


# Handbook Notice No 80

September 2020

## Contents

1.	<u>Overview</u>	<u>2</u>
2.	<u>Summary of changes</u>	<u>6</u>
3.	<u>Consultation feedback</u>	<u>14</u>
4.	<u>Additional information</u>	<u>24</u>

### How to navigate this document onscreen

 returns you to the contents list



# 1 Overview

## Legislative changes

- 1.1 On 17 September, the Board of the Financial Conduct Authority made the relevant changes to the FCA Handbook as set out in the instrument listed below.

CP	Title of instrument	Instrument No	Changes effective
<u>CP19/8</u>	Value Measures Reporting and Monitoring Instrument 2020	FCA 2020/40	01/07/2021, except for Annex C which comes into force on 01/01/2021

- 1.2 On 30 September, the Board of the Financial Conduct Authority made the relevant changes to the FCA Handbook as set out in the instrument listed below.

CP	Title of instrument	Instrument No	Changes effective
<u>CP20/4</u>	Allocation of the Responsibility for Insurance Distribution Activity or Mortgage Credit Directive Credit Intermediation Activity Instrument 2020	FCA 2020/41	01/10/2020
<u>CP20/4</u>	Reporting of Information about Directory Persons (Miscellaneous Amendments) Instrument 2020	FCA 2020/42	01/10/2020
<u>CP20/4</u>	Decision Procedure and Penalties Manual (Office for Professional Body Anti – Money Laundering Supervision Regulations) Instrument 2020	FCA 2020/43	01/10/2020
<u>CP20/4</u>	Consumer Credit (High Net Worth Exemption) Instrument 2020	FCA 2020/44	01/10/2020
<u>CP20/4</u>	Financial Crime Guide (Amendment No 4) Instrument 2020	FCA 2020/45	01/10/2020



<u>CP19/27</u>	Exiting the European Union: Handbook (Amendments) Instrument 2020	FCA 2020/47	01/10/2020, IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP19/33</u>	Exiting the European Union: Handbook (Amendments) (No 2) Instrument 2020	FCA 2020/48	01/10/2020, 01/07/2021, IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP19/19</u>	Exiting the European Union: Securitisation Repositories (DEPP and EG) Instrument 2020	FCA 2020/57	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>N/A</u>	Exiting the European Union: Miscellaneous (Amendments) (No 2) Instrument 2020	FCA 2020/58	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>N/A</u>	EU Exit ("IP Completion Day" and Time-Related Amendments) Instrument 2020	FCA 2020/60, FOS 2020/4	01/10/2020

1.3 On 30 September, the Board of the Financial Conduct Authority made the relevant changes to the Binding Technical Standards as set out in the instruments listed below.

CP	Title of instrument	Instrument No	Changes effective
<u>CP19/27</u>	Technical Standards (Payment Services Directive) (EU Exit) (No 2) Instrument 2020	FCA 2020/49	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP19/27</u>	Technical Standards (Prospectus Regulation) (EU Exit) Instrument 2020	FCA 2020/50	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020



<u>CP19/27</u>	Technical Standards (Securitisation Regulation) (EU Exit) Instrument 2020	FCA 2020/53	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP19/33</u>	Technical Standards (Securitisation Regulation) (EU Exit) Instrument (No 2) 2020	FCA 2020/54	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP19/33</u>	Technical Standards (Transparency Directive) (EU Exit) (No 2) Instrument 2020	FCA 2020/55	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP19/27</u>	Technical Standards (Fourth Money Laundering Directive) (EU Exit) Instrument 2020	FCA 2020/59	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020

1.4 On 30 September, the Board of the Financial Conduct Authority consented to the making of the rules for the voluntary jurisdiction and fixing and variation of the standard terms by the Financial Ombudsman Service. On 29 September, the Board of the Financial Ombudsman Service made the relevant changes to the FCA Handbook in the instrument listed below, subject to the consent and approval of the FCA.

CP	Title of instrument	Instrument No	Changes effective
<u>N/A</u>	EU Exit ("IP Completion Day" and Time-Related Amendments) Instrument 2020	FCA 2020/60, FOS 2020/4	01/10/2020

## Summary of changes

1.5 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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- 1.6 Consultation feedback is published in Chapter 3 of this Notice or in separate Policy Statements.

## FCA Board dates for 2020

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

October	22	2020
November	26	2020
December	17	2020



## 2 Summary of changes

- 2.1 This Handbook Notice describes the changes to the FCA Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 17 September and 30 September 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>.

