

General Provisions

Chapter 2

Interpreting the Handbook

2.1 Introduction

Application

- 2.1.1 **G** [deleted]
- 2.1.2 **R** This chapter applies to every *person* to whom any provision in the *Handbook* applies. In relation to a provision other than a *rule*, the *rules* in this chapter apply as if they were part of that provision.
- 2.1.3 **P** [deleted]
- 2.1.4 **E** [deleted]
- 2.1.5 **D** [deleted]
- 2.1.6 **G** [deleted]
- 2.1.7 **R** [deleted]
- 2.1.8 **R** This chapter applies to all rules made by *FOS Ltd.*
- 2.1.9 **G** The effect of **GEN 2.1.8 R** is that this chapter applies with respect to those provisions in **DISP 2** (Jurisdiction of the Financial Ombudsman Service), **DISP 3** (Complaint handling procedures of the Financial Ombudsman Service), **DISP 4** (Standard terms) and **FEES 5** (Financial Ombudsman Service Funding) made by *FOS Ltd.*

The Reader's Guide

- 2.1.10 **G** The Reader's Guide supplements this chapter. It provides an introduction to the structure and contents of the *Handbook* and its related materials, explaining how the different modules fit together and how to interpret and use the *Handbook*.



2.2 Interpreting the Handbook

Purposive interpretation

- 2.2.1 **R** Every provision in the *Handbook* must be interpreted in the light of its purpose.
- 2.2.2 **G** The purpose of any provision in the *Handbook* is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions. The *guidance* given on the purpose of a provision is intended as an explanation to assist readers of the *Handbook*. As such, *guidance* may assist the reader in assessing the purpose of the provision, but it should not be taken as a complete or definitive explanation of a provision's purpose.

Evidential provisions

- 2.2.3 **R** Any *rule* in the *Handbook* which has the status letter "E" in the margin or heading:
 - (1) is to be taken also to provide that contravention of the *rule* does not give rise to any of the consequences provided for by provisions of the Act other than section 138C (Evidential provisions); and
 - (2) incorporates the status letter "E" in the margin or heading as part of the *rule*.
- 2.2.4 **G**
 - (1) The *rules* to which section 138C of the Act applies ("evidential provisions") are identified in the *Handbook* by the status letter "E" in the margin or heading.
 - (2) Other provisions in the *Handbook*, although also identified by the status letter "E" in the margin or heading, are actually not *rules* but provisions in codes and ■ GEN 2.2.3 R does not apply to them.

- 2.2.5 **G** Chapter 6 of the Reader's Guide contains an explanation of the significance of the status letters R, E, G, D, UK, EU, P and C, and includes further information on *Handbook* provisions, including *evidential provisions*.

Use of defined expressions

- 2.2.6 **G** Expressions with defined meanings appear in italics in the *Handbook*, unless otherwise stated in individual sourcebooks or manuals.

- 2.2.7** **R** In the *Handbook* (except *IPRU*, unless otherwise indicated):
- (1) an expression in italics which is defined in the *Glossary* has the meaning given there; and
 - (2) an expression in italics which relates to an expression defined in the *Glossary* must be interpreted accordingly.
- 2.2.8** **G** Examples of related expressions are:
- (1) "*advice on investments*" and "*advise on investments*", which should be interpreted by reference to "*advising on investments*";
 - (2) "*closely linked*", which should be interpreted by reference to "*close links*";
 - (3) "*controls*" and "*controlled*", which should be interpreted by reference to "*control*";
 - (4) "*effect*", as for example in "*effect a life policy*", which should be interpreted by reference to "*effecting contracts of insurance*"; and
 - (5) "*employment*", which should be interpreted by reference to "*employee*".
- 2.2.9** **G** Unless the context otherwise requires or unless otherwise stated in a particular sourcebook or manual, where italics have not been used, an expression bears its natural meaning (subject to the Interpretation Act 1978; see ■ GEN 2.2.11 R to ■ GEN 2.2.12 G).
- 2.2.10** **G** The Interim Prudential sourcebooks (*IPRU*) have individual arrangements for defined terms and each contains *rules* or *guidance* on its own arrangements. In respect of those sourcebooks, reliance should not be placed on the definitions which appear in the *Glossary* unless otherwise indicated.
- Application of the Interpretation Act 1978**
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- 2.2.11** **R** The Interpretation Act 1978 applies to the *Handbook*.
- 2.2.12** **G** The application of the Interpretation Act 1978 to the *Handbook* has the effect, in particular, that:
- (1) expressions in the *Handbook* used in the *Act* have the meanings which they bear in the *Act*, unless the contrary intention appears;
 - (2) where reference is made in the *Handbook* to an enactment, it is a reference to that enactment as amended, and includes a reference to

