

# Handbook Notice No 78

June 2020

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# 1 Overview

## Legislative changes

- 1.1 On 21 May, 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>CP19/25</u>	Conduct of Business Sourcebook (Pension Transfers) (No 3) Instrument 2020	FCA 2020/21	15/06/2020, 01/10/2020
<u>CP19/31</u>	Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020	FCA 2020/23	03/06/2020, 07/12/2020

- 1.2 On 25 June, 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>N/A</u>	Handbook Administration (No 53) Instrument 2020	FCA 2020/25	26/06/2020, 31/07/2020, 01/10/2020
<u>N/A</u>	Variation of Permission and Cancellation Form (Miscellaneous Amendments) Instrument 2020	FCA 2020/28	26/06/2020
<u>CP19/27</u>	Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2020	FCA 2020/29	01/07/2020



## 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.

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 May 2020 and 25 June 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>.



### ***Conduct of Business Sourcebook (Pension Transfers) (No 3) Instrument 2020***

- 2.2 Following consultation in Consultation Paper [CP19/25](#), the FCA Board has made changes to the FCA Handbook section listed below:

**Glossary**

**TC 2.1**

**COBS 2.3, 6.1A, 9.1, 9.3, 9.4, 9.5, 15.1, 15.2, 15.3, 15 Annex 1, 19.1, 19.2, 19 Annex 4A, 19 Annex 4B, 19 Annex 4C, 19 Annex 5R and TP 2  
SUP 16.12, 16 Annex 9R, 16 Annex 9AG, 16 Annex 18AR, 16 Annex 18BG, 16 Annex 24R and 16 Annex 25G  
PERG 8.30A and 12 Annex 1**

- 2.3 This instrument also adds the following new sections to the Handbook: COBS 19.1A, 19.1B.

- 2.4 In summary, this instrument introduces a ban on contingent charging for advice on pension transfers and conversions except in specific circumstances; requires firms to consider a workplace pension scheme as a destination for a transfer; enables firms to give a short form of advice (abridged advice); improves how advisers disclose charges and requires checks on consumer understanding during the advice process; introduces specific continuing professional development for pension transfer specialists; requires advice firms to submit new data to improve our ability to supervise the sector; and amends technical areas of our rules and guidance to clarify and extend existing requirements.

- 2.5 This instrument comes into force on 15 June 2020 and 1 October 2020. Further information has been published in a separate Policy Statement.

### ***Individual Accountability (FCA-Authorised Benchmark Firms) Instrument 2020***

- 2.6 Following consultation in Consultation Paper [CP19/31](#), the FCA Board has made changes to the FCA Handbook section listed below:

**Glossary**

**SYSC 22.1, 22.8, 23.2, 23.3, 23 Annex 1, 25.2, 27.6, 4.1, 4.4, TP 7.1 and TP 7.4**

**COCON 1.1, 4.1, 4.2 and TP 1**

**COND 2.5**

**APER 1.1A and 3.1**

**FIT 1.1, 1.2, 1.3, 2.1, 2.2 and 2.3**

**MAR 8.5**

**SUP 6.3, 6.4, 10A.1, 10A.4, 10A.5, 10A.6, 10A.9, 10A.10, 10A.12, 10A.13, 10A.14, 10A.15, 10A.16, 10A.17, 10A Annex 1G, 10A Annex 2G, 10A Annex 4D, 10A Annex 8D, 10A Annex 10D, 10C.1, 10C.3, 10C.4, 10C.6, 10C.12,**



**10C.16, 10C Annex 1, 10C Annex 3D, 10C Annex 4R, 10C Annex 5R, 10C Annex 6R, 10C Annex 7D, 12.6, 13A Annex 1G, 15.1, 15.3, 16.26, TP 11A.1 and TP 11A.26  
PROF 5.3  
BENCH 2.1**

- 2.7 This instrument also adds the following new sections to the Handbook: SUP 15.17.
- 2.8 In summary, this instrument extends the Senior Managers Regime (SMR) to benchmark administrators (BMAs) that do not undertake any other regulated activities.
- 2.9 This instrument comes into force on 3 June 2020 and 7 December 2020. Feedback has been published in a separate Policy Statement.

***Handbook Administration (No 53) Instrument 2020***

- 2.10 The Board has made minor changes to various modules of the FCA Handbook, as listed below. These changes were not consulted on separately because they are minor amendments which correct or clarify existing provisions which have previously been consulted on. None of these changes represents any alteration in FCA policy.

