

HANDBOOK ADMINISTRATION (NO 28) INSTRUMENT 2012**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex D (LR) comes into force on 31 December 2012;
 - (2) Part 2 of Annex C (SUP) comes into force on 31 December 2013;
 - (3) the remainder of this instrument comes into force on 1 January 2013.

Amendments to the Handbook

- D. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Supervision manual (SUP)	Annex C
Listing Rules sourcebook (LR)	Annex D
Prospectus Rules sourcebook (PR)	Annex E

Amendments to the material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex F to this instrument.
- F. The Unfair Contract Terms Regulatory Guide (UNFCOG) is amended in accordance with Annex G to this instrument.

Citation

- G. This instrument may be cited as the Handbook Administration (No 28) Instrument 2012.

By order of the Board
13 December 2012

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking thorough indicates deleted text.

*drawdown
mortgage*

a *lifetime mortgage* contract where:

(a) the amount borrowed is paid by the *mortgage lender* to the *customer* in instalments during the life of the mortgage; and

(b) the size and frequency of the instalments are:

...

(2) set by reference to an index or interest rate (such as the ~~Bank of England repo rate~~ Official Bank Rate).

market maker

(1) (except in COBS and DTR) (in relation to an *investment*) a *person* who (otherwise than in his capacity as the *operator* of a *regulated collective investment scheme*) holds himself out as able and willing to enter into transactions of sale and purchase in *investments* of that description at prices determined by him generally and continuously rather than in respect of each particular transaction.

(2) (in COBS and DTR) a *person* who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling *financial instruments* against his proprietary capital at prices defined by him.

...

(3) [deleted]

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking thorough indicates deleted text.

Late Payments

2.2.1 R If a *person* does not pay the total amount of a periodic fee, *FOS* levy, or share of the *FSCS* levy or *CFEB* levy, before the end of the date on which it is due, under the relevant provision in *FEES* 4, 5, 6 or 7, that *person* must pay an additional amount as follows:

...

- (2) interest on any unpaid part of the fee at the rate of 5% per annum about the ~~Bank of England's repo rate~~ Official Bank Rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.

...

6.3.20 R ...

(3) Recoveries referred to in (1) must be applied in the following order of priority:

(a) (if the *compensation costs* were allocated to the general retail pool (see *FEES* 6.5.2R(2)) to the *classes* and *sub-classes* to which the costs were allocated in accordance with *FEES* 6.5.2R(2) in the same proportion as those *classes* and respective *sub-classes* contributed, up to the total amount of that allocation plus interest at a rate equivalent to the ~~Bank of England's repo rate~~ Official Bank Rate from time to time in force;

...

...

Appendix 1 **Unauthorised Mutuals Registration Fees Rules**

...

App 1.2.9 R If a *registered society* does not pay the total amount of a periodic fee or a fee payable under 1.4.2R on the date on which it is due under the relevant provision of these rules, that *registered society* must pay an additional amount as follows:

...

...

- (2) if the fee is not paid in full before the end of 15 days after the due date, interest on any unpaid part of the fee at the rate of 5% per annum about the ~~Bank of England's repo rate~~ Official Bank Rate from time to time in force, accruing on a daily basis from the date on which the amount concerned became due.

Annex C

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Comes into force on 1 January 2013

Customer function (CF 30)

10.10.7A R The *customer function* is the function of:

...

- (5) *dealing*, as principal or as agent, and *arranging (bringing about) deals in investments* other than a *non-investment insurance contract* with or for, or in connection with ~~customers~~ customers where the *dealing* or *arranging deals* is governed by COBS 11 (Dealing and managing);

...

...

Regulatory Activity Group 7

...

16.12.23 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.22AR are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

<i>Data item</i>	Frequency				
	Unconsolidated <i>BIPRU</i> <i>investment firm</i>	Solo consolidated <i>BIPRU</i> <i>investment firm</i>	<i>UK</i> <i>Consolidation</i> <i>Group</i> or <i>defined liquidity</i> <i>group</i>	Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million
<i>Annual reports and accounts</i>	No standard format <u>Annually</u>			<u>Annually</u>	<u>Annually</u>
Annual accounts of the <i>mixed-activity holding company</i>	No standard format <u>Annually</u>			<u>Annually</u>	<u>Annually</u>
Solvency statement	No standard format <u>Annually</u>				

...					
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Part 2: Comes into force on 31 December 2013

16 Annex 18AR Retail Mediation Activities Return ('RMAR')

...

