

**EXITING THE EUROPEAN UNION: HANDBOOK (AMENDMENTS) (No 3)
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) the following provisions of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (the FCA’s general rules);
 - (b) section 137R (Financial promotion rules);
 - (c) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance);
 - (e) section 247 (Trust scheme rules);
 - (f) section 248 (Scheme particulars rules);
 - (g) section 261I (Contractual scheme rules);
 - (h) section 261J (Contractual scheme particulars rules); and
 - (3) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- 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. (1) Subject to (2) to (6) below, this instrument comes into force on the IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020.
- (2) Part 2 of Annex A to this instrument comes into force on 1 January 2021.
- (3) Part 3 of Annex A to this instrument comes into force immediately after the amendments to the Conduct of Business sourcebook (COBS) made by Annex B of the Conduct of Business (Cryptoasset Products) (Amendment) and Associated Exiting the European Union Amendments Instrument 2020 (FCA 2020/46) take effect.
- (4) Part 4 of Annex A, Annex C and Annex D to this instrument come into force on 1 February 2021 immediately after the amendments to the Conduct of Business sourcebook (COBS) and Product Intervention and Product Governance sourcebook (PROD) made by the Conduct of Business Sourcebook (Investment Pathways) Instrument 2019 (FCA 2019/83) as amended by the Covid-19: deferral of commencement (Pension Transfers,

Investment Pathway, Platform Switching, Access to Insurance) instrument 2020 (FCA 2020/15) take effect.

- (5) Part 5 of Annex A to this instrument comes into force on 1 July 2021 immediately after the amendments to the Supervision manual (SUP) made by the Value Measures Reporting and Monitoring Instrument 2020 (FCA 2020/40) and the Exiting the European Union: Handbook (Amendments) (No 2) Instrument 2020 (FCA 2020/48), take effect.
- (6) Annex B to this instrument comes into force on IP completion day immediately after the amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) made by the Exiting the European Union: Prudential Sourcebooks (Amendments) Instrument 2019 (FCA 2019/22) take effect.

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)
General Provisions (GEN)	Annex A
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Product Intervention and Product Governance sourcebook (PROD)	Annex D
Collective Investment Schemes sourcebook (COLL)	Annex E

Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex F to this instrument.

Notes

- F. In this instrument, notes shown as “*Editor’s note*” and “**Note:**” are intended for the convenience of the reader but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Exiting the European Union: Handbook (Amendments) (No 3) Instrument 2020.

By order of the Board
10 December 2020

Annex A

Amendments to the General Provisions (GEN)

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

Part 1

2 Interpreting the Handbook

...

2.2 Interpreting the Handbook

...

Guidance applying while a firm has temporary permission

...

2.2.35A G A TP firm should refer to the provisions listed below, which identify the rules and guidance in their sourcebooks that came into force after IP completion day and in respect of which special provision has been made to apply them to TP firms.

ICOB 1 Annex 1

Part 2: (What?)

paragraph 5

PROD 1.4.-1AR

Amend the text as shown by inserting the new COBS cross-references at the beginning of the list.

Part 2

2 Interpreting the Handbook

...

2.2 Interpreting the Handbook

...

2.2.35A G A TP firm should refer to the provisions listed below, which identify the rules and guidance in their sourcebooks that came into force after IP completion day and in respect of which special provision has been made to apply them to TP firms.

COBS 2.2.-1R,

COBS 4.12.3R,

COBS 4.14.1R,
COBS 10.1.2R and
COBS 14.3.1R

...

Part 3

2 Interpreting the Handbook

...

2.2 Interpreting the Handbook

...

2.2.35A G A *TP firm* should refer to the provisions listed below, which identify the *rules and guidance* in their sourcebooks that came into force after *IP completion day* and in respect of which special provision has been made to apply them to *TP firms*.

COBS 2.2.-1R,
COBS 4.12.3R,
COBS 4.14.1R,
COBS 10.1.2R,
~~and~~ COBS 14.3.1R
and COBS 22.6.1R

...

Part 4

2 Interpreting the Handbook

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2.2 Interpreting the Handbook

...

2.2.35A G A *TP firm* should refer to the provisions listed below, which identify the *rules and guidance* in their sourcebooks that came into force after *IP completion day* and in respect of which special provision has been made to apply them to *TP firms*.

