

# Handbook Notice No 83

December 2020

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# 1 Overview

## Legislative changes

- 1.1 On 7 December, 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>CP20/8</u>	Conduct of Business (Speculative Illiquid Securities) Instrument 2020	FCA 2020/74	11/12/2020; IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020

- 1.2 On 10 December, 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>	Exiting the European Union: Handbook (Amendments) (No 3) Instrument 2020	FCA 2020/78	01/01/2021; 06/01/2021; 01/02/2021; 01/07/2021; IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP20/18</u>	Exiting the European Union: SMCR and APR (Amendments) (No 2) Instrument 2020	FCA 2020/79	11/12/2020; IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020

<u>CP20/18</u>	Technical Standards (Specifying the Information and Details of a Securitisation to be Made Available by the Originator, Sponsor and SSPE) (EU Exit) Instrument 2020	FCA 2020/80	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP20/18</u>	Technical Standards (Specifying the Information to be Provided to Comply with the STS Notification Requirements) (EU Exit) Instrument 2020	FCA 2020/81	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP20/18</u>	Technical Standards (Format of Applications for Registration of Securitisation Repositories) Instrument 2020	FCA 2020/82	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP20/18</u>	Technical Standards (Information to be Provided in the Application for Registration of a Securitisation Repository) Instrument 2020	FCA 2020/83	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP20/18</u>	Technical Standards (Securitisation Repository Operational Standards for Data Collection, Aggregation, Comparison, Access and Verification of Completeness and Consistency) Instrument 2020	FCA 2020/84	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>CP20/18</u>	Technical Standards (Supplementing EMIR with regard to the Clearing Obligation) (EU Exit) Instrument 2020	FCA 2020/85	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>N/A</u>	Technical Standards (European Long-Term Investment Fund Regulation) (EU Exit) Instrument 2020	FCA 2020/86	IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020
<u>N/A</u>	Technical Standards (Miscellaneous Amendments) (EU Exit) Instrument 2020	FCA 2020/87	IP completion day as defined in the European Union (Withdrawal Agreement) Act 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 and 2021

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

January	28	2021
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 FCA Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 7 December 2020 and 10 December 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 (Speculative Illiquid Securities) Instrument 2020***

- 2.2 Following consultation in Consultation Paper [CP20/8](#), the FCA Board has made changes to the FCA Handbook sections listed below:

#### **Glossary**

**COBS 2.2, 4.7, 4.12, 9.3, 9A.2, 10.1 and 14.3**

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

#### **COBS 4.14**

- 2.4 In summary, this instrument makes changes to the FCA Handbook to make permanent the temporary ban on the mass-marketing of speculative illiquid securities (SIS) to retail investors. It also extends the ban to certain listed debentures which are not regularly traded. Investment in these products can lead to unexpected and significant losses for retail investors. Therefore, these changes help to prevent harm to consumers from investing in SISs, which are higher-risk, complex products and are not suitable for most retail investors.

- 2.5 This instrument comes into force on 11 December and IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020. Further information has been published in a separate [Policy Statement](#).

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

- 2.6 The FCA Board has made changes to the FCA Handbook via the instruments listed in Chapter 1 of this Notice. The FCA Board has additionally made instruments amending Binding Technical Standards (BTS) to ensure the BTS operate effectively in UK law.
- 2.7 We have proceeded to make the 'Exiting the European Union: Handbook (Amendments) (No 3) Instrument 2020' and the 'Exiting the European



Union: SMCR and APR (Amendments) (No 2) Instrument 2020' consulted on in CP20/18.

2.8 We have proceeded with the following instruments making amendments to BTS largely as proposed and consulted on in CP20/18:

- Technical Standards (Specifying the Information and the Details of a Securitisation to be Made Available by the Originator, Sponsor and SSPE) (EU Exit) Instrument 2020
- Technical Standards (Specifying the Information to be Provided to Comply with the STS Notifications Requirements) (EU Exit) Instrument 2020
- Technical Standards (Format of Applications for Registration of Securitisation Repositories) Instrument 2020
- Technical Standards (Information to be Provided in the Application for Registration of a Securitisation Repository) Instrument 2020
- Technical Standards (Securitisation Repository Operational Standards for Data Collection, Aggregation, Comparison, Access and Verification of Completeness and Consistency) Instrument 2020
- Technical Standards (Supplementing EMIR with Regard to the Clearing Obligation) (EU Exit) Instrument 2020

2.9 We have made two further instruments:

- Technical Standards (European Long-Term Investment Fund Regulation) (EU Exit) Instrument 2020
- Technical Standards (Miscellaneous Amendments) (EU Exit) Instrument 2020

### **Summary**

2.10 The instruments listed in Chapter 1 make changes to the FCA Handbook and BTS for which we are responsible, jointly with the PRA or the Bank of England in some cases. These changes ensure a functioning regulatory and legal framework for financial services will be in place after the transition period.

