

**HANDBOOK STRUCTURE (SPECIAL GUIDES) INSTRUMENT 2003****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) of the Financial Services and Markets Act 2000 (Guidance).

**Commencement**

- B. This instrument comes into force on 1 February 2004.

**Special Guides**

- C. The Special Guides listed below are removed from the Handbook:
- (1) Energy Market Participants (EMPS);
  - (2) Small Friendly Societies (FREN);
  - (3) Oil Market Participants (OMPS);
  - (4) Service companies (SERV).

**Consequential amendments to the Handbook**

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

(1)	(2)
Reader's Guide Reader's Short Guide	Annex A
AUTH	Annex B
SUP	Annex C
ECO	Annex D
ELM	Annex E
Glossary	Annex F

**Citation**

- E. This instrument may be cited as the Handbook Structure (Special Guides) Instrument 2003.

By Order of the Board  
18 December 2003

## Annex A

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

### Amendments to the Reader's Guide

- 28 The letter G is normally used to indicate guidance given under section 157. The guidance in the Handbook relates to the operation of the Act, the rules in the Handbook and other matters. Most general guidance (meaning, in this Guide, guidance given to persons or regulated persons generally or to a class of regulated person) will be given through the Handbook, but in certain cases, where the guidance is urgent or temporary, it will be published in a separate Guidance Note. Material published in vehicles other than the Handbook or Guidance Notes, for example in the Handbook Guides, newsletters or on the FSA's website, is not guidance unless it says that it is.

### Contents of the Handbook

	Sourcebook or manual	Reference Code
...		
Special guides	Energy Market Participants	EMPS
	Small Friendly Societies	FREN
	Oil Market Participants	OMPS
	Service companies	SERV
...		

### Amendments to the Reader's Short Guide

### Contents of the Handbook

	Sourcebook or manual	Reference Code
...		
Special guides	Energy Market Participants	EMPS
	Small Friendly Societies	FREN
	Oil Market Participants	OMPS
	Service companies	SERV
...		

## Annex B

### Amendments to the Authorisation manual (AUTH)

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

#### 1.5 Understanding the requirements and standards of the regulatory system

...

1.5.3 G As a general guide, all applicants for *Part IV permission* should be familiar with the *threshold conditions (COND)* and the Principles ~~Principles~~ for Businesses (*PRIN*) in the High Level Standards part of the *Handbook*. To complete an application for *Part IV permission*, an applicant will also need to have regard to the following matters:

...

- (4) Other regulatory obligations:
- (a) the detailed regulatory obligations that apply to certain types of *firm* or *regulated activity* in *COB*, the Market Conduct sourcebook (*MAR*) and *SUP*;
  - (b) the obligations in Dispute resolution: Complaints (*DISP*) and Compensation (*COMP*); and
  - (c) the specialist sourcebooks ~~or special guides~~ included in the *Handbook* such as, for example, those for *collective investment schemes*, exempt *professional firms*, and the market at Lloyd's ~~and market service companies~~.

...

#### 5 Ann 3G Application of the Handbook to Incoming EEA Firms

2 Table G

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
EMPS	Not relevant.	Not relevant.
FREN	Does not apply.	Does not apply.
OMPS	Not relevant.	Not relevant.
SERV	Not relevant.	Not relevant.

## Annex C

### Amendments to the Supervision manual (SUP)

EMPS 2 is renumbered as SUP 21, as follows. Differences from EMPS 2 are indicated by underlining for new text and by striking through for deletions.

#### 21.1 Form of waiver for energy market participants

- 21.1.1 G SUP21 Ann1G sets out a form of *waiver* that the FSA will be minded to give to *energy market participants* in the exercise of its statutory discretion under section 148 of the *Act* to grant a *waiver* of certain *rules*.
- 21.1.2 G *Energy market participants* should bear in mind that section 148 of the *Act* requires that in order to give a *waiver* of particular *rules*, the FSA must be satisfied that:
- (1) compliance with the *rules*, or with the *rules* as unmodified, would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and
  - (2) the *waiver* would not result in undue risk to persons whose interests the *rules* are intended to protect.
- 21.1.3 G Accordingly, the FSA must be satisfied that the statutory criteria will be met in each case where an *energy market participant* applies for a *waiver* in the form in SUP21 Ann1G.
- 21.1.4 G In particular, clause 4 of the form of *waiver* in SUP21 Ann1G will not ordinarily be inserted in *waivers* for *energy market participants* that will not, at the time the *waiver* will take effect, clearly satisfy the conditions set out in that clause. For these purposes the FSA will take into account the relative proportions of the *energy market participant's* assets and revenues that are referable to the various parts of its business, as well as to any other factor that the FSA considers is relevant to an assessment of the prudential risk presented by the *energy market participant*.

## Form of Waiver: Energy Market Participant

### Power

1. This *waiver* is given by the FSA under section 148 of the *Act* (Modification and waiver of rules).

### Authorised person to whom this waiver applies

2. This *waiver* applies to ..... (the “firm”).

### Guidance Note

In addition to the provisions of this *waiver*, the following special application provisions in the *Handbook* will apply to the firm because it is an *energy market participant*: COB 1.6.6R – COB 1.6.11G and SUP 3.1.2R, SUP 3.2.4G, SUP 10.1.21R and SUP 10.1.22G.

### Term

3. (1) This *waiver* takes effect from the date of this notice.

(2) However, if the firm is not then an *energy market participant*, this *waiver* takes effect only when the firm becomes one.

(3) This *waiver* ends, except as specified in (4):

(a) when the firm first stops being an *energy market participant*; or

(b) if (a) does not happen earlier, 30 November ~~2003~~ 2005.

(4) The modification of TC 2.4.1R in this *waiver* ends 12 months after the date in (3).