COBS 1.1.1CR,
COBS 2.2.-1R,

...

PROD 1.3.-1AR
and PROD 1.4.-
1AR

Part 5

2 Interpreting the Handbook

...

2.2 Interpreting the Handbook

...

2.2.35A G A *TP firm* should refer to the provisions listed below, which identify the *rules and guidance* in their sourcebooks that came into force after *IP completion day* and in respect of which special provision has been made to apply them to *TP firms*.

...

PROD 1.3.-1AR
and *PROD 1.4.-*
1AR

SUP 16.1.3R, SUP
16.27.2R and SUP
16.27.8R

Annex B

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

3 Professional indemnity insurance

...

3.2 Professional indemnity insurance requirements

...

Minimum limits of indemnity: MCD credit intermediaries

3.2.9A R If the *firm* is:

(1) ...

(2) a *home finance intermediary* that is:

(a) an *MCD mortgage adviser*; or

(b) an *MCD mortgage arranger*,

who is not also an *MCD mortgage lender* carrying out direct sales only;

then the minimum *limit of indemnity* is that specified in ~~ACOB~~ MIPRU 3.2.9BR.

[**Note:** article 29(2) of the *MCD*]

...

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

- 1 Application**
- 1.1 General application**
- ...
- Electronic money
- 1.1.1B R ...
- Application to TP firms and Gibraltar-based firms
- 1.1.1C R In addition to the application rules in COBS as relevant, TP firms and Gibraltar-based firms carrying on business from an establishment in the United Kingdom must also comply with the provisions in:
- (1) COBS 16.6.7AR (drawdown pensions: annual statements) and COBS 16.6.8R to COBS 16.6.13G (income withdrawals – annual statements);
- (2) COBS 19.10 (Drawdown, investment pathways and cash warnings).
- (3) COBS TP 2 paragraphs 2.8G to 2.8J (Other Transitional Provisions)
- 1.1.1D G Unless the contrary intention appears, a reference to Gibraltar-based firm in COBS 1.1.1CR has the same meaning as in the Gibraltar Order.
- ...
- 16 Reporting information to clients (non-MiFID provisions)**
- ...
- 16.6 Communications to clients – life insurance, long term care insurance and drawdown pensions**
- ...
- Drawdown pensions: annual statements
- 16.6.7A R In the rest of COBS 16.6:
- ...

- (3) “cash-like investments” includes *cash* or *near cash*, units in a *regulated money market fund*, or units in a fund authorised as a money market fund for the purposes of the UK version of the European Parliament and Council Regulation on money market funds (2017/1131/EU), which is part of UK law by virtue of the EUWA; and

...

...

19 Pensions supplementary provisions

...

19.10 Drawdown, investment pathways and cash warnings

Definitions

19.10.1 R In *COBS* 19.10:

- (1) “cash-like investments” includes *cash* or *near cash*, units in a *regulated money market fund*, or units in a fund authorised as a money market fund for the purposes of the UK version of the European Parliament and Council Regulation on money market funds (2017/1131/EU), which is part of UK law by virtue of the EUWA;

Annex D

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)**
- ...
- 1.3 Application of PROD 3**
- ...
- 1.3.-1A R A TP firm and a Gibraltar-based firm must also comply with the provisions in PROD 1.3 and PROD 3 in relation to a pathway investment, with respect to activities carried on from an establishment maintained by it, or its appointed representative, in the United Kingdom.
- ...
- 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) ...
- (2) PROD 1.4 and PROD 4 in relation to a pathway investment.
- ...
- Manufacturing and distributing pathway investments
- ...
- 1.4.3B R Where a firm:
- (1) manufactures or distributes pathway investments in connection with its operating of a retail client's personal pension scheme or stakeholder pension scheme; and
- (2) is not otherwise within the scope of the rules or ~~EU regulation~~ onshored regulations in PROD in relation to that manufacturing or distribution activity, then: ~~PROD 4, PROD 1.4.4UK and PROD 1.4.10G,~~
- (a) ~~;~~ and

(b) ~~PROD 1.4.4EU~~ applies as a *rule*,

apply with respect to that *manufacturing* or *distribution* activity.