### ***Exiting the European Union: Handbook (Amendments) (No 3) Instrument 2020***

2.11 Recent changes to the Collective Investment Schemes sourcebook (COLL) have extended the categories of persons who can act as an approved counterparty to an Undertakings for Collective Investment in



Transferable Securities (UCITS) scheme or a non-UCITS retail scheme (NURS) that enters into an over-the-counter (OTC) derivative contract. These categories include persons who qualify by reason of EU legislation, including authorisation or (for non-EEA central clearing counterparties (CCPs)) recognition under the European Markets Infrastructure Regulation (EMIR).

- 2.12 Persons who qualify as approved counterparties in reliance on their EU status will cease to be approved after Implementation Period (IP) completion day, in line with the general approach to onshoring the FCA Handbook. CCPs in some EU Member States will remain approved under COLL 5.2.23R(1)(e) because those jurisdictions have been assessed by the Financial Stability Board as meeting the internationally-agreed G20 standards. Those non-UK CCPs that stand to lose their approved counterparty status will regain it if they become approved or recognised under the onshored version of EMIR.
- 2.13 To avoid any disruption of OTC derivative contracts that are open as at IP completion day, and to allow both fund managers and counterparties time to adjust to the new situation, we are introducing a transitional provision. Any CCP or other person that, because of an EU authorisation or recognition, is an approved counterparty on IP completion day will retain that status for two years afterwards.
- 2.14 We are also introducing other changes through this instrument:
- a provision to GEN (Annex A), which will direct firms in the temporary permission regime to rules applied to them after IP completion day;
  - correcting a cross-reference in MIPRU (Annex B);
  - consequential amendments in Annex C (COBS) and Annex D (PROD) to the investment pathway requirements to fix deficiencies arising from the UK's exit from the EU and include changes such as replacing references to EU regulations with references to UK regulations;
  - inserted new application provisions in Annex C (COBS) and Annex D (PROD) since consultation. These are additional onshoring amendments to explicitly apply the requirements in relation to investment pathway to Temporary Permission firms and Gibraltar-based firms. We have added cross-references to the rules applying to Temporary Permission firms in GEN 2.2.35AG (Annex A). These provisions come into force on 1 February 2021; and
  - amended PERG 2.7 guidance to bring it in line with the onshored Regulatory Activities Order (RAO) as it relates to the exemptions to the regulated credit perimeter permitted for agreements that would previously have been subject to the Mortgage Credit Directive.



### ***Exiting the European Union: SMCR and APR (Amendments) (No 2) Instrument 2020***

- 2.15 This brings together all the instruments and draft instruments published in 2019 setting out the effect of the UK leaving the EU on the parts of the Handbook dealing with the Senior Managers & Certification Regime (SM&CR) and the Approved Persons Regime (APR).
- 2.16 This means that we are revoking the Exiting the European Union: SMCR and APR (Amendments) Instrument 2019 (FCA 2019/30) and not making the Exiting the European Union: SMCR and APR (Amendments) (Solo-Regulated Firms) Instrument 2019 (which was included in PS19/5: Brexit Policy Statement: Feedback on CP18/28, CP18/29, CP18/34, CP18/36 and CP19/2) or the Exiting the European Union: SMCR and APR (Amendments) (No 2) Instrument 2019 as contained in CP19/27: Quarterly Consultation Paper No 25 and in CP19/33: Quarterly Consultation No 26.
- 2.17 The instrument reproduces the material in the previous instruments, but has been amended to reflect the changes to the Handbook material about SM&CR and the APR in 2019 and 2020. It also takes in to account the fact that the commencement of SM&CR for solo-regulated firms began before EU law ceases to apply in the UK. There have not been any substantial changes from the consultation version and the cost benefit analysis published in CP 20/18 still applies.