### *Value Measures Reporting and Monitoring Instrument 2020*

- 2.2 Following consultation in Consultation Paper [CP19/8](#), the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary**  
**SUP 13A Annex 1G, 16.1, 16.2 and TP 1**  
**PROD 1.4**

- 2.3 This instrument adds the following new sections to the FCA Handbook:

**SUP 16.27, 16 Annex 48R, 16 Annex 48AR and 16 Annex 48BG**  
**PROD 4.5 and TP 1**

- 2.4 In summary, this instrument makes changes to the FCA Handbook to introduce new General Insurance rules to report and publish data on value measures, alongside new product governance requirements.

- 2.5 This instrument comes into force on 1 July 2021, except for Annex C which comes into force on 1 January 2021. Further information has been published in a separate [Policy Statement](#).

### *Allocation of the Responsibility for Insurance Distribution Activity or Mortgage Credit Directive Credit Intermediation Activity Instrument 2020*

- 2.6 Following consultation in Consultation Paper [CP20/4](#), the FCA Board has made changes to the FCA Handbook sections listed below:

**SUP 10C Annex 3D Form A**  
**SUP 10C Annex 7D Form E**  
**MIPRU 2.2**

- 2.7 This instrument adds the following new sections to the FCA Handbook:

**MIPRU 2.2.1AG and 2.2.1BR**  
**TP 1**



- 2.8 In summary, this instrument makes changes to the FCA Handbook to SUP 10C Annex 3D Form A and SUP 10C Annex 7D Form E to align our wording with MIPRU 2.2.1R (Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries) and it adds a notification requirement in MIPRU 2.2.1BR. It adds MIPRU 2.2.1AG to make clearer who can be allocated the Insurance Distribution Directive (IDD) and Mortgage Credit Directive (MCD) responsibilities. It also adds a transitional provision to clarify what process firms should use to notify us of the IDD and MCD responsibility allocations when they are not submitting a Directory persons report form.
- 2.9 This instrument comes into force on 1 October 2020. Feedback has been published in Chapter 3 of this Handbook Notice.

***Reporting of Information about Directory Persons (Miscellaneous Amendments) Instrument 2020***

- 2.10 Following consultation in Consultation Paper CP20/4, the FCA Board has made changes to the FCA Handbook sections listed below:

**SUP 16 Annex 47AR**  
**SUP 16 Annex 47BG**

- 2.11 In summary, this instrument makes changes to the FCA Handbook to bring SUP 16 Annex 47AR Directory persons report in line with Connect, enabling the FCA to validate the information reported on Directory persons, and to rename, on the form, the PRA Material Risk Taker role category.
- 2.12 In this instrument we are also making consequential amendments to the manner in which firms can notify us about the IDD and MCD responsibility allocations required by MIPRU 2.2.1R, therefore IDD and MCD responsibility boxes are added to the SUP 16 Annex 47AR Directory persons report.
- 2.13 This instrument comes into force on 1 October 2020. Feedback has been published in Chapter 3 of this Handbook Notice.

***Decision Procedure and Penalties Manual (Office for Professional Body Anti-Money Laundering Supervision Regulations) Instrument 2020***

- 2.14 Following consultation in Consultation Paper CP20/4, the FCA Board has made changes to the FCA Handbook sections listed below:

**Glossary**  
**DEPP 2 Annex 1**



- 2.15 In summary, this instrument makes changes to the FCA Handbook to set out the procedure for decisions made under The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (the OPBAS Regulations). The OPBAS Regulations give the FCA powers to supervise professional body anti-money laundering supervisors, in relation to compliance with anti-money laundering and counter terrorist financing requirements.
- 2.16 This instrument comes into force on 1 October 2020. Feedback has been published in Chapter 3 of this Handbook Notice.

### ***Consumer Credit (High Net Worth Exemption) Instrument 2020***

- 2.17 Following consultation in Consultation Paper [CP20/4](#), the FCA Board has made changes to the FCA Handbook sections listed below:

#### **CONC App 1.4**

- 2.18 In summary, this instrument makes changes to the FCA Handbook to increase the range of options for individuals and firms for obtaining a statement of high net worth.
- 2.19 This instrument comes into force on 1 October 2020. Feedback has been published in Chapter 3 of this Handbook Notice.

### ***Financial Crime Guide (Amendment No 4) Instrument 2020***

- 2.20 Following consultation in Consultation Paper [CP20/4](#), the FCA Board has made changes to the FCA Handbook sections listed below:

#### **FCG 3.24 and 3.27**

- 2.21 In summary, this instrument makes changes to the FCA Handbook to reflect recent regulatory changes to ensure the FCG remains up to date. The changes are not intended to represent an exhaustive list of all the amendments to the MLRs or set out substantive guidance on the amendments or sector specific guidance.
- 2.22 This instrument comes into force on 1 October 2020. Feedback has been published in Chapter 3 of this Handbook Notice.