1.4.3C G The effect of *PROD 1.4.3BR* is to apply *PROD 4* to any *firm*, such as a *SIPP* operator, which:

- (1) *manufactures* or *distributes pathway investments* in connection with its operating of a *retail client’s personal pension scheme* or *stakeholder pension scheme*; and
- (2) before the entry into force of *PROD 1.4.3BR*, was not subject to the *rules* or ~~*EU regulation*~~ *onshored regulations* in *PROD*.

...

Effect of provisions marked “~~EU~~ UK” for certain manufacturers and distributors of insurance products

1.4.6 R ...

Effect and interpretation of *PROD 1.4* and *PROD 4* for certain manufacturers and distributors of *pathway investments*

1.4.6A R A *firm* to which *PROD 1.4.3BR* applies must:

- (1) comply with provisions marked “~~EU~~ UK” in *PROD 1.4* and *PROD 4* as if they were *rules*; and
- (2) read terms or phrases found in *PROD 1.4* or *PROD 4* as follows:
 - (a) terms referred to in column (1) of the table below have the meaning indicated in the same row of column (2) of the table;
 - (b) terms relating to insurance or insurance products have the meaning of the corresponding term relevant in the context of *pathway investments*; and
 - (c) terms or phrases which are only relevant to *firms manufacturing* or *distributing* insurance products may be disregarded.

This table belongs to *PROD 1.4.6AR(2)(a)*.

(1)	(2)
“ Article 17(1) of Directive (EU) 2016/97 ”	COBS 2.1.1R

“Article 25(1) of Directive (EU) 2016/97”	<i>PROD 4.2.1R, 4.2.2R, 4.2.15R, 4.2.29R, 4.2.33R and 4.2.34R</i>
“competent authorities”	<i>FCA</i>
“ <i>ICOBS 2.5-1R and COBS 2.1.1R</i> ”	<i>COBS 2.1.1R</i>
“ <i>ICOBS</i> ”	relevant conduct of business obligations
“ IDD manufacturer product governance requirements (PROD 4.2, equivalent requirements of another EEA State or directly applicable PROD 4.2 requirements of the IDD POG Regulation) ”	<i>PROD 4.2 or equivalent requirements of another EEA State</i>
“insurance-based investment products”	<i>pathway investment</i>
“insurance distributor”	<i>distributor</i>
“insurance distribution activities”	<i>distribution activities</i>
“insurance intermediary and an insurance undertaking”	<i>firms</i>
“insurance product”	<i>pathway investment</i>
“‘manufacturer’ and ‘manufacturers’ within the meaning of Article 2 of this Delegated Regulation”	<i>manufacturer</i>
“manufacturing”	<i>manufacturing</i>
“ <i>premiums</i> ”	costs and charges
“shall”	must

...

6 Product governance: additional provisions for pathway investments

6.1 General

- 6.1.1 R This chapter does not affect the application of other requirements in the *FCA Handbook* or ~~EU regulation~~ *onshored regulations* applying to *firms* within the scope of this chapter. *Firms* within the scope of *PROD 1.3* (Application of *PROD 3*), *PROD 1.4* (Application of *PROD 4*), *PROD 3* (Product governance: MiFID) and *PROD 4* (Product governance: IDD) must continue to comply with those provisions.

Annex E

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

5 Investment and borrowing powers

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5.2 General investment powers and limits for UCITS schemes

...

OTC transactions in derivatives

5.2.23 R A transaction in an *OTC derivative* under *COLL 5.2.20R(1)(b)* or, for the purposes of (1) only, executed by or on behalf of a *regulated money market fund*, must be:

(1) with an approved counterparty; a counterparty to a transaction in *derivatives* is approved only if the counterparty is:

...

(b) a person whose *permission* (including any *requirements* or *limitations*), as published in the *Financial Services Register*, ~~or whose *Home State authorisation*~~, permits it to enter into the transaction as *principal off-exchange*;

...

...

5.2.23-A G The ~~non-EEA~~ jurisdictions that fall within *COLL 5.2.23R(1)(e)* are Australia, France, Germany, Hong Kong, Italy, Japan, the Netherlands, Singapore, Spain, Switzerland, and the United States of America.