### ***Securitisation technical standards***

- 2.18 In September 2020, EU technical standards under the Securitisation Regulation covering disclosure, securitisation repositories, STS notifications and margining came into effect.
- 2.19 There are 6 instruments amending 8 securitisation BTS in total. We have made changes to amend deficiencies arising from the UK's exit from the EU. The more significant changes have been in 2 BTS concerning disclosure requirements which are jointly owned by us and the PRA, and specific attention was drawn to these proposals in September's consultation paper.
- 2.20 Additionally, we had proposed, in our September consultation paper, to add risk free rates to the list of benchmarks available throughout the templates. We are not proceeding with that change at this point in time.

### ***Technical Standards (European Long-Term Investment Fund Regulation) (EU Exit) Instrument 2020***

- 2.21 The European Long-Term Investment Fund (ELTIF) Regulation has been onshored in secondary legislation; the terminology has been changed so that UK funds established under the Regulation will be known as Long-





Term Investment Funds (LTIFs). The present instrument makes changes to the Technical Standards to refer to LTIFs instead of ELTIFs.

### ***Technical Standards (Miscellaneous Amendments) (EU Exit) Instrument 2020***

- 2.22 As set out in paragraphs 4.37 and 4.38 of CP 20/18, the EUWA provides that the Annexes to the EEA Agreement, as they have effect in EU law immediately before IP completion day, form part of UK law on and after IP completion day – to the extent that they refer to or adapt any EU regulation, EU decision or EU tertiary legislation which is retained by section 3. The EUWA also provides that the Protocol 1 to the EEA Agreement, as it has effect in EU law immediately before IP completion day, forms part of UK law.
- 2.23 Annex IX to the EEA Agreement makes adaptations to various EU legislation, including BTS which the FCA has the power to amend under the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.
- 2.24 Following Consultation Paper 20/18, we have identified a small number of deficiency fixes which are appropriate in relation to these BTS in light of this. These fixes are made by the Technical Standards (Miscellaneous Amendments) (EU Exit) Instrument 2020.
- 2.25 Feedback to the instruments as consulted on in CP20/18 has been published in Chapter 3 of this Handbook Notice.

### ***Temporary Transitional Power***

- 2.26 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).
- 2.27 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.
- 2.28 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 requirements, we expect firms and other regulated persons to be preparing to comply with their changed



obligations, ready for 11pm on 31 December 2020. Further information about our approach to the TTP is set out on our [TTP webpage](#).

- 2.29 With respect to the BTS instruments listed in Chapter 1, please note that the TTP does not apply to onshored requirements for firms, subject to the reporting obligation under the onshored SFTR regime, or to the onshored requirements for trade repositories.
- 2.30 However, the TTP will apply to securities financing transactions where one of the counterparties is a member of the European System of Central Banks. For these transactions, the status quo is retained and counterparties will not need to report these transactions under the onshored SFTR until 31 March 2022.

## 3 Consultation feedback

### European Union Withdrawal Instruments

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#### *Feedback to CP20/18*

- 3.1 There were no responses to the Exiting the European Union: SMCR and APR (Amendments) (No 2) Instrument 2020 or the Exiting the European Union: Handbook (Amendments) (No 3) Instrument 2020.
- 3.2 We had 6 responses to our proposals for securitisation onshoring which were all broadly supportive. One of the responses focused on proposals in the disclosure templates. The first concerned the substitution of an EU classification of industries (NACE) with a UK version used by Companies House (SIC). The second concerned the definition of leveraged loans, where we proposed to replace a definition used by the European Central Bank. In both cases, the comments in this one response contradicted broader support from the other respondents. After considering all the responses, and the broader support given by other respondents, we felt it was appropriate and not unduly burdensome to implement the proposals as consulted.

#### *Cost benefit analysis and compatibility statement*

- 3.3 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 BTS where we have used those powers.
- 3.4 As indicated in Chapter 2, there have been no substantive changes to consultation version of the Exiting the European Union: SMCR and APR (Amendments) (No 2) Instrument 2020 and the cost benefit analysis published in CP 20/18 still applies.

#### *Equality and diversity issues*

- 3.5 We believe the changes made to our consultation drafts 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.fcarg.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.handbookca.orgk/>. 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 83

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 7 December 2020 and 10 December 2020.

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

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

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

Ayesha Dayaji

Tel: 020 7066 0575

Email: [Ayesha.Dayaji@fca.org.uk](mailto:Ayesha.Dayaji@fca.org.uk)

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

Tel: 0300 500 0597

Fax: 0207 066 0991

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

Post: Contact Centre

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