

Handbook Notice No 84

January 2021

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1 Overview

Legislative changes

- 1.1 On 22 December 2020, the Board of the Financial Conduct Authority made the relevant changes to the FCA Handbook as set out in the instruments listed below.

CP	Title of instrument	Instrument No	Changes effective
<u>CP20/18</u>	Financial Conduct Authority Technical Standards (Capital Requirements Directive and Regulation) (EU Exit) (No 2) Instrument 2020	FCA 2020/88	23/12/2020; IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP20/18</u>	Technical Standards (Miscellaneous Amendments) (No 2) (EU Exit) Instrument 2020	FCA 2020/89	23/12/2020; IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020

- 1.2 On 28 January 2021, the Board of the Financial Conduct Authority made the relevant changes to the FCA Handbook as set out in the instruments listed below.

CP	Title of instrument	Instrument No	Changes effective
<u>N/A</u>	Fees (Trade Repositories and Securitisation Repositories) Instrument 2021	FCA 2021/1	29/01/2021
<u>CP20/4</u>	Markets in Financial Instruments (Tick Sizes) Instrument 2021	FCA 2021/2	29/01/2021
<u>CP20/5</u>	Listing Rules (Open-ended Investment Companies) Instrument 2021	FCA 2021/3	04/02/2022



Summary of changes

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

Feedback on responses to consultations

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

FCA Board dates for 2020 and 2021

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

February	25	2021
March	25	2021
April	29	2021
May	27	2021
June	24	2021
July	22	2021
September	30	2021
October	21	2021
November	25	2021
December	16	2021



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 22 December 2020 and 28 January 2021. 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>.

Financial Conduct Authority Technical Standards (Capital Requirements Directive and Regulation) (EU Exit) (No 2) Instrument 2020 (FCA 2020/88)

- 2.2 Following consultation in Consultation Paper (CP) [CP20/18](#), the FCA Board has made changes to the onshored Binding Technical Standards (BTSS) under the Capital Requirements Regulation (CRR) and Fourth Capital Requirements Directive (CRD).
- 2.3 In CP20/18, we consulted on the FCA Technical Standards Capital Requirements Directive and Regulation (EU Exit) (No. 2) Instrument. The No.2 Instrument contained a series of amendments to the FCA versions of certain onshored BTSS under the CRR and CRD. These amendments were additional to the amendments to CRR and CRD BTSS contained in the FCA Technical Standards (Capital Requirements Directive and Regulation) (EU Exit) Instrument 2019 (the "No. 1 Instrument").
- 2.4 After further discussions with the PRA, we decided it would be simpler for firms if we repeal the No. 1 Instrument and use the No. 2 Instrument to mirror the amendments made by the PRA to the PRA versions of shared CRR and CRD BTSS. This achieves the same substantive policy outcomes that we proposed in CP20/18, but also ensures consistency with the equivalent PRA amendments. This will also ensure that the adaptations made by the PRA to those BTSS to reflect the EEA Agreement apply to the FCA versions of those texts. The No. 2 Instrument operates by cross-reference to the amendments made in the PRA's Technical Standards (Capital Requirements) (EU Exit) (No. 3) Instrument 2019, as amended by the PRA's Technical Standards (Capital Requirements) (EU Exit) (No. 4) Instrument 2020. Firms should therefore refer to those [PRA instruments](#) to identify the amendments made to the FCA versions of the shared CRR and CRD BTSS.
- 2.5 We did not receive any feedback on our proposals in CP20/18. The final No.2 Instrument therefore implements the same substantive outcomes we outlined in the consultation, but using the approach set out above



of mirroring the PRA's equivalent amendments. Paragraph H of the instrument, which repealed the No. 1 Instrument, came into force on 23 December 2020. The remainder of the instrument came into force on IP completion day, immediately after the PRA's Technical Standards (Capital Requirements) (EU Exit) (No. 3) Instrument 2020 (as amended by the PRA's Technical Standards (Capital Requirements) (EU Exit) (No. 4) Instrument 2020) came into force.