**COBS 9.4, TP 2  
MAR 9 Annex 6D  
SUP 10C Annex 3D, 15 Annex 4R, 16 Annex 24 and 25G**

- 2.11 In summary, the amendments this month are as follows:
- Changes to COBS TP 2 to update TP 2.30 and 2.31 to extend the end dates of these transitional provisions to 31 January 2021. Following the implementation of the COVID-19: Deferral of Commencement (Pension Transfers, Investment Pathways, Platform Switching, Access to Insurance) Instrument 2020, which delayed the implementation of the Conduct of Business Sourcebook (Investment Pathways) Instrument 2019 from 1 August 2020 to 1 February 2021 (save for part 1 of Annex A, which came into force on 26 July 2019). These changes to COBS TP 2 will enable a firm and its IGCs to be able to continue to comply with the requirements of COBS 19.5 and the guidance in SYSC 3.2 and SYSC 4.1 in the period 1 August 2020 to 31 January 2021.
  - Changes to COBS 9.4 to fix minor typographical errors and make clarificatory amendments to the text as recently amended by instrument FCA 2020/21.
  - Change to MAR 9 Annex 6D to update the hyperlink to the notification form for changes to the membership of the management body which is on the main FCA website.



- Changes to SUP 10C Annex 3D to make minor clarificatory amendments to the Short and Long Form As for solo-regulated firms.
- Changes to the cover sheet of the notification form in SUP 15 Annex 4R to update the FCA's office address.
- Changes to SUP 16 Annex 24R and 25G to fix a lettering error originating from instrument FCA 2020/21.

2.12 This instrument comes into force on 26 June 2020, except for the changes to Part 2 of Annex A and Part 2 of Annex C which come into force on 1 October 2020.

### ***Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2020***

2.13 Following consultation in Consultation Paper [CP19/27](#), the FCA Board has made changes to the FCA Handbook sections listed below:

- COLL 5.2**
- COLL 6.2**
- COLL 6.6**
- COLL 8.5**
- COLL 9.3**
- COLL TP 1**
- COLL Schedule 2**

2.14 In summary, this instrument makes changes to the Handbook to the rules about which counterparties can transact with an authorised fund manager (AFM) for an over-the-counter (OTC) derivative transaction. In addition, it will ensure alignment between the FCA rules and HMRC's tax regulations regarding property authorised investment funds (PAIFs). It gives a new direction on notifications to be made by operators of individually recognised schemes and makes minor changes to a small number of existing rules.

2.15 This instrument comes into force on 1 July 2020. Feedback has been published in chapter 3 of this Handbook Notice.

### ***Variation of Permission and Cancellation Form (Miscellaneous Amendments) Instrument 2020***

2.16 The Board has also made changes to the Handbook to update the VOP forms with the Money Laundering Regulations question and other minor changes, and also to amend the cancellation form with the Stratford office address. These changes were not consulted on separately because they are minor amendments which correct or clarify existing provisions



which in most cases have previously been consulted on. None of these changes represents any alteration in FCA policy.

**SUP 6 Annex 5D**

**SUP 6 Annex 6D**

- 2.17 This instrument comes into force on 26 June 2020.

## 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**

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#### **Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2020**

##### ***Eligible counterparties for over-the counter (OTC) derivative transactions***

###### Background

- 3.2 In [CP19/27](#), Chapter 3, we consulted on changes to COLL 5.2.23R to extend the range of entities that can be an approved counterparty to an OTC derivative contract with an Undertaking for Collective Investment in Transferable Securities (UCITS) scheme, and a non-UCITS retail scheme (NURS).
- 3.3 We proposed to extend the range of entities to include:
- any EU CCP authorised under European Market Infrastructure Regulation (EMIR);
  - any non-EU CCP recognised under the processes set out in article 25 of the EMIR;
  - CCPs from jurisdictions that have been assessed by the Financial Stability Board (FSB) as having implemented the G20 reforms on OTC derivatives as at June 2019.



- 3.4 The amendments aim to ensure that our rules do not exclude certain types of well-regulated counterparties, particularly non-EEA central counterparties (CCPs) where it is the CCP itself, acting as agent for the clearing member, that is the counterparty to the transaction (not the bank or investment firm that is the clearing member).
- 3.5 The proposed amendments were also intended to reflect the change in market practices brought about by the introduction of central clearing for several types of OTC derivative under the EMIR.

### Feedback

- 3.6 We received 2 responses from trade associations that were broadly supportive of our proposals.
- 3.7 While they agreed with the amendments we proposed to COLL 5.2.23R and 5.6.15R, one respondent suggested we should also make changes to COLL 5.4.4R to further extend the range of entities that can be an approved counterparty to an OTC derivative contract with a UCITS scheme and a NURS.
- 3.8 The other respondent felt that the proposed amendments to COLL 5.2.23R (1)(e) could be better future proofed, in particular the reference to a 2019 FSB report.

### Our response

- 3.9 We considered other options for the scope of this rule, but we think that our approach strikes the right balance between greater flexibility and adherence to internationally-accepted standards.
- 3.10 We are also not changing the reference to the 2019 FSB report as any references from our Handbook to external publications need to provide certainty and be specific in nature.
- 3.11 We will make the rule changes as consulted on subject to some minor drafting clarifications.