### ***European Union Withdrawal Instruments 2020***

- 2.23 The FCA Board has made changes to FCA Handbook via the instruments listed in Chapter 1 of this Notice. The Board has also made a number of instruments amending Binding Technical Standards (BTS) to ensure the BTS operate effectively in UK law. These are also listed in the table in Chapter 1. We have proceeded as follows:





- We have proceeded with the Handbook provisions and amendments to BTS largely as proposed and consulted on in CP19/27 Chapter 7 and CP19/33 Chapter 8;
- The FCA Board also proceeded to make 'The Exiting the European Union Securitisation Repositories (DEPP and EG) Instrument 2020', published as near-final in PS19/15;
- We did not proceed to make the near-final SMCR and APR instrument included in PS19/05 and the instruments consulted on in CP19/27 and CP19/33 as separate instruments. As further SMCR and APR amendments are being consulted on in CP20/18 Chapter 4, we now propose to make a single instrument comprising all changes towards the end of the transition period;
- We did not proceed with the proposed change to the glossary definition of 'readily realisable security' in CP19/33 because the rules in COBS 4.14 (Restrictions on the promotion of speculative illiquid securities to retail clients) will expire on 31 December 2020. We are currently consulting on proposals to make permanent rules in relation to speculative illiquid securities in [CP20/8](#);
- We did not proceed to make the Financial Conduct Authority Technical Standards (Capital Requirements Directive and Regulation) (EU Exit) (No 2) Instrument 2019, as an updated draft of this instrument is also being consulted on in CP20/18 Chapter 4; and
- We have not proceeded with the Technical Standards (Markets in Financial Instruments Regulation) (EU Exit) (No 3) Instrument 2020, the Technical Standards (Securities Financing Transactions Regulation) (EU Exit) (No 1) Instrument 2020 and the Technical Standards (Securities Financing Transactions Regulation) (EU Exit) (No 2) Instrument 2020, but we propose to make these later in the year.

2.24 The FCA Board also made the following instruments which were not included in the consultations mentioned above:

- Exiting the European Union: Miscellaneous (Amendments) (No 2) Instrument 2020; and
- EU Exit ("IP Completion Day" and Time-Related Amendments) Instrument 2020.

### Impact of the Withdrawal Agreement

2.25 Since the instruments were consulted on, the European Union (Withdrawal Agreement) Act 2020 (the 'EUWAA') has been enacted and the Withdrawal Agreement has been approved. Under the Withdrawal Agreement, the UK left the EU on 31 January 2020 at 11pm, and the European Union



(Withdrawal) Act 2018 ('EUWA') defines "exit day" by reference to this time. The UK is now in a transition period (officially known as the implementation period (IP)) which will last until 31 December 2020 at 11pm, and the EUWAA defines "IP completion day" by reference to this time. During the transition period, EU law continues to apply in and to the UK.

- 2.26 The amendments made to the Handbook and BTS in connection with the UK's exit from the EU will therefore come in effect on IP completion day rather than exit day. Instruments included in Consultation Papers CP19/27 and CP19/33 on the basis that they would come into effect on exit day have been updated to reflect that they will now come into effect on IP completion day instead (except as indicated below).
- 2.27 The EUWAA automatically defers the commencement of "subordinate legislation" from exit day to IP completion day. To the extent that the EUWAA does not defer the commencement of the exit instruments we made last year, or certain provisions within them, we made an instrument in January 2020 that did this. We have now made a further instrument to amend the references within the body of relevant instruments from exit day to IP completion day.

### Summary

- 2.28 In summary, the instruments listed in Chapter 1 make changes to the FCA Handbook and to BTS for which we are responsible to ensure that a functioning regulatory and legal framework for financial services will be in place after the transition period. The proposed changes will ensure the proper functioning of the respective provisions once the UK is no longer subject to EU law and, as a result, also support firms in complying with these provisions.
- 2.29 We have proceeded with the majority of the Handbook provisions and amendments to BTS as set out in CP19/27 and CP19/33, except for minor consequential and drafting amends. We made changes to the commencement date of all the instruments (from exit day to IP completion day) to reflect the effect of the Withdrawal Agreement and the EUWAA.
- 2.30 We made amendments to the Exiting the European Union: Handbook (Amendments) Instrument 2020 as follows:
- Changes to Annex A (Glossary). The changes include missed consequential changes to Glossary definitions and minor amendments to Glossary Definitions consulted on in CP19/27. We added a cross-reference to SYSC 23 Annex 1 1.4R and SUP 10A.1.34R to the definition of EEA senior managers and certification regime (SMCR) firm and EEA PTV Firm. These rules treat a Gibraltar-based firm in the same way as an EEA firm for the purpose of the SMCR and the approved



persons regime and the cross-references in the Glossary are for the convenience of the reader.