[see next page]

15	Total assets less current liabilities	<input type="text"/>	<u>has a participating interest where included in debtors.</u> <input type="text"/>
16	Other liabilities falling due after more than one year	<input type="text"/>	
17	Provisions for liabilities and charges	<input type="text"/>	
18	Net assets	<input type="text"/>	30 <u>Memo (2)</u> <u>Value of shares in group undertakings where such investments are held as current assets.</u> <input type="text"/>
19	Memo: guarantees provided by firm	<input type="text"/>	<u>Notes</u> <u>Memos (1) and (2) to be completed, where applicable, by all insurance intermediaries subject to MIPRU.</u>

...

...

SECTION D6: Capital Resources
Personal Investment Firms subject to IPRU(INV) chapter 13

A

1 Base requirement

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...

Annex D

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking thorough indicates deleted text.

Part 1: Comes into force on 31 December 2012

Principles for sponsors: identifying and managing conflicts

8.3.7A G The purpose of *LR* 8.3.7BR to ~~*LR* 8.3.13G~~ *LR* 8.3.12AG is to ensure that conflicts of interest do not adversely affect:

...

...

8.3.8 G In identifying conflicts of interest, *sponsors* should also take into account circumstances that could:

- (1) create a perception in the market that a sponsor may not be able to perform its functions properly; ~~and~~ or
- (2) compromise the ability of a *sponsor* to fulfil its obligations to the *FSA* in relation to the provision of a *sponsor service*.

...

Applying for transfer between listed categories

8.4.14 R In relation to a proposed transfer under *LR* 5.4A, if a *sponsor* is appointed in accordance with *LR* 8.2.1AR, it must:

- (1) ...
- (2) submit a completed Sponsor's Declaration for a Transfer of Listing to the *FSA* for the proposed transfer on the day the *circular* or announcement is to be approved by the *FSA* and before it is approved; and
- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FSA* in considering the transfer between *listing* categories have been disclosed with sufficient prominence in the *circular* or announcement referred to in *LR* 5.4A or otherwise in writing to the *FSA*.

[**Note:** The Sponsor's Declaration for a ~~transfer~~ Transfer of Listing can be found on the UKLA section of the *FSA* website.]

8.4.15 R A *sponsor* must not submit to the *FSA* on behalf of an *issuer* a final *circular* or announcement for approval or a Sponsor's Declaration for a

~~transfer~~ Transfer of Listing, unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

...

...

Reverse takeovers

8.4.17 R A *sponsor* acting on a *reverse takeover* where the *issuer* decides to make a disclosure announcement under LR 5.6.15G must:

- (1) submit to the *FSA* under LR 5.6.17R a completed Sponsor's ~~Disclosure Announcement~~ Declaration for a Reverse Takeover Announcement;
- (2) not submit to the *FSA* the Sponsor's ~~Disclosure Announcement~~ Declaration for a Reverse Takeover Announcement unless it has come to a reasonable opinion, after having made due and careful enquiry, that it is reasonable for the *issuer* to provide the declarations described in LR 5.6.15G(3) and LR 5.6.15G(4); and
- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FSA* in considering a proposed disclosure announcement under LR 5.6.15G have been disclosed with sufficient prominence in the announcement or otherwise in writing to the *FSA*.

[**Note:** The Sponsor's ~~Disclosure Announcement~~ Declaration for a Reverse Takeover Announcement can be found on the UKLA section of the *FSA* website]

...

General notifications

8.7.8 R A *sponsor* must notify the *FSA* in writing as soon as possible if:

- (1) (a) ...
- (b) the *sponsor* becomes aware of any fact or circumstance relating to the *sponsor* or any of its employees engaged in the provision of *sponsor services* by the *sponsor* which, in its reasonable opinion, would be likely to adversely affect market confidence in the ~~sponsor~~ sponsor regime; or

...

- (11) there is expected to be a change in the financial position of the *sponsor* or any of its *group companies* that would be likely to adversely affect the *sponsor's* ability to perform ~~the sponsor~~

services or otherwise comply with *LR 8*.