### Waiver: Capital and financial reporting requirements<sup>1</sup>

4. The FSA directs that the parts of the *Handbook* mentioned in the table do not apply to the firm, if the firm satisfies both the following conditions:

(1) the firm’s main business consists of the generation, production, storage, distribution, or transmission of *energy*; and

(2) the firm does not engage in *oil market activity* as a member of a *recognised investment exchange* or *designated investment exchange* which is under the rules of that exchange entitled to trade with other members.

### Table:

Part of Handbook	Waiver
IPRU(INV) 3	IPRU(INV) 3 (Financial resources for Securities and Futures Firms which are not Investment Firms) does not apply to the firm if the firm satisfies both the conditions in this clause.
SUP 16.7	SUP 16.7 (Financial reports) does not apply to the firm if the firm satisfies both the conditions in this clause

<sup>1</sup> For whether this clause would be inserted in a particular case, see SUP 21.1.4G

## Guidance Notes

An *energy market participant* to which *IPRU(INV)* 3 does not apply is still subject to the requirement of *Principle 4* to have adequate financial resources.

The conditions in this clause are imposed under s. 148(5) of the *Act*. For *guidance* on the effect of conditions attached to a *waiver*, see *SUP* 8.4.1G(2).

## Waiver: Training and competence

5. The *FSA* directs that the parts of the *Handbook* mentioned in the table apply to the firm with the modifications specified in the table.

### Table:

Part of Handbook	Modifications
<i>TC</i> 2.4.1R and <i>TC</i> 2.4.5R	<i>TC</i> 2.4.1R and <i>TC</i> 2.4.5R are modified:  (1) so that <i>TC</i> 2.4.5R(2) does not apply to the firm during the term of this <i>waiver</i> in relation to any <i>person</i> who is an <i>employee</i> of the firm during the term of this <i>waiver</i> ; and  (2) so that any assessment of an <i>employee</i> in reliance on (1) ceases to have effect for the purposes of <i>TC</i> 2.4.1R 12 months after the end of this <i>waiver</i>

### Guidance Note

*TC* 2.4.1R provides (with certain exceptions) that a *firm* must not permit an *employee* to engage in or oversee an activity unless the *employee* has been assessed as competent in that activity in accordance with *TC* 2.4.5R

*TC* 2.4.5R(2) provides that a *firm* must not assess an *employee* as competent to engage in or oversee an activity unless the *employee* has passed each module of the appropriate *approved examination* specified in the annexes to *TC* 2.

Twelve months after the end of this *waiver*, an assessment of competence carried out in reliance on this *waiver* will cease to have effect. The effect of this is to require a re-assessment of the competence of an *employee* who was assessed as competent without having passed each module of the appropriate *approved examination* specified in the annexes to *TC* 2 in accordance with *TC* 2.4.1R and *TC* 2.4.5R (to the extent that *TC* 2.4.1R would otherwise apply to the firm in relation to that *employee*).

## Modification: Transaction reports

6. The *FSA* directs that the part of the *Handbook* mentioned in the table apply to the firm with the modifications specified in the table.

### Table:

Part of Handbook	Modification
<i>SUP</i> 17	<i>SUP</i> 17 (Transaction reports) does not apply to the firm in relation to its <i>energy market activity</i> .

## Interpretation

7. (1) Unless the contrary intention appears, interpretative provisions in *GEN 2* (Interpreting the Handbook) apply to this *waiver* in the same way as they apply to the *Handbook*.

### Guidance Note

Defined terms in this *waiver* (other than the term "the firm") are italicised.

(2) For the purposes of this *waiver*, the term "employee" has the same meaning as in *TC*.

## Annex D

### Amendments to the E-Commerce Directive sourcebook (ECO)

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

#### 1.1 Application and purpose

...  
1.1.10 G Table Handbook provisions applicable to, or relevant for, incoming ECA providers. This Table belongs to ECO ~~4.1.7R~~1.1.6R

Provision	Description
...	
<del>SERV 1.2.2G</del>	<del>Service companies guidance</del>
<del>OMPS 1.2.2G</del>	<del>Oil market participants guidance</del>
<del>EMPS 1.2.3G</del>	<del>Energy market participants guidance</del>
<del>FREN 1.2.2G</del>	<del>Small friendly societies guidance</del>
...	



## Annex E

### Amendments to the Electronic Money sourcebook (ELM)

In this Annex, striking through indicates deleted text.

#### 1.5 Application of other parts of the Handbook to ELMIs

...  
1.5.2 G Table Application of other parts of the Handbook to ELMIs

...

Block	Module	Application
...		
Block 6 (Special Guides)	Energy Market Participants ( <i>EMPS</i> ), Small Friendly societies ( <i>FREN</i> ), Oil Market Participants ( <i>OMPS</i> ) and Service companies ( <i>SERV</i> )	<del>These guides do not apply to an <i>ELMI</i>.</del>

## Annex F

### Amendments to the Glossary

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

<i>EMPS</i>	the <del>Special guide</del> <u>Handbook Guide</u> for energy market participants, <del>forming part of the <i>Handbook</i>.</del>
<i>FREN</i>	the <del>Special guide</del> <u>Handbook Guide</u> for small Friendly societies, <del>forming part of the <i>Handbook</i>.</del>
<i>OMPS</i>	the <del>Special guide</del> <u>Handbook Guide</u> for oil market participants, <del>forming part of the <i>Handbook</i>.</del>
<i>SERV</i>	the <del>Special guide</del> <u>Handbook Guide</u> for service companies, <del>forming part of the <i>Handbook</i>.</del>
<u><i>SIFA</i></u>	<u>the Handbook Guide: “Using the FSA Handbook: an Overview for small IFA firms”</u>