- Changes to Annex D (GEN), Annex G (BCOBS) and the deletion of what was Annex L (CONC). The amendments reflect that the rules no longer deal with the application to TP firms of the buy now pay later (BNPL) retrospective interest rule (CONC 6.7.16BR), overdraft competition remedy (BCOBS 2.2B, BCOBS 4.4, BCOBS 8 and CONC 6.7.41R), overdraft pricing and repeat use rules (CONC 5C and 5D) and associated transitional provisions, cross references, and guidance. These rules will automatically apply to such firms in accordance with the general rules and guidance in GEN 2.2.26R to GEN 2.2.39G, and specific provision is no longer necessary.
- Changes to Annex E (COBS). We have added guidance to highlight that our product intervention rules in COBS 22.4 and COBS 22.5 apply to certain contractual run-off firms and the analogous regime for e-commerce firms. We have previously drawn attention to this point when publishing the rules themselves.
- Changes to Annex N (PRR) were made in CP 19/27 to follow relevant points in The Cross-Border Distribution of Funds, Proxy Advisors, Prospectus and Gibraltar (Amendment) (EU Exit) Regulations 2019. The provisions in that SI were not made but we have retained the amendments as those amendments were made in the Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020. We have added notes indicating where this is the case. Further changes to Annex N (PRR) are being made to update the copy-out text as the onshoring changes arising as a result of changes to the Prospectus Regulation by the SME Regulation are expected to be brought forward in due course by HM Treasury in an EU Exit Statutory Instrument before the end of the Transition Period.

### 2.31 We made amendments to the Exiting the European Union: Handbook (Amendments) (No.2) Instrument 2020 as follows:

- Insertion of Annex B (ICOBS), Annex C (PROD) and Annex E (SUP). These are additional onshoring amendments to fix deficiencies. In some cases, we are applying specific provisions to Temporary Permission firms and Gibraltar-based firms. We have broadened the scope of the PROD and SUP amendments from those consulted on in an EU withdrawal alternative version in CP19/8 (General Insurance Value Measures reporting). The changes to the amendments in PROD and SUP take account of the development of the temporary permission regime so that the post-transition period rules will now align more closely with the scope of the policy as set out in both the CP19/8 proposal and PS20/09 (General Insurance value measures reporting publication) which include applying the requirement to incoming cross-border services.



- Insertion of Annex H correcting the citation of relevant legislation on the cover sheet of the Exiting the European Union: Temporary Permission and Financial Services Contracts Instrument 2019 (FCA 2019/36).

- 2.32 The Exiting the European Union: Miscellaneous (Amendments) (No.2) Instrument 2020 updates provisions in the Handbook relating to the FCA's powers to waive rules on a firm-specific basis where the rules incorporate requirements laid down in EU directives. These are consequential changes arising from the effect of the European Union (Withdrawal) Act 2018. The Handbook provisions on the FCA's power to waive or modify a rule on a firm-specific basis are otherwise unchanged, including the guidance on waivers in chapter 8 of the Supervision Manual. The statutory framework for firm-specific waivers is also unchanged, so the same statutory conditions for a waiver apply after the transition period as applied prior to and during the transition period.
- 2.33 We have made a further instrument in connection with the transition period. The EU Exit ("IP Completion Day" and Time-Related Amendments) Instrument 2020 updates references from exit day to IP completion day in instruments made last year. These amended provisions therefore now apply by reference to IP completion day. The instrument also amends other time-related provisions linked to exit day (such as fee periods, Glossary definitions and guidance setting out the operation of the withdrawal legislative framework) and inserts definitions of IP completion day into instruments or legislation where relevant. The changes to the exit instruments we had already made reflect the effect of the Withdrawal Agreement and the European Union (Withdrawal Agreement) Act 2020.
- 2.34 These instruments come into force on IP completion day as defined in the EUWAA (that is, 31 December 2020 at 11pm), except where they amend previous instruments and need to come into force before then, and in relation to the insertion of the Glossary definitions for exit day and IP completion day.
- 2.35 Feedback to the instruments as consulted on in CP19/27 and CP19/33 has been published in Chapter 3 of this Handbook Notice.
- 2.36 We have also amended and reissued the following pieces of non-Handbook guidance:
- FCA's approach to EU non-legislative materials;
  - FCA's approach to non-Handbook guidance where it relates to EU-law or EU-derived law; and
  - Interpretative Guide on completing the FCA's forms after the UK's withdrawal from the EU.



- 2.37 These have been updated for the effect of the Withdrawal Agreement and the transition period, with references to “exit day” and related terms being updated to refer to “IP completion day”.