## ***Amendment to COLL 6.2.23R and 8.5.12AR: Property Authorised Investment Funds***

### Background

- 3.12 In CP19/27, Chapter 3, we also consulted on changes to COLL 6.2.23R and COLL 8.5.12AR in relation to the corporate ownership of a property authorised investment fund (PAIF).





- 3.13 The changes were proposed to ensure that the COLL rules reflect the corporate ownership condition applicable to PAIFs, which is set out in Regulations 69K and 69L of the Authorised Investment Fund (Tax) Regulations 2006. The purpose of the corporate ownership condition, as stated in HMRC's Company Taxation Manual, is to "ensure that the UK retains the ability to tax investors fairly on income from UK land and property".
- 3.14 The effect of the condition is to prevent a body corporate from beneficially holding 10% or more of a PAIF. However, it is possible for a body corporate to have an additional indirect interest of more than 10% in a PAIF by holding units in a feeder fund investing in units of the PAIF, subject to certain conditions.
- 3.15 We proposed to amend our rules in COLL 6.2.23R and 8.5.12AR to align with the underlying tax regulations by clarifying that a body corporate may have an indirect interest in a PAIF of more than 10% where the necessary conditions are met.

#### Feedback

- 3.16 We received 2 responses that were supportive of our proposals.
- 3.17 One of the respondents asked for clarification of what constitutes the "reasonable steps" an authorised fund manager must take to ensure that no body corporate holds more than 10% of the net asset value of a PAIF, under our proposed changes to COLL 6.2.23R and 8.5.12AR.

#### Our response

- 3.18 This rule has been in force for some time and we haven't seen enough evidence that AFMs are failing to take reasonable steps to warrant issuing new guidance on it. We will make the rule changes as consulted on subject to some minor drafting clarifications.

### ***COLL 9.3: Notifications by individually recognised schemes***

#### Background

- 3.19 In CP19/27, Chapter 3, we consulted on introducing a direction in COLL 9.3 applying to the operator of a non-UK fund that is individually recognised under section 272 of the Financial Services and Markets Act (FSMA) for marketing to the general public in the UK.
- 3.20 Under the proposed direction, the fund operator would need to provide us with an annual certificate explaining whether, and if so how, the fund's ability to comply with the conditions of its recognition has changed.



- 3.21 The operator would also be required to set out what steps it has taken to inform itself of any changes to the relevant FCA rules for comparable authorised schemes, and consider any such changes together with any changes made to the recognised scheme itself.
- 3.22 The proposed direction also specified when and how the certificate should be submitted.

#### Feedback

- 3.23 We received one response on this topic. The respondent thought that we should not introduce the proposed direction until post-Brexit gateways for overseas funds have been determined.

#### Our response

- 3.24 While we acknowledge the concerns of the respondent, we are proceeding with the notification requirement for individually recognised schemes. The Government will need to introduce legislation to establish a new post-Brexit recognition gateway and we don't know when this gateway might come into effect. We consider the measure to be important for investor protection in the meantime to ensure non-UK funds are continuing to meet the necessary standards for individual recognition. We will make the new direction and related guidance as consulted on.

### ***Minor Amendments to COLL 6.6.12R, 8.5.4R and 5.2.4R(2)***

#### Background

- 3.25 In CP19/27, Chapter 3, we proposed some minor amendments to COLL 6.6.12R and 8.5.4R concerning the safekeeping obligations of depositaries.
- 3.26 The changes proposed were intended to clarify the interaction between these rules and relevant EU legislation affecting depositaries. We also proposed to add the missing words "that may" to COLL 5.2.4R (2) to make the sentence grammatically correct.

#### Feedback

- 3.27 We received 2 responses that were broadly supportive of our proposals.
- 3.28 One of the respondents reiterated previous calls for UK rules requiring assets to be registered in the name of the depositary to be widened to include the fund, or the manager on behalf of the fund, for non-financial assets such as immovables. They commented that the proposed amendments would appear to permit this to happen.



## Our response

- 3.29 We did not intend to expand the scope of the rules to permit assets to be registered in the name of the fund or fund manager and we disagree that the proposed drafting allows this possibility. Such arrangements are permitted only in relation to unauthorised collective investment schemes and other kinds of alternative investment fund that are sold to professional investors. The FCA has exercised its power, in line with the Alternative Investment Fund Managers Directive, to make stricter rules for funds that may be marketed either to all retail investors, such as non-UCITS retail schemes, or to certain limited classes of retail investor, such as qualified investor schemes.
- 3.30 We will make the rule changes as consulted on subject to a few minor changes the text.

# 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 78

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 May 2020 and 25 June 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:

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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)

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