Part 2: Comes into force on 1 January 2013

Cross-holdings

- 15.2.5 R (1) No more than 10%, in aggregate, of the value of the total assets of an *applicant* at admission may be invested in other ~~listed~~ listed *closed-ended investment funds*.
- (2) The restriction in (1) does not apply to investments in *closed-ended investment funds* which themselves have published investment policies to invest no more than 15% of their total assets in other ~~listed~~ listed *closed-ended investment funds*.

Annex E**Amendments to the Prospectus Rules sourcebook (PR)**

In this Annex, underlining indicates new text and striking thorough indicates deleted text.

Provisions implementing the prospectus directive

1.1.6 G The following documents need to be considered together to determine the effect of the *prospectus directive*:

...

(4) the ~~CESR~~ ESMA recommendations.

Annex F

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

15 **Guidance on the scope of the Payment Services Regulations 2009**

15.1 ...

Scope

...

The conditions for authorisation as a payment institution are set out in regulation 6. In addition to the authorisation regime for payment institutions, there is an alternative ~~lighter~~ regime for those which fall within the category of small payment institutions (that is businesses which meet the conditions in regulation 13). Broadly, the category of small payment institutions will only be relevant to firms executing payment transactions with a monthly average of 3 million euros (or an equivalent amount) or less, over a 12 month period. Broadly, small payment institutions are not subject to ~~the authorisation requirements in regulation 6 or~~ the requirements in Part 3 of the PSD regulations (including capital requirements), but they are subject to a registration regime and the conduct of business provisions in Parts 5 and 6.

...

15.4 **Small payment institutions, agents and exempt bodies**

Q26. What criteria must we meet to be a "small payment institution"?

The conditions are set out in regulation 13 and include the following:

- the average of the preceding 12 months' total amount of payment transactions executed by you, including your agents in the UK, does not exceed 3 million euros (or an equivalent amount) per month;
- none of the individuals responsible for the management or operation of your business has been convicted of offences relating to money laundering or terrorist financing, the *Act*, the PSD regulations or financial crimes;
- if you are a partnership, an unincorporated association, or a body corporate, you must satisfy us that any persons having a qualifying holding in your business are fit and proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a small payment institution;
- you must satisfy us that your directors (if you are a body corporate), any persons responsible for the management of your business, and where relevant the persons responsible for the management of your payment services, are of good repute and possess appropriate knowledge and

experience to provide payment services;

- if you are a body corporate you must satisfy us that any close links you have with another person are not likely to prevent our effective supervision of you. If it appears to us that you have any close links that are subject to the laws, regulations or administrative provisions of a territory outside of the EEA (“the foreign provisions”) you must satisfy us that neither the foreign provisions, nor any deficiency in their enforcement, would prevent our effective supervision of you;
- your head office, registered office or place of residence, as applicable, is in the UK; and
- you must comply with the registration requirements of the Money Laundering Regulations 2007, where they apply to you.

Annex G

Amendments to the Unfair Contract Terms Regulatory Guide (UNFCOG)

In this Annex, underlining indicates new text and striking thorough indicates deleted text, unless otherwise stated.

2 Statements of Good Practice on fairness of terms in consumer contracts Unfair Contract Terms material published by the FSA

2.1

- 2.1.1 G In ~~Annexes 1 and 2~~ the Unfair Contract Terms Library (<http://www.fsa.gov.uk/Pages/Doing/Regulated/uct/library/index.shtml>) you will find ~~‘Statements of Good Practice’~~ Notices of Undertakings, Statements, Speeches and other publications where we have set out our views on the likely application of the Regulations in relation to certain types of clause in standard form *consumer* contracts. We will add further ~~Statements of Good Practice relating to the Regulations~~ publications to the Unfair Contract Terms Library as and when they are published. ~~Please note that these Statements of Good Practice do not form general guidance on rules under the Act.~~

...

Delete the following two annexes.

- 2 Annex 1 ~~Fairness of terms in consumer contracts: Statement of Good Practice (May 2005)~~ http://www.fsa.gov.uk/pubs/other/good_practice.pdf
- 2 Annex 2 ~~Fairness of terms in consumer contracts: Statement of Good Practice on mortgage exit administration fees (January 2007)~~ http://www.fsa.gov.uk/pubs/other/meaf_goodpractice.pdf