#### Temporary Transitional Power

- 2.38 To help firms adapt to their new or changed regulatory requirements, the Treasury has given UK financial regulators the power to make transitional provisions in relation to financial services legislation for a temporary period. This is known as the Temporary Transitional Power (TTP).
- 2.39 We intend to apply the Temporary Transitional Power (TTP) on a broad basis from the end of the transition period until 31 March 2022. This means firms and other regulated persons do not generally need to prepare now to meet the changes to their UK regulatory obligations brought about by onshoring. Where the TTP applies, we expect firms to use the duration of the TTP period to prepare for full compliance with the onshored UK regime by 31 March 2022.
- 2.40 There are some areas, where it would not be consistent with our statutory objectives to grant transitional relief, or where it would not otherwise be appropriate to do so. In some key areas, we expect firms and other regulated persons to be preparing to comply with their changed obligations, ready for 11pm on 31 December 2020. We provide more details on this [page](#).



## 3 Consultation feedback

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

### **CP20/4: Quarterly Consultation Paper No 27**

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#### ***The Allocation of the Responsibility for Insurance Distribution Activity or Mortgage Credit Directive Credit Intermediation Activity Instrument 2020***

##### Background

- 3.2 We proposed to update the text of SUP 10C Annex 3D Form A and SUP 10C Annex 7D Form E to align our wording with MIPRU 2.2.1R by removing the following sentences where they exist: "(Note: Yes can only be selected if the individual is applying for a governing function (other than a non-executive director function))"; "(Note: Yes can only be selected if the individual is applying for (SMF1, SMF3, SMF27 or SMF29))".
- 3.3 We proposed to add a notification requirement in MIPRU 2.2.1BR to ensure that firms notify the FCA about their IDD and MCD responsibility allocations. We also proposed to add MIPRU 2.2.1AG to set out who can be allocated the IDD and MCD responsibilities and add guidance to MIPRU 2.2.1R to explain how firms should notify us about allocations of IDD and MCD responsibilities.
- 3.4 Following consultation, we propose to include a transitional provision to clarify what process firms should use to notify us of the IDD and MCD responsibility allocations when they are not submitting a Directory persons report form.

#### ***Reporting of Information about Directory Persons (Miscellaneous Amendments) Instrument 2020***

##### Background

- 3.5 Following the introduction of the Senior Managers and Certification Regime (SM&CR) to dual-regulated and solo-regulated firms, we proposed to introduce a directory of certified and assessed persons. Our proposal involved extending the existing Financial Services (FS) Register to include information on certification employees and other important individuals in firms regulated by the FCA (Directory persons).



- 3.6 Since publication of the final rules on establishing the Directory in March 2019, we have been making changes to our systems and processes to enable information, on Directory persons, to be reported to us and displayed on the FS Register. During this time, a few changes were made to the information firms were being asked to provide on Connect to ensure submissions could be correctly processed.
- 3.7 In March 2020, we consulted on proposals to make changes to SUP 16 Annex 47AR Directory persons report to bring it in line with Connect. We proposed to include:
- an optional 'title' field;
  - a 'commonly used name' field, to be provided if this information is known; and
  - a 'nationality' field, which is mandatory where the firm provides a passport number;
- 3.8 These amendments enable us to validate the information reported to us on Directory persons, so we can match this data against records already held on individuals, and ensure that accurate information is displayed on the FS Register.
- 3.9 We also proposed to rename, on the Directory persons report form, the PRA's Material Risk Taker role category from '[PRA CF] Material Risk Taker' to '[PRA CF] Significant Risk Taker or Material Risk Taker'. This amendment will make clear that selecting this Certification Function on the Directory persons report form is appropriate for individuals who meet the PRA's definitions of being a significant risk taker or a material risk taker or both.
- 3.10 Finally, as the SM&CR rules focus regulatory approval on fewer senior individuals in a firm and to make it easier for firms to report this information to the FCA, we proposed consequential amendments to the manner in which firms can notify us about the IDD and MCD responsibility allocations required by MIPRU 2.2.1R. Therefore, we proposed to add IDD and MCD responsibility boxes to the SUP 16 Annex 47AR Directory persons report.

### Feedback

- 3.11 We received one response to the proposals we consulted on in Chapter 7 of CP20/4. The respondent agreed with our proposals to align SUP 16 Annex 47AR with Connect and to rename the PRA Material Risk Taker category. We received no further feedback on our proposals regarding the allocation of the responsibility for Insurance Distribution Activity or MCD Credit Intermediation Activity.