...

TP 1 Transitional Provisions

TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
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...					
<u>Amendments made by the Exiting the European Union: Handbook (Amendments) Instrument 2020</u>					
<u>51</u>	<u>COLL</u> <u>5.2.23R(1)</u>	<u>R</u>	<p>[For the purpose of the <u>rule</u> specified in column (2),] an approved counterparty includes:</p> <p>(a) a person who, as a result of its authorisation in an <u>EEA State</u>, can enter into the transaction as <u>principal off-exchange</u>;</p> <p>(b) a <u>CCP</u> that is authorised in that capacity for the purpose of <u>EU EMIR</u> as it had effect immediately before <u>IP completion day</u>; and</p> <p>(c) a <u>CCP</u> that is recognised in that capacity in accordance with the process set out in article 25 of <u>EU EMIR</u> as it had effect immediately before <u>IP completion day</u>.</p>	<u>[IP completion day to 31 December [2023]]</u>	<u>[Date of coming into force of the instrument]</u>

Annex F

Amendments to the Perimeter Guidance Manual (PERG)

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

2 Authorisation and regulated activities

...

2.7 Activities: A broad outline

...

Exemption relating to the purchase of land for non-residential purposes

2.7.19E G A *credit agreement* is an exempt agreement if, at the time it is entered into:

...

- (2A) the *credit agreement* is not an ~~MCD~~ *article 3(1)(b) credit agreement* which is not one to which section 423A(3) of the Act applies, and which is secured on land less than 40% of which is intended to be used as or in connection with a dwelling.

...

Exemptions relating to the nature of the lender

2.7.19F G A *credit agreement* is an exempt agreement in the following cases:

...

- (4) If the *lender* is an *investment firm* or a *credit institution* (other than a credit union or friendly society) and the agreement is entered into for the purpose of allowing the *borrower* to carry out a transaction relating to one or more financial instruments.

2.7.19F G The exclusion referred to in PERG 2.7.19FG ~~will~~ may not be available to a
A *firm* that is an *MCD firm* (see PERG 4.10A (Activities regulated under the Mortgage Credit Directive)).

...

Exemptions relating to number of repayments to be made

...

- 2.7.19G G The exclusion referred to in *PERG 2.7.19G* ~~will~~ may not be available to a
A *firm* that is an *MCD firm* (see *PERG 4.10A* (Activities regulated under the Mortgage Credit Directive)).

...

Exemptions relating to the total charge for credit

- 2.7.19I G A *credit agreement* is also an exempt agreement in the following cases:
- (1) if it is a *borrower-lender agreement*, the *lender* is a *credit union* and the rate of the *total charge for credit* (see *CONC App 1*) does not exceed 42.6 per cent provided that:
 - (a) the agreement is not ~~an *MCD-regulated mortgage contract* or an *article 3(1)(b) credit agreement*~~; or
 - (b) the agreement is ~~an *MCD-regulated mortgage contract* or an *article 3(1)(b) credit agreement*~~ but:
 - (i) the agreement is of a kind to which section 423A(3) of the Act applies ~~the *MCD* does not apply by virtue of article 3(2) of the *MCD* (in other words, it is an agreement listed ~~in~~ (see *PERG 4.10A.5G(1) to (6)*); or~~
 - ...
 - ...
 - ...
 - (7) if the agreement is ~~an *MCD-regulated mortgage contract* or an *article 3(1)(b) credit agreement*~~, the agreement is only an exempt agreement if:
 - ...

High net worth exemption

- 2.7.19J G A *credit agreement* is an exempt agreement if:
- (1) the *borrower* is an individual;
 - (2) the agreement is either:
 - (a) secured on *land*; or
 - (b) for credit which exceeds £60,260 and, if entered into on or after 21 March 2016, is for a purpose other than the renovation of residential property.²
 - (i) ~~the renovation of residential property~~; or

- (ii) ~~to acquire or retain property rights in *land* or in an existing or projected building;~~

...

2.7.19JA G The exclusion referred to in *PERG* 2.7.19J G ~~will~~ may not be available to a *firm* that is an *MCD firm* (see *PERG* 4.10A (Activities regulated under the Mortgage Credit Directive)).

...