

**EXITING THE EUROPEAN UNION: HANDBOOK (AMENDMENTS) (No 2)
INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards) (Amendment etc.) (EU Exit) Regulations 2018;
 - (2) section 139A (Power of the FCA to give guidance) in the Financial Services and Markets Act 2000 (“the Act”);
 - (3) regulation 120 (Guidance) of the Payment Services Regulations 2017;
 - (4) regulation 60 (Guidance) of the Electronic Money Regulations 2011;
 - (5) paragraph 12K (Power to charge fees) of part 1A and paragraph 35 (Power to charge fees) of part 3 of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018; and
 - (6) the relevant powers and related provisions referred to in schedule 4 to the General Provisions of the FCA Handbook.
- B. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020, save for:
- (1) Annex A, which comes into force on IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020, immediately after the changes made by Annex A in the Exiting the European Union: Glossary (Amendments) Instrument 2019 (FCA 2019/19) come into force;
 - (2) Annex C, which comes into force on 1 January 2021;
 - (3) Annex D, which comes into force on IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020, immediately after the changes made by Annex C in the Exiting the European Union: Business Standards Sourcebooks (Amendments) Instrument 2019 (FCA 2019/23) come into force;
 - (4) Annex E, which comes into force on 1 July 2021;

- (5) Annex G, which comes into force on IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020, immediately after the changes made by the Exiting the European Union: Miscellaneous (Amendments) Instrument 2019 (FCA 2019/29) come into force; and
- (6) Annex H, which comes into force on 1 October 2020.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Insurance: Conduct of Business sourcebook (ICOBS)	Annex B
Product Intervention and Product Governance sourcebook (PROD)	Annex C
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex D
Supervision manual (SUP)	Annex E
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex F

- E. The FCA confirms and remakes in the Glossary of definitions the defined expressions relating to any UK legislation which has been amended further to section 8 of the European Union (Withdrawal) Act 2018.

Amendments to material outside the Handbook

- F. The General Guidance on Benchmark Submission and Administration (BENCH) is amended in accordance with Annex G to this instrument.

Amendments to a previous instrument

- G. Annex H amends the Exiting the European Union: Temporary Permission and Financial Services Contracts Instrument 2019 (FCA 2019/36).

Citation

- H. This instrument may be cited as the Exiting the European Union: Handbook (Amendments) (No 2) Instrument 2020.

By order of the Board
30 September 2020

Annex A**Amendments to the Glossary of definitions**

Insert the following definition in the appropriate alphabetical position. The text is not underlined.

TD ESEF Regulation the *UK* version of Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format, which is part of *UK* law by virtue of the *EUWA*.

Amend the following definitions as shown. Underlining indicates new text.

EU EMIR the *EU* version of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories as amended by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019.

Annex B

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

1 Annex Application (see ICOBS 1.1.2R)

1

...

Part 2: What?

Modifications to the general application rule according to type of firm			
...			
5		Travel insurance contracts	
5.1	R	In addition to the general application rule in <i>ICOBS</i> 1.1.1R, The the provisions in <i>ICOBS</i> 6.1.7-AG, <i>ICOBS</i> 6.5.1AG and <i>ICOBS</i> 6A.4 also apply to incoming cross-border services :	
		(1)	an incoming firm in respect of that part of its business that is carried on as an electronic commerce activity from another <i>EEA State</i> TP firms and Gibraltar-based firms which carry on business from an establishment in the <i>United Kingdom</i> ; or
		(2)	(a) TP firms and Gibraltar-based firms that provide services from an establishment outside the <i>United Kingdom</i> , (other than an incoming firm where the <i>state of the risk</i> is an <i>EEA State</i> or Gibraltar, and to the extent that the <i>EEA State</i> in question or Gibraltar imposes measures of like effect); and
			(b) firms operating from an establishment overseas; and
			with a <i>customer</i> in the <i>United Kingdom</i> .
5.2	G	Unless the contrary intention appears, a reference to Gibraltar-based firm in paragraph 5.1 above has the same meaning as in the <i>Gibraltar Order</i> .	

...

Annex C

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

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

- 1 Product intervention and Product Governance Sourcebook (PROD)**
- 1.1 Application and purpose**
- Purpose**
- ...
- 1.1.4 **G** Unless the contrary intention appears, a reference to Gibraltar-based firm in *PROD* has the same meaning as in the *Gibraltar Order*.
- ...
- 1.4 Application of PROD 4**
- ...
- 1.4.-1A **R** A *TP firm* and a Gibraltar-based firm must also comply with the provisions in:
- (1) *PROD* 1.4 and *PROD* 4.5 (Additional expectations for manufacturers and distributors in relation to value measures data).
- ...
- 4 Product governance: IDD and pathway investments**
- 4.5 Additional expectations for manufacturers and distributors in relation to value measures data**
- ...
- 4.5.4 **R** The requirements on *manufacturers* referred to in *PROD* 4.5.3R are:
- (1) ...