## Our response

- 3.12 Given the feedback received, we are proceeding in line with our proposals as set out in Chapter 7 of CP20/4. We have made minor changes to the draft rules we consulted on to add further clarity and to include a transitional provision which explains what process firms should use to submit a notification when they are not using a Directory persons report form. We continue to consider that our proposed changes provide clarity to firms and individuals while ensuring that information is collected in a way which enables it to be correctly processed.

## Cost benefit analysis and compatibility statement

- 3.13 As we have made no significant alterations to our proposals, the cost benefit analysis and compatibility statement from the CP have not changed.

## Equality and diversity issues

- 3.14 In CP20/4, we set out our equality and diversity considerations. We said that we did not consider that the proposals adversely impact any of the groups with protected characteristics: ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment. Our analysis on equality and diversity has not changed as we did not receive feedback on this and we are proceeding with the proposals as set out in the CP.

## ***Decision Procedure and Penalties Manual (Office for Professional Body Anti-Money Laundering Supervision) Regulations Instrument 2020***

### Background

- 3.15 In March 2020, we consulted on some minor changes to DEPP. These were to set out the decision-making procedure to be followed under the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (the OPBAS Regulations). The OPBAS Regulations give the FCA powers to supervise professional body anti-money laundering supervisors (“self-regulatory organisations”), in relation to compliance with anti-money laundering and counter terrorist financing requirements.
- 3.16 The OPBAS Regulations give the FCA:
- the power to publish a statement censuring a self-regulatory organisation; and





- the power to make a recommendation to the Treasury that a self-regulatory organisation is removed from Schedule 1 to the Money Laundering, Terrorist Financing and Transfer of Fund (Information on the Payer) Regulations 2017.

3.17 The OPBAS Regulations also describe the procedure we need to follow to exercise these new powers over a self-regulatory organisation.

3.18 We proposed changes to DEPP Annex 2 to set out the procedure for decisions made under Regulations 16 and 17 of the OPBAS Regulations. The decision maker will be the Regulatory Decisions Committee or FCA Staff under Executive Procedures.

#### Feedback

3.19 We received no responses to our consultation.

#### Our response

3.20 We are making no alterations to our proposal as we consider that the amendments will provide transparency on our decision-making procedures.

#### Cost benefit analysis and compatibility statement

3.21 The cost benefit analysis and compatibility statement from the CP has not changed because we have made no alterations following the consultation process.

#### Equality and diversity issues

3.22 We continue to believe that the changes do not give rise to discrimination as stated in the CP.

### ***The Consumer Credit (High Net Worth Exemption) Instrument 2020***

#### Background

3.23 Under articles 60H and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, credit and hire agreements with high net worth individuals are generally exempt from regulation, subject to certain conditions. One of these conditions is that a statement of the individual's income or assets must be made and signed in accordance with FCA rules.

3.24 The relevant rules are set out in Appendix 1 to CONC. CONC App 1.4.3R says that the statement must be signed by the lender or owner or



by an accountant who is a member of any of the bodies listed or of a professional body for accountants established in a jurisdiction outside the United Kingdom.

- 3.25 In CP20/4, we consulted on adding the Institute of Financial Accountants (IFA) to the list of bodies specified in CONC App 1.4.3R(2).

#### Feedback

- 3.26 We received one response, which agreed with our proposal to add the IFA to the list.

#### Our response

- 3.27 The rule amendment we proposed in CP20/4 remains unchanged.

#### Cost benefit analysis and compatibility statement

- 3.28 We are satisfied that this amendment is compatible with our objectives and regulatory principles. The amendment advances our operational objectives of securing an appropriate degree of consumer protection and promoting market integrity, and helps to promote effective competition in the interests of consumers. We are also satisfied that the proposed amendment either does not increase costs to firms or consumers, or that any increase will be of minimal significance.

#### Equality and diversity issues

- 3.29 We continue to believe that the amendment does not raise concerns regarding equality and diversity, or adversely impact any of the groups with protected characteristics under the Equality Act 2010.

### ***Financial Crime Guide (Amendment No 4) Instrument 2020***

#### Background

- 3.30 On 10 January 2020, the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (SI 2019/1511) came into force, which amended the UK's Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs)<sup>1</sup>. These changes follow Treasury's (HMT) consultation and subsequent Policy Statement on the transposition of the EU's 5th Money Laundering Directive (5MLD) and implementation of additional international recommendations set by the Financial Action Task Force.

- 3.31 As a result, we proposed a small number of consequential changes to our guidance on money laundering and terrorist financing as set out in the Financial Crime Guide (FCG) to align with the amendments to the MLRs. The changes are not intended to represent an exhaustive list of



all the amendments to the MLRs or set out substantive guidance on the amendments or sector specific guidance.

