HANDBOOK ADMINISTRATION (NO 13) INSTRUMENT 2009

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of:

(1) the following powers and related provisions in the Act:

   (a) section 138 (General rule-making power);
   (b) section 139 (Miscellaneous ancillary powers);
   (c) section 145 (Financial promotion rules);
   (d) section 156 (General supplementary powers); and
   (e) section 157(1) (Guidance); and

(2) the other 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 Act.

Commencement

C. This instrument comes into force as follows:

   (1) Annex J (DTR) comes into force on 1 June 2009;
   (2) the remainder of this instrument comes into force on 6 May 2009.

Amendments to the Handbook and related material

D. The Insurance: New Conduct of Business sourcebook (ICOBS) is renamed the Insurance: Conduct of Business sourcebook (ICOBS).

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

<table>
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<td>Annex B</td>
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<td>Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)</td>
<td>Annex I</td>
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</tbody>
</table>
Notes

F. In the Annexes to this instrument, the Notes (indicated by “Note:”) are included for the convenience of readers but do not form part of the legislative text.

Citation

G. This instrument may be cited as the Handbook Administration (No 13) Instrument 2009.

By order of the Board
23 April 2009
Annex A

Amendments to the Glossary of definitions

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

close links

(1) (in relation to MiFID business) a situation in which two or more persons are linked by:

(a) participation which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

(b) control which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

[Note: article 4(1)(31) of MiFID]

A situation in which two or more persons are permanently linked to one and the same person by a control relationship is also to be regarded as constituting a close link between such persons.

(2) (except where (1) applies, and except in SUP 3 (Auditors) and SUP 4 (Actuaries)) (in accordance with paragraph 3(2) in Schedule 6 to the Act (Close links)) the relationship between a person (“A”) and another person (“CL”) which exists if:

…

…
Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

8.1.8 R A common platform firm must in particular take the necessary steps to ensure that the following conditions are satisfied:

…

(5) the firm must retain the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing, and must manage those risks; and must supervise those functions and manage those risks;

…
Annex C

Amendments to the Fit and Proper test for Approved Persons sourcebook (FIT)

In this Annex, underlining indicates new text.

1.2.4A

G Under Article 5(1)(d) of the MiFID Implementing Directive and Article 31 and 32 of MiFID, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the firm’s Home State. Therefore, in assessing the fitness and propriety of a person to perform a controlled function solely in relation to the MiFID business of an incoming EEA firm, the FSA will not have regard to that person’s competence and capability. Where the controlled function relates to matters outside the scope of MiFID, for example money laundering responsibilities (see CF11), or to business outside the scope of the MiFID business of an incoming EEA firm, for example insurance mediation activities in relation to life policies, the FSA will have regard to a candidate’s competence and capability as well as his honesty, integrity, reputation and financial soundness.
Annex D

Amendments to the Fees manual (FEES)

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

2.1.5 G Paragraph 17 of Schedule 1 to and section 99 to of the Act enable the FSA to charge fees to cover its costs and expenses in carrying out its functions. …
Annex E

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

In this Annex, underlining indicates new text.

4.4.59 R For exposures to companies where the total annual sales for the consolidated group of which the firm is a part is less than EUR 50 million a firm may use the following correlation formula for the calculation of risk weights for corporate exposures. In this formula S is expressed as total annual sales in millions of Euros with EUR 5 million ≤ S ≤ EUR 50 million. Reported sales of less than EUR 5 million must be treated as if they were equivalent to EUR 5 million. In accordance with BIPRU 4.8.21R, for purchased receivables the total annual sales are the weighted average by individual exposures of the pool. The formula for the calculation of correlation (R) is:

\[
0.12 \times \frac{(1-\exp(-50*PD))}{(1-\exp(-50))} + 0.24 \times \left[1-\frac{(1-\exp(-50*PD))}{(1-\exp(-50))}\right] - 0.04 \times \frac{(1-(S-5)/45)}
\]

[Note: BCD Annex VII Part 1 point 5 (part)]
Annex F

Amendments to the Prudential sourcebook for UCITS Firms (UPRU)

In this Annex, striking through indicates deleted text.

TP1  Transitional Provisions for UPRU

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<tr>
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<tbody>
<tr>
<td>1.</td>
<td>This sourcebook</td>
<td>R</td>
<td>An operator of a UCITS scheme authorised on or before 12 February 2004 need not comply with the provisions in this sourcebook until 12 February 2007 provided it continues to comply instead with the provisions in IPRU(INV) 5 and it continues to restrict its activities to those specified under CIS 16.5.1R(1) to (3) or COLL 6.9.9(1) to (3), as appropriate.</td>
<td>From 01/01/07 to 12/02/07</td>
<td>01/01/07</td>
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Annex G

Amendments to the Complaints against the FSA sourcebook (COAF)

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

1.5 Procedure

…

1.5.1F G For all complaints dealt with under the ‘fast track’ procedure, the FSA will advise the complainant of his right to refer his complaint to the FSA’s Company Secretariat Corporate Services Division if he believes the complaint has not been resolved or is otherwise dissatisfied with the way it has been dealt with.

Handling of ‘fast track’ complaints referred to the Company Secretariat Corporate Services Division

1.5.1G G (1) If the complainant refers his complaint to the FSA’s Company Secretariat Corporate Services Division, the FSA will acknowledge this complaint within five business days of receiving this referral.

(2) …
Annex H

Amendments to the Supervision manual (SUP)

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

Auditors’ statutory duty to report

3.8.10 G (1) Auditors are subject to regulations made by the Treasury under sections 342(5) and 343(5) of the Act (Information given by auditor or actuary to the FSA). Section 343 and the regulations also apply to an auditor of an authorised person in his capacity as an auditor of a person who has close links with the authorised person.

(2) These regulations oblige auditors to report certain matters to the FSA. Sections 342(3) and 343(3) of the Act provide that an auditor does not contravene any duty by giving information or expressing an opinion to the FSA, if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the FSA. …

…

Actuaries’ statutory duty to report

4.5.7 G (1) Actuaries appointed under this chapter are subject to regulations made by the Treasury under sections 342(5) and 343(5) of the Act (Information given by auditor or actuary to the Authority). Section 343 and the regulations also apply to an actuary of an authorised person in his capacity as an actuary of a person with close links with the authorised person.

(2) These regulations oblige actuaries to report certain matters to the FSA. Sections 342(3) and 343(3) of the Act provide that an actuary does not contravene any duty by giving information or expressing an opinion to the FSA, if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the FSA. These provisions continue to have effect after the end of the actuary’s term of appointment. …

…
### Sch 4  Powers exercised

#### 4.1 G

The following powers and related provisions in the *Act* have been exercised by the *FSA* to make the *rules* in *SUP*:

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<td>(12)</td>
<td>...</td>
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<tr>
<td>(12A)</td>
<td>Section 178 (Obligation to notify the Authority: acquisitions of control)</td>
</tr>
<tr>
<td>(12B)</td>
<td>Section 191D (Obligation to notify the Authority: dispositions of control)</td>
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<tr>
<td>...</td>
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Annex I

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text.

**Sch 4  Powers exercised**

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<