that provision as extended or applied by or under any other enactment, unless the contrary intention appears; and

- (3) unless the contrary intention appears:
 - (a) words in the *Handbook* importing the masculine gender include the feminine and words importing the feminine gender include the masculine;
 - (b) words in the *Handbook* in the singular include the plural and words in the plural include the singular.

Civil partnership - references to stepchildren etc

2.2.12A **R** Any reference in a provision of the *Handbook* made before 5 December 2005 to a stepchild, step-parent, stepdaughter, stepson, stepbrother or stepsister is to be interpreted in accordance with section 246 of the Civil Partnership Act 2004.

2.2.12B **G** ■ GEN 2.2.12A R and sections 246 and 247 of the Civil Partnership Act 2004 amend each reference in the *Handbook* to a stepchild, step-parent and certain related expressions to take account of civil partnerships. As a result a reference (for example) to a stepchild of a person (A) includes a reference to the child of the civil partner of A where that child is not A's child.

Cross-references in the Handbook

2.2.13 **R**

- (1) A reference in the *Handbook* to another provision in the *Handbook* is a reference to that provision as amended from time to time.
- (2) Unless a contrary intention appears, a reference in the *Handbook* to a provision in the PRA Rulebook is a reference to that provision as amended from time to time.

2.2.13A **R** Unless a contrary intention appears, to the extent that a provision made by the *FCA* ('the referring provision') contains a cross-reference to another provision that is not made by the *FCA* including a provision formerly made by the *PRA* which the *PRA* has now deleted ('the referred provision'), the referred provision as amended from time to time (excepting deletion in its entirety) is to be treated as having been made by the *FCA* to the extent necessary to make the referring provision function with the full effect indicated by the reference.

2.2.13B **G** The purpose of ■ GEN 2.2.13AR is to ensure that cross references in the *FCA Handbook* to provisions outside the *FCA Handbook* are effective, including cross references to material that was formerly in the *PRA Handbook* but which the *PRA* has now deleted.

References to writing

2.2.14 **R** If a provision in the *Handbook* refers to a communication, notice, agreement or other *document* "in writing" then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper,

irrespective of the medium used. Expressions related to writing must be interpreted accordingly.

2.2.15 **G** ■ GEN 2.2.14 R means that, for example, electronic media may be used to make communications which are required by a provision of the *Handbook* to be "in writing", unless a contrary intention appears, or the use of electronic media would contravene some other requirement. ■ GEN 2.2.14 R does not, however, affect any other legal requirement which may apply in relation to the form or manner of executing a *document* or agreement.

2.2.15A **G** An example of a requirement relevant to whether a communication required by a provision of the *Handbook* to be "in writing" may be made by use of electronic media is the requirement to treat *customers* fairly under *Principle 6*.

2.2.16 **G** "*Document*" is a defined term in the *Glossary*, the definition of which includes information recorded in any form, including electronic form.

Activities covered by general rules

2.2.17 **R** A *general rule* (that is a *rule* made by the *FCA* the *general rule making powers*) is to be interpreted as:

- (1) applying to a *firm* with respect to the carrying on of all *regulated activities*, except to the extent that a contrary intention appears; and
- (2) not applying to a *firm* with respect to the carrying on of *unregulated activities*, unless and then only to the extent that a contrary intention appears.

Continuity of authorised partnerships and unincorporated associations

2.2.18 **R** (1) If a *firm*, which is a partnership or unincorporated association, is dissolved, but its authorisation continues to have effect under section 32 of the *Act* (Partnerships and unincorporated associations) in relation to any partnership or unincorporated association which succeeds to the business of the dissolved *firm*, the successor partnership or unincorporated association is to be regarded as the same *firm* for the purposes of the *Handbook* unless the context otherwise requires.

(2) [deleted]

(3) [deleted]

2.2.19 **G** In principle, it is possible to view a change of partners in a partnership, or a change in the membership of the unincorporated association, as the formation of a new partnership or association. ■ GEN 2.2.18 R reflects section 32 of the *Act* (Partnerships and unincorporated associations), which provides for the continuing *authorisation* of partnerships and unincorporated associations following a change in partners or members if certain conditions are satisfied. ■ GEN 2.2.18 R ensures a similar effect to section 32 in relation to

the status of the partnership or unincorporated associations as a "firm" or "authorised person" for the purposes of the Handbook.

Designated investment exchanges

2.2.20 **G** In the *Glossary*, the definition of *designated investment exchange* lists certain investment exchanges. Further information on *designated investment exchanges*, including *guidance* on the addition of an investment exchange to the list, is set out in ■ GEN 2 Annex 1 G and the obligation to pay the application fee is set out in ■ FEES 3.2.

European Economic Area (EEA)

2.2.21 **G** The agreement on the *European Economic Area*, signed at Oporto on 2 May 1992, extends certain *EU* legislation to those *EEA States* which are not Member States of the *EU*, namely Norway, Iceland and Liechtenstein. References in the *Handbook* concerning the territorial scope of *EU* law should therefore be read as extending throughout the *EEA* where the context requires.

Treaty of Lisbon

2.2.22 **G** As a result of the Treaty of Lisbon, the European Union has replaced and succeeded the European Community. References in the *Handbook* to the European Community should therefore be interpreted as references to the European Union, where the context requires. In particular, references which are copied out directly from *EU* or *UK* legislation may contain references to the Community which should be read in conjunction with section 3 of the European Union (Amendment) Act 2008.

EU Regulations and third country firms

2.2.22A **R**

- (1) Unless exempted in (2) and subject to (3), *MiFIR*, and any *EU regulation* adopted as at 3 January 2018 under *MiFIR* or *MiFID*, apply to a *third country investment firm* as if it were a *UK MiFID investment firm* when the following conditions are met:
 - (a) when it carries on *MiFID* or *equivalent third country business*; and
 - (b) it carries on the business in (a) from an establishment in the *United Kingdom*.
- (2) Paragraph (1) does not apply:
 - (a) to the extent *MiFIR* or an *EU regulation* adopted under *MiFIR* or *MiFID* imposes a specific requirement in relation to a *third country investment firm*; and
 - (b) to *EU regulations* adopted under articles 7, 34 and 35 of *MiFID*.
- (3) Paragraph (1) is modified by the application provisions in individual *Handbook* chapters for particular purposes.

2.2.22B **G**

- (1) The purpose of ■ GEN 2.2.22AR is to ensure consistency with the principle referred to in recital 109 to *MiFID* that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*. A *third country investment firm* does not, however,

benefit from passporting rights in the manner envisaged for *EEA firms* and its *authorisation* requires consideration of other issues, including the nature and extent of regulation provided by its *Home State regulator*.

- (2) ■ GEN 2.2.22AR may be overridden where the application provisions at the beginning of individual *Handbook* chapters qualify its effect.

Application of provisions where there are commensurate PRA provisions

2.2.23

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- (1) This *rule* applies to *Handbook* provisions where the *PRA* have made commensurate provisions in the *PRA Rulebook*. It may affect their application by the *FCA* to *PRA-authorised persons* and *PRA approved persons*.
- (2) Where a *Handbook* provision (or part of one) goes beyond the *FCA's* powers or regulatory responsibilities, it is to be interpreted as applied to the extent of the *FCA's* powers and regulatory responsibilities only.
- (3) The extent of a *Handbook* provision is to be interpreted as cut back under (2) by the minimum degree necessary.
- (4) [deleted]

2.2.24

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The published Memorandum of Understanding between the *FCA* and the *PRA* describes their regulatory responsibilities.

2.2.25

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An example of a *rule* being interpreted as cut back by ■ GEN 2.2.23R is ■ SYSC 6.1.1R, which requires a *firm* to maintain adequate policies and procedures to ensure compliance with its obligations under the *regulatory system*; ■ SYSC 6.1.1R should be interpreted as applied by the *FCA* in respect of a *PRA-authorised person's* compliance with regulatory obligations that are the responsibility of the *FCA* (for example, in respect of a *bank* maintaining policies and procedures to ensure compliance with banking conduct requirements in *BCOBS*).

- (1) [deleted]
- (2) [deleted]
- (3) [deleted]

Designated investment exchanges

Introduction

1. A *designated investment exchange* is an exchange appearing in the list of such exchanges in the *Glossary*.

Benefits of designation

2. Under certain *rules*, *firms* may treat transactions effected on a *designated investment exchange* in the same way as transactions on *RIEs* (for example, see [CASS 2](#)).

Criteria for inclusion in the list of designated investment exchanges

3. Before adding an investment exchange to the list of *designated investment exchanges* in the *Handbook*, the *FCA* will comply with all the requirements imposed by the *Act* in relation to the exercise of its rule-making powers. This will include consulting on the proposed amendment to the list.
4. In considering compatibility of the proposed addition with the *statutory objectives*, the *FCA* will determine whether the investment exchange provides an appropriate degree of protection for *consumers* having regard in particular to:
 - (1) the relevant law and practice, including the regulatory framework in which the investment exchange operates, in the country or territory in which the investment exchange's head office is situated and any other relevant country or territory; and
 - (2) the rules and practices of the investment exchange.
5. Only investment exchanges which do not carry on a *regulated activity* in the *United Kingdom* and are not *regulated markets* may be added to the list. This is because an investment exchange carrying on a *regulated activity* in the *United Kingdom* will need to apply for recognition as an *RIE*, or authorisation, and because a regulated market is usually treated in the same way as an *RIE* in the *rules*.

Applications to be added to the list of designated investment exchanges

6. An application to be added to the list should be in writing and delivered to the *FCA* by:
 - (1) post to:
 - The Financial Conduct Authority
 - 12 Endeavour Square
 - London
 - E20 1JN; or
 - (2) leaving the application at that address.
7. In support of the application, an investment exchange should provide information on the questions set out in the table below.
8. An application will not be considered by the *FCA* until the application fee has been paid. See [FEES 3.2](#)

Designated investment exchange questionnaire

- | | |
|---|--|
| 1 | In what way are members subject to formal supervision by the exchange or another supervisory or regulatory body? Describe how capital resources of members are monitored on an ongoing basis and how this is related to business done. |
|---|--|

Designated investment exchange questionnaire	
2	What powers does the exchange or any other supervisory or regulatory body have to intervene in a member's business in the event of misconduct, financial difficulties or otherwise?
3	What are the clearing arrangements of the exchange? How does the exchange ensure performance of a contract between its members? If relevant, what type of contract guarantee is available?
4	How is price information in respect of contracts effected on the exchange disseminated to investors, particularly those investors in the <i>United Kingdom</i> ?
5	What are the exchange's arrangements for reporting and recording of transactions effected on the exchange? Please describe.
6	Does the exchange, or any other supervisory or regulatory body, require members to segregate the money and assets of the member's <i>clients</i> from the money and assets of the member? If so, please describe in outline how this operates. If not, are investors protected in any other way in the event of the insolvency of a member or the exchange?
7	Does the exchange have procedures for the investigation of complaints? Please describe what they are.
8	Does the exchange classify the different contracts traded on it in terms of liquidity? Is it possible to identify certain contracts which are more liquid than others and in which a ready market might be considered to exist?

[deleted]