- (2) that in relation to new products and significant adaptations to existing products, the *firm's* product approval process in *PROD* 4.2.1R, product testing in ~~*PROD* 4.2.22EU~~ *PROD* 4.2.22UK including considerations in *PROD* 4.2.25R and the review of products in *PROD* 4.2.34R also incorporate the procedures and considerations in (1) above.

Annex D

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

1 Application and purpose

...

1.3 General application: where?

Location of the customer

1.3.1 R Except as set out in this section, *MCOB* applies if the *customer* of a *firm* carrying on *home finance activities* is, at the time that the *home finance activity* is carried on, resident in:

(1) the *United Kingdom* ~~at the time that the *home finance activity* is carried on;~~ or

(2) an *EEA State*, where the activity is carried on:

(a) from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*; and

(b) in respect of a *regulated mortgage contract* entered into before *IP completion day*.

Annex E

Amendments to the Supervision manual (SUP)

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

[*Editor's note:* The Exiting the European Union: Regulatory Processes Sourcebooks (Amendments) Instrument 2019 (FCA 2019/24) comes into force on IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020. This instrument deleted SUP 13A and the Annexes to SUP 13A in their entirety, and also deleted parts of SUP 16.1 and SUP 16.3. The Value Measures Reporting and Monitoring Instrument 2020 (FCA 2020/40) (PS 20/09 'General Insurance value measures reporting publication Policy Statements') in force on 1 July 2021 made amendments to those provisions. The text below takes account of the changes made by both these instruments. Changes made by FCA 2020/40 to the Annexes to SUP 13A are not shown as SUP 13A will have been deleted on IP completion day.]

16 Reporting requirements

16.1 Application

16.1.1 R This chapter applies to every *firm* and *qualifying parent undertaking* within a category listed in column (2) of the table in SUP 16.1.3 R and in accordance with column (3) of that table.

...

16.1.2 G (1) Subject to (2) and (3), the only category of *firm* to which no section of this chapter applies is an *ICVC*.₂

(a) ~~{deleted}~~

(b) ~~{deleted}~~, or ~~SUP 16.27~~

(c) ~~{deleted}~~

(2) SUP 16.26 (Reporting of information about Directory persons) applies to a *firm* which is an *SMCR firm* (see SUP 16.1.1FR).

(3) SUP 16.27 (General insurance value measures reporting) applies to the type of firms listed in SUP 16.1.3R.

16.1.2A G In SUP 16.1 a reference to Gibraltar-based firm in relation to SUP 16.27 (General insurance value measures reporting) has the same meaning as in the Gibraltar Order.

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16, SUP 16.17, SUP 16.22, SUP 16.26 and SUP 16.27

(1) Sections	(2) Categories of firm to which applies	(3) Applicable rule and guidance
...		
SUP 16.26	...	
SUP 16.27	A firm which, in respect of <i>general insurance contracts</i> , is:	Entire section
...	(a) an <i>insurer</i> ;	
	(b) an <i>incoming firm</i> falling within (a), a (i) <u>TP firm which has temporary permission</u> ; or (ii) <u>a Gibraltar-based firm, treated as having permission, to effect contract of insurance</u> including those providing cross border services <u>services from an establishment outside the UK with a customer in the UK</u> ;	
	(c) ...	
...		

16.3 General provisions on reporting

Application

- 16.3.1 G The effect of SUP 16.1.1R is that this section applies to every *firm* except an ICVC:
- (1) ~~an ICVC~~;
 - (2) ~~[deleted]~~

(a) ~~or SUP 16.27~~

(3) ~~{deleted}~~

16.3.1A G The effect of SUP 16.1.1R is that this section applies to a TP firm and Gibraltar-based firm of a type listed in SUP 16.1.3R, as a firm to which SUP 16.27 applies.

...

16.27 General insurance value measures reporting

Application

Who?

16.27.1 R The effect of SUP 16.1.1R is that this section applies to every firm of a type listed in column 1 of the table in SUP 16.27.8R.