- 3.32 We expect firms to adopt a risk-based approach to anti-money laundering which means a focus on outcomes. Firms that apply a risk-based approach will focus their anti-money laundering resources where they will have the biggest impact. Firms must have in place systems and controls to identify, assess, monitor and manage money laundering risk. These systems and controls must be comprehensive to reflect their obligations as applicable under the MLRs and be proportionate to the nature, scale and complexity of a firm's activities. They should help firms identify the risk associated with different types of customers, and inform the level of customer due diligence measures firms apply and their decision about accepting or maintaining individual business relationships.
- 3.33 The FCG consolidates our guidance on financial crime and aims to enhance firms' understanding of our expectations of systems and controls in this area. The FCG provides practical assistance and information for firms of all sizes on actions they can take to counter the risk that they might be used to further financial crime. The FCG changes will be of interest to firms who are subject to the money laundering provisions in SYSC 3.2.6R – 3.2.6G, SYSC 6.1.1R and SYSC 6.3 or otherwise for whom we are the supervisory authority under the MLRs.
- 3.34 The changes to the FCG reflect the following amendments to the MLRs:
- Customer due diligence (CDD) (Regulation 27(8)) – CDD measures to apply when contacting an existing customer as part of any legal duty in the course of a calendar year for the purpose of reviewing information which is relevant to a customer's risk assessment, and relates to beneficial ownership of a customer. CDD measures also apply when contacting an existing customer to fulfil any duty under the International Tax Compliance Regulations 2015;
  - CDD measures (Regulation 28(3A)) – reasonable steps must be taken to understand the ownership and control structure of a customer where the customer is a legal person, trust, company, foundation or similar legal arrangement;
  - CDD measures (Regulation 28(8)) – relates to record keeping of all actions taken in circumstances where all possible means of identifying the beneficial owner of a body corporate have been taken and the beneficial owner cannot be identified satisfactorily or at all. Reasonable measures must also be taken to verify the identity of the senior person in the body corporate responsible for managing it and to keep records of all actions taken to do so and any difficulties encountered in doing so;



- CDD measures (Regulation 28(19)) – this provision allows for an electronic identification process as a reliable source for the purposes of CDD verification where that process is independent of the person whose identity is being verified, secure from fraud and misuse and capable of providing an appropriate level of assurance that the person claiming a particular identity is in fact that person with that identity;
- Reporting discrepancies in registers (Regulation 30A). This is a new requirement on firms to collect proof of company registration before establishing a business relationship with certain legal entities as defined in Regulation 30A(1) including a company, a limited liability partnership or eligible Scottish partnership. There is also a requirement on firms to report to Companies House any discrepancies relating to the beneficial ownership of the customer between information it collects when seeking such proof and that which otherwise becomes available in the course of carrying out its obligations under the MLRs;
- Enhanced due diligence measures (EDD) (Regulation 33(1)(b) and Regulation 33(3A)) – specified EDD measures which must be taken for relevant transactions (meaning transaction where CDD measures apply under Regulation 27) where either of the parties to the transaction is established in a high-risk third country. These include EDD measures to obtain additional information on the customer, beneficial owner, the intended nature of the business relationship and reasons for the transactions as well as enhanced monitoring;
- EDD measures (Regulation 33(1)(f) and 33(4)) – specified EDD measures or transactions which are complex or unusually large, there is an unusual pattern of transactions, or the transaction(s) have no apparent economic purpose or legal purpose. The EDD measures must include, as far as reasonably possible, examining the background and purpose of the transaction and increasing the degree and nature of monitoring of the business relationship in which the transaction is made to determine whether the transaction or relationship appear to be suspicious;
- EDD measures (Regulation 33(4A)) – where the customer is a beneficiary of a life insurance policy, is a legal person or legal arrangement and presents a high risk of money laundering or terrorist financing for any other reason, credit or financial institutions must take reasonable measures to identify and verify the identity of a beneficiary of a life insurance policy before any payment is made under the policy; and
- EDD measures for high risk factors (Regulation 33(6)) – requires firms to include new additional high-risk factors when assessing the need for EDD.



## Feedback

- 3.35 We received one response to the consultation which sought further guidance and interpretation on the amendments to the Money Laundering Regulations.

## Our response

- 3.36 We are not making alternations to the proposed changes to the FCG as these are consequential changes to reflect the amendments to the (MLRs) and are not intended to set out substantive guidance.

## Cost benefit analysis and compatibility statement

- 3.37 We are not under a statutory obligation to carry out a cost benefit analysis (CBA) when amending guidance. However, we have committed to consider conducting and publishing an analysis of the costs and benefits of any guidance that is likely to result in firms or consumers incurring significant costs that were not formally considered during consultation on rules or principles that the guidance relates to. In this case, changes to the guidance reflect amendments to the MLRs we consider to be consequential and will have been subject to Treasury's consultation process.