Technical Standards (Miscellaneous Amendments) (No 2) (EU Exit) Instrument 2020 (FCA 2020/89)

- 2.6 This instrument corrects some typographical errors in the EU Exit ("IP Completion Day" and Time-Related Amendments) Instrument 2020 (FCA 2020/60) and the Technical Standards (Packaged Retail and Insurance-Based Investment Products Regulation) (EU Exit) Instrument 2019 (FCA 2019/50). Further to FCA 2020/60, it also amends references to "exit day" and related time periods in the Technical Standards (European Market Infrastructure) (EU Exit) (No 2) Instrument 2019 (FCA 2019/62) and the Technical Standards (European Market Infrastructure) (EU Exit) (No 4) Instrument 2019 (FCA 2019/66). This instrument was made without consultation.
- 2.7 This instrument came into force on 23 December 2020, save as provided for in paragraph D of the cover sheet:
- (1) Annex D to this instrument came into force on IP completion day, as defined in the European Union (Withdrawal Agreement) Act 2020, immediately after the Technical Standards (Packaged Retail and Insurance-Based Investment Products Regulation) (EU Exit) Instrument 2019 (FCA 2019/50).
 - (2) Annex E to this instrument came into force on IP completion day, as defined in the European Union (Withdrawal Agreement) Act 2020, immediately after the Technical Standards (Short Selling Regulation) (EU Exit) Instrument 2019 (FCA 2019/54) come into force.

Fees (Trade Repositories and Securitisation Repositories) Instrument 2021 (FCA 2021/1)

- 2.8 In response to a need to remake Glossary definitions relating to trade repositories and securitisation repositories after the end of the Transition Period, the FCA Board has made changes to the FCA Handbook Glossary of definitions.
- 2.9 In summary, this instrument makes changes to the Handbook to enable any future applications to become trade repositories, or securitisation repositories to be charged and the rules to which the Glossary definitions refer to operate effectively.



2.10 This instrument comes into force on 29 January 2021.

Markets in Financial Instruments (Tick Sizes) Instrument 2021 (FCA 2021/2)

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

REC 2.5.1
MAR 5.3A.14AR
MAR 5A.5.14AR

2.12 In summary, this instrument makes changes to the Handbook to implement the EU Investment Firms Directive, ([IFD](#)) and its amendment to the [Markets in Financial Instruments Directive](#) (MiFID II) tick size regime. We have amended our rules to set out that the tick size regime shall not prevent trading venues from matching large-in-scale orders at mid-point, within current bid and offer prices.

2.13 This instrument comes into force on 29 January 2021. Feedback has been published in Chapter 3 of this Handbook Notice.

Listing Rules (Open-ended Investment Companies) Instrument 2021 (FCA 2021/3)

2.14 Following consultation in Consultation Paper (CP) [CP20/5](#), the FCA Board has made changes to the FCA Handbook sections listed below:

Glossary of definitions
FEES 3 Annex 12R
LR 1.5, 1.6, 4.1, 5.2, 5.4A, 5.6, 8.2, 8.4, 9.3 and 14.1.

2.15 This instrument adds the following new section to the Handbook: LR 16A.

2.16 In summary, this instrument makes changes to the Handbook to create a more proportionate listing regime for open-ended investment companies (OEICs) in standard listing by dis-applying or amending existing requirements that:

- are disproportionate because they prescribe transparency and safeguards, including rights to shareholders, that are already present in underlying funds regimes under which the OEIC is already authorised or recognised; or
- are not relevant or are inoperable for OEICs because they don't take account of the specific features of OEICs' business models or structures.

2.17 This instrument comes into force on 4 January 2022. Feedback has been published in Chapter 3 of this Handbook Notice.



3 Consultation feedback

CP20/4: Amendments to MiFID II relating to the tick size regime

Background

3.1 In Chapter 8 of Quarterly Consultation Paper No 27 (CP20/4) we asked:

- Q8.1: Do you have any comments on our proposed amendments to REC 2.5.1, MAR 5.3A.14AR and MAR 5A.5.14AR?
- Q8.2: Do you have any comments on how trading on trading venues and their members and participants might be affected by the amendment to the MiFID tick-size regime? Could you also provide us with an indication of what the cost implications might be?

Feedback

3.2 We received one response to Chapter 8 of CP20/4.

3.3 The respondent did not support the strict implementation of the proposed amendments. By strict interpretation it meant an application of the new tick size regime that prevents all forms of execution at a price which is off-tick, for example mid-price matching. They felt that this would likely lead to harmful consequences for trading venue customers that currently benefit from mid-point matching within current bid and offer prices below the large-in-scale (LIS) threshold.

