at targeting the recovery of exceptional costs to the firm that gave rise to them rather than other firms picking up those costs through their periodic fees.



## ***Other revisions to the fees manual***

### Background

3.32 We consulted on a number of revisions and clarifications to the fees manual:

- We proposed to bring the presentation of fees for designated professional bodies (DPBs) into line with those for other fee-blocks by amending FEES 4 Annex 5R to set out the basis of the fees calculation and the rate per unit (number of exempt professional firms) rather than listing the amounts paid by each fee-payer.
- The fees for premium listed issuers are based upon market capitalisations provided by the London Stock Exchange (LSE). These are currently provided as the last business day of November, but the LSE are changing the reporting date to September, so we proposed to change the valuation date to reflect this change.
- We proposed to update certain cross-references in FEES 13 (illegal money lending levy – IML), to reflect changes that have been made to FEES 4. We listed the changes in the CP.
- We proposed to update the fee-rates for persons registered with us under the Money Laundering Regulations (MLRs) in fee-block G.1 (FEES APP 3.1.2(2)), to make it clear that the charge for 2019/20 is £460.

### Feedback

3.33 We received no feedback on these proposals.

### Our response

3.34 We have implemented our proposals as consulted on.

## ***Administration charge for paper invoicing***

### Background

3.35 We proposed to introduce from April 2020 an administration charge of £50 for fee-payers who require us to issue paper invoices instead of taking advantage of the online invoicing portal.

### Feedback

3.36 We received 2 responses. Both supported the objective but questioned the charge:



- Compulsion did not seem to be necessary since we had successfully reduced the proportion of paper invoices from 15% to 8% since 2017 without a levy.
- The charge was too high and would recover about £200,000 – either we would be over-recovering in which case it looked like a penalty, or else there were questions about our efficiency and cost controls.
- It was ‘wholly objectionable’ to penalise customers who prefer paper invoices. ‘Were a firm to adopt such an approach toward a consumer it would likely face sanctions for poor conduct.’

### Our response

- 3.37 We believe our proposal is sound and so we are proceeding as consulted on.
- 3.38 The potential revenue should not be calculated on the basis of the current figures. As a result of our continuing campaign to encourage online invoicing, reinforced by the prospect of a charge, we expect the proportion of firms requiring paper invoices to be considerably lower than 8% by the time we issue invoices in July. Our ultimate aim is not cost recovery but to get to a position where there are no charges. In the run-up to issuing invoices, we will intensify our proactive campaign to increase take-up of the online system. The great majority of fee-payers appreciate the positive steps we have taken to make online invoicing an easy to use “one-stop shop” for fees information. Furthermore, firms can now opt to receive their invoice by email if they do not wish to log into their account. The charge is intended to give an extra push to those who have not yet made the step.
- 3.39 £50 is our best estimate of the cost. It is not a charge for issuing a single invoice but for providing a full paper-based service over 12 months. This may include several invoices, non-payment reminder letters and other fee-related communications. As fewer fee-payers opt for paper invoicing, any economies of scale are eroded and the costs per firm of operating a printing and posting service become more expensive.
- 3.40 If any fee-payer believes specific factors would make online invoicing impractical in their particular circumstances, we will consider their case under the relieving provisions in FEES 2.3.

### Cost benefit analysis and compatibility statement

- 3.41 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. The compatibility statement we published in CP19/30 remains unchanged.



## Equality and diversity issues

- 3.42 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. Following a query we received about whether we would make exceptions for disability, we have reviewed the equality and diversity issues of this proposal, in particular our public sector duty under the Act to have due regard to the need to promote equality of opportunity and to eliminate discrimination. We believe the relieving provisions in FEES 2.3 enable us to meet our duty since they allow us to exempt from the charge any fee-payers with protected characteristics whose circumstances would make it inequitable to insist upon online invoicing. No other concerns about equality or diversity were raised during consultation.

# 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 material

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- 4.2 This Notice is published on the FCA website and is available in hardcopy.
- 4.3 The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, 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**

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- 4.7 This Notice, and the feedback to which paragraph 1.4 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**

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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, they should be sent to [handbookproduction@fca.org.uk](mailto:handbookproduction@fca.org.uk) (or see contact details at the front of this Notice).

## Handbook Notice 74

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 30 January 2020 and 27 February 2020.

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

Post: Contact Centre

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