## Equality and diversity issues

- 3.38 Some of the guidance in the FCG reflect provisions in amendments to the MLRs on classification of certain jurisdictions as 'high risk' and the requirement to carry out EDD gives rise to possible equality and diversity issues. However, we consider that such classifications are necessary and justifiable though we urge firms to consider whether the approaches they have adopted to manage their risk are proportionate and whether there are steps they can take to mitigate any negative effects on individuals from the jurisdictions in question.

## **CP19/27: Quarterly Consultation Paper No 25**

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### ***European Union Withdrawal Instruments 2020***

#### Background

- 3.39 In Chapter 7 ('Further Brexit-related changes to Handbook & BTS following extension of Article 50') of Quarterly Consultation No 25 (CP19/27), we asked:
- Q7.1 Do you have any comments on the proposed Handbook amendments?



- Q7.2 Do you have any comments on the proposed BTS amendments?
- Q7.3 Do you have any comments on our TTP approach, including on its application to the further changes proposed in this chapter, or its application to the changes in relevant draft statutory instruments that have been laid or published since 29 March 2019 (Annex 1 - Part C)?

### Feedback and our response

3.40 We received no responses to Q7.1 or Q7.3.

3.41 Application of rules for overdrafts to firms subject to the temporary permission regime (TPR): In CP19/27, we proposed applying the draft rules contained in CP19/18 on Overdraft Pricing Remedies and Competition Remedies to any firm subject to the TPR. Our rules were finalised in PS19/25. The final rules made in PS19/25 were subject to minor amendment from the draft rules detailed in CP19/18. We have therefore updated our final rules in the Exiting the European Union: Handbook (Amendments) Instrument 2020 to reflect this change. The effect of the rules is unchanged.

3.42 In CP19/27, we noted that Article 43(8) of the UK Securitisation Regulation makes transitional provisions for reporting securitisations under Article 7, effective until BTS have been made under Article 7(3). These transitional provisions refer to Commission Delegated Regulation (EU) 2015/3. We proposed to reinstate Commission Delegated Regulation (EU) 2015/3 for the purposes of addressing the transitional provisions in Article 43(8) of the UK Securitisation Regulation, with changes to fix Brexit-related deficiencies. We are going ahead with our proposal and have published the instrument required for these purposes.

### Cost benefit analysis and compatibility statement

3.43 Under the powers to address deficiencies in our rules and BTS in the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 there is no obligation to conduct a cost benefit analysis (CBA). We have therefore not produced a CBA for the proposed amendments to rules and BTS where we have used those powers.

3.44 For the rule changes where we used our powers in the Financial Services and Markets Act 2000 ('FSMA'), the cost benefit analysis and compatibility statement set out in Chapter 7 of CP19/27 has not changed because we have made no material alterations following the consultation process.

### Equality and diversity issues

3.45 We believe these changes do not give rise to any equality and diversity issues nor do they give rise to unfair discrimination against protected groups, as set out in the consultation paper.

## CP19/33: Quarterly Consultation Paper No 26

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### ***European Union Withdrawal Instruments 2020***

#### Background

- 3.46 Following the extension of Article 50 to 31 January 2020, we also consulted in Chapter 8 of Quarterly Consultation No 26 (CP19/33) 'Further Brexit-related changes to Handbook & BTS'. We asked:
- Q8.1 Do you have any comments on the proposed Handbook amendments?
  - Q8.2 Do you have any comments on the proposed BTS amendments?

#### Feedback and our response

- 3.47 We received no responses to Q8.1. For Q8.2, we received one response in support of the proposal relating to the European Single Electronic Format (ESEF) BTS.

#### Cost benefit analysis and compatibility statement

- 3.48 Under the powers to address deficiencies in our rules and BTS in the Financial Regulators' Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018 there is no obligation to conduct a cost benefit analysis (CBA). We have therefore not produced a CBA for the proposed amendments to rules and BTS where we have used those powers.
- 3.49 For the rule changes where we used our powers in the Financial Services and Markets Act 2000 ('FSMA'), the cost benefit analysis and compatibility statement set out in Chapter 8 of CP19/33 has not changed because we have made no material alterations following the consultation process.

#### Equality and diversity issues

- 3.50 We believe these changes do not give rise to any equality and diversity issues nor do they give rise to unfair discrimination against protected groups, as set out in the consultation paper.



## 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 FCA 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 FCA 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 1.6 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 80

This Handbook Notice describes the changes to the FCA Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 17 September and 30 September 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

Financial Conduct Authority

12 Endeavour Square

London E20 1JN

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