16.27.2 R The rules in this section do not apply to a TP firm or a Gibraltar-based firm where the state of the risk is an EEA State or Gibraltar, to the extent that the EEA State in question or Gibraltar imposes measures of like effect:

- (1) ~~an incoming firm in respect of that part of its business that was carried on as an electronic commerce activity from another EEA State; or~~
- (2) ~~an incoming firm where the state of the risk is an EEA State to the extent that the EEA State in question imposes measures of like effect.~~

...

16.27.8 R This is the table referred to in SUP 16.27.7R.

(1) Type of firm	(2) Nature of business
An insurer other than an incoming firm <u>a TP firm or Gibraltar-based firm</u>	all contracts of insurance effected by the insurer.
An incoming firm <u>A TP firm or Gibraltar-based firm</u>	all contracts of insurance effected by the incoming firms <u>TP firm or Gibraltar-based firm</u> from an establishment of the firm <u>firm</u> (or its appointed representative) in the UK.

<p>An incoming firm <u>A TP firm or Gibraltar-based firm</u></p>	<p>all contracts of insurance effected by the firm <u>firm</u>:</p> <p>(a) on a cross border services basis <u>from an establishment outside the UK with a customer in the UK</u>; and</p> <p>(b) which were not <i>manufactured</i> by a firm <u>firm</u> operating from an establishment in the UK.</p>
<p>A firm <u>firm</u> manufacturing from an establishment in the UK</p>	<p>all contracts of insurance effected by an incoming firm <u>on a cross border services basis a TP firm or Gibraltar based-firm</u> from an establishment outside the UK with a customer in the UK.</p>
<p><u>A firm, a TP firm or a Gibraltar-based firm</u> which, from an establishment in the UK, either:</p> <p>(1) <i>manufactures</i>; or, if not,</p> <p>(2) advises on or proposes <i>contracts of insurance</i> which it does not <i>manufacture</i>.</p>	<p>all contracts of insurance effected by an incoming firm <u>a firm</u> on a cross border services basis <u>in respect of that part of its business that was carried on as an <i>electronic commerce activity</i> from another EEA State</u> from an establishment outside the UK with a customer in the UK without carrying on a <i>regulated activity</i> in the UK.</p>
<p>...</p>	<p>...</p>

Annex F

Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

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

4 Periodic Financial Reporting

4.1 Annual financial report

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Reporting format

- 4.1.14 R The annual financial report must be prepared using the single electronic reporting format specified in ~~Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format~~ the *TD ESEF Regulation* as amended from time to time.

[**Note:** article 4(7) of the *TD*]

...

Annex G

Amendments to the General guidance on Benchmark Administration, Contribution and use (BENCH)

In this Annex, striking through indicates deleted text.

2 Parts of the Handbook applicable to regulated benchmark administrators and benchmark contributors

...

2.3 Guidance for benchmark users: articles 28 and 29 of the benchmarks regulation

...

2.3.2 G ...

(2) The effect of the prohibition in article 29 is that, subject to the exclusions in article 2 of the *benchmarks regulation*, a *firm* which is a *supervised entity* may only use a *benchmark* in cases where:

- (a) if the benchmark administrator is *located* in the *UK*, the benchmark administrator is listed in the register maintained by the *FCA* under article 36 of the *benchmarks regulation*; or
- (b) if the benchmark administrator is *located* outside the *United Kingdom*, the *benchmark* itself is listed in the register maintained by the *FCA* under article 36 of the *benchmarks regulation*.

~~[Note: Part 3, Chapter 2 of the *benchmarks regulation* provides for a temporary registration period, of two years beginning with *exit day*, during which a *firm* which is a *supervised entity* may also use a *benchmark* in cases where, if the benchmark administrator is *located* outside the *UK* but in the *EU*, has been authorised or registered by a competent authority of an *EEA State* under article 34 of the *EU benchmarks regulation* and is recorded on the *ESMA* register at 5pm on *exit day*, the benchmark administrator is listed in the register maintained by the *FCA* under article 36 of the *benchmarks regulation*.]~~

Annex H**Amendments to the Exiting the European Union: Temporary Permission and Financial Services Contracts Instrument 2019 (FCA 2019/36)**

Paragraphs A(2) and (3) of the Exiting the European Union: Temporary Permission and Financial Services Contracts Instrument 2019 (FCA 2019/36) are replaced with the following text, and that instrument is to be treated as having contained the following text when made:

- (2) regulation 120 (Guidance) of the Payment Services Regulations 2017;
- (3) regulation 60 (Guidance) of the Electronic Money Regulations 2011;
- (3A) paragraph 12K (Power to charge fees) of part 1A and paragraph 35 (Power to charge fees) of part 3 of Schedule 3 to the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018;