3.4 The respondent highlighted implications on liquidity, investor choice, efficacy of trade execution, the ability to achieve best execution and price slippage.

Our response

3.5 We note the consultation response. The proposals, accompanied with FCA supervision, should continue to allow UK markets to function with appropriate integrity and orderliness.

3.6 We are therefore proceeding in line with our proposals as set out in Chapter 8 of CP20/4.



Cost benefit analysis and compatibility statement

- 3.7 The Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
- 3.8 As we have made no significant alterations to our proposals, the cost benefit analysis and compatibility statement from Chapter 8 of CP20/4 have not changed.

Equality and diversity issues

- 3.9 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 Chapter 8 of CP20/4.

CP20/5: Open-ended Investment Companies – Proposals for a more proportionate listing regime

Background

- 3.10 Discussion Paper DP17/2 in 2017 sought views on our existing approach to requiring listed open-ended investment companies (OEICs) – a common legal form of 'exchange traded fund' (ETF) – to be subject to our premium listing standards. The Discussion Paper asked whether this securities category should be repositioned in the standard listing segment and, if so, whether any individual elements of the premium listing regime should be retained. Following feedback to DP17/2 that suggested that the standards listing regime was more appropriate and should apply, we made a commitment in the 2019/20 Business Plan to consult on changes for listed OEICs.
- 3.11 We published CP20/5 in March 2020. We set out proposals to move listed OEICs from the premium listing segment (as provided for in Chapter 16 of our Listing Rules (LRs)) to the standard listing segment. The standard-listing regime is based on minimum EU directive standards and primarily focusses on transparency. The premium-listing regime sets requirements, which exceed standard listing, including greater transparency and rights for shareholders.
- 3.12 In CP20/5 we proposed to change the Listing Rules applicable to OEICs to dis-apply or amend existing requirements that are either:



- disproportionate because they prescribe transparency and safeguards, including rights to shareholders, that are already present in underlying funds regimes under which the OEIC is already authorised or recognised; or
- not relevant or are inoperable for OEICs because they don't take account of the specific features of OEICs' business models or structures.

3.13 We proposed a new Chapter – LR 16A – setting out requirements for OEICs that are consistent with standard listing, to replace LR 16 in its entirety. We also proposed consequential changes to align our listing requirements for OEICs more closely with standard listing for shares in LR14 Standard listing (shares).

3.14 To ensure consistency and clarity on our Listing Rules requirements for OEICs, we proposed that all OEICs that already have a premium listing will automatically become standard listed under the amended provisions in new LR 16A when the final rules come into force. We suggested a three-month period from publication of the rules before they took effect to allow OEICs time to prepare.

3.15 In a series of questions, we asked whether respondents agreed with the overall approach and some of the specific changes proposed consistent with our intended policy outcome, and sought views on the timing for applying the rules changes. The full list of questions can be found in Annex 1 of CP20/5.

3.16 Our consultation closed on 1 October 2020, having been extended from the original closing date to allow more time for respondents to comment due to the impact and market disruption caused by the coronavirus pandemic.

Feedback and our response

3.17 We received three substantive responses. Two responses represented trade associations, while one response was from an asset manager that has a listed OEIC. All three were supportive of our overall approach to moving listed OEICs to a set of rules based on our standard listing regime, subject to a limited number of suggestions. Therefore, the made instrument does not significantly differ from the draft in CP20/5 other than the timing of when the rules will come into force (see below).

Implementation timing

3.18 One respondent requested a reasonable transition period before re-classifying currently listed ETFs to enable OEICs with cross-listings to engage with other jurisdictions where UK premium listing was made a condition of that listing. This is to ensure a firm can retain overseas listings when their ETF moves to standard listing in the UK, and does



not risk funds being de-listed by the overseas exchange. The respondent proposed 12 months as a 'reasonable' time frame, versus the 3-month period we consulted on. In response to this feedback, we have decided to bring the final rules into force on 4 January 2022, which provides just under 12 months' notice and aligns to the first trading day of the next calendar year. We consider this should give listed OEICs sufficient time to address cross-listing issues with any relevant overseas exchanges.

Related party transaction rules

- 3.19 As part of the change to move listed OEICs from premium listed to standard listed requirements, we proposed to dis-apply rules concerning 'related party transactions' (mainly detailed in LR 11.1.5 R). These rules aim to prevent 'related parties' (i.e. certain parties connected to the issuer as specified in LR 11.1.4R) from using their influence to extract value from a company, or creating the impression of doing so, to the detriment of its shareholders. It requires additional shareholder engagement and approval by the issuer's sponsor in certain circumstances, providing additional protections.
- 3.20 One respondent recommended that related parties rules are retained for listed OEICs under our new LR 16A Chapter and that the definition of 'related party' is amended to align with wording in LR 15.5.4 for closed-ended investment companies. However, as we stated in CP20/5, while related party rules offer valuable safeguards to investors in commercial companies and closed-ended investment funds, we consider OEICs are already subject to other rules that should ensure any conflicts of interest are managed properly.
- 3.21 Investment managers of FCA-authorized OEICs are subject to either the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive-derived conflicts rules in the Handbook, or similar rules derived from the Alternative Investment Fund Managers Directive (AIFMD) for alternative funds. For example, rules concerning conflicts of interests are contained in Chapter 10 of our Senior Management Arrangements, Systems and Controls sourcebook ([SYSC 10](#)), while broader obligations on UK-authorized funds are set out in our Collective Investment Scheme sourcebook ([COLL](#)). We think these requirements adequately mitigate the likely risks arising from related party transactions, and all OEICs that are currently listed are subject to rules implementing the UCITS Directive.
- 3.22 As noted in CP20/5, we also maintain the view that, in practice, OEICs are unlikely to undertake transactions that would be classed as related party transactions under the Listing Rules and we have not observed any such transactions in the last 10 years. However, we will monitor UK-authorized funds for any evidence of such transactions and potential harm to investors in ETFs as part of our general supervisory activities. For EEA-authorized funds post-implementation period, we will rely on the



relevant EEA member state regulator to supervise those funds, and so would engage with a relevant regulator if we detected concerns.

- 3.23 For these reasons, we continue to consider it disproportionate to overlay the related party rules to listed OEICs. We have therefore decided to proceed to finalise our rules in this respect as consulted on in CP20/5.
- 3.24 Aligning certain requirements for listed closed-ended investment companies with our amended approach to listed OEICs: Finally, one respondent argued that the requirement to exercise operational control over the business it carries on as its main activity should be dis-applied for closed-ended investment companies listed under LR 15 as well as for OEICs. Since such a change was not the subject of our consultation in CP20/5, we will not proceed with any rule change to this effect. While we recognise there may be an argument for such a change, we would want to explore the issue in further detail given the different legal structure of closed-ended companies.
- 3.25 We are open to considering this issue in due course, although prioritisation of this work will depend on evidence of the scale of harm and costs of the existing rules for close-ended investment companies, and the benefit of removing it. We welcome further industry input on these points.

Cost benefit analysis and compatibility statement

- 3.26 These rule changes are made using our powers in the Financial Services and Markets Act 2000 ('FSMA'). The cost benefit analysis and compatibility statement set out CP20/5 has not changed because we have made no material alterations following the consultation process.
- 3.27 We do not consider that allowing a longer period before the rules apply will have any material implications for either the costs or benefits of our measures. One off costs will remain the same, and are simply deferred. Ongoing costs associated with remaining premium listed for slightly longer will arise versus moving to standard listing sooner, however we consider these to be of minimal significance for the OEICs affected. The longer period will help OEICs with cross-listings manage the commercial implications of the change by having more time to negotiate with overseas exchanges to retain their listing.

Equality and diversity issues

- 3.28 We have considered whether the change to the proposed in force date gives rise to any equality and diversity issues such that we should reconsider our initial equality impact assessment, and we have concluded that it does not. Overall, we do not believe that rule changes being proposed give rise to unfair discrimination against protected groups, as set out in the consultation paper.



4 Additional Information

Making corrections

- 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

- 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/instrument>. A print version of the Handbook is available from The Stationery Office's (TSO) shop at <https://www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/>.
- 4.6 Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website.

Obligation to publish feedback

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

- 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 Handbook.Feedback@fca.org.uk (or see contact details at the front of this Notice).

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This Handbook Notice describes the changes to the FCA Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 22 December 2020 and 28 January 2021.

It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

General comments and queries on the Handbook can be addressed to:

Ayesha Dayaji

Tel: 020 7066 0575

Email: Ayesha.Dayaji@fca.org.uk

However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Contact Centre:

Tel: 0300 500 0597

Fax: 0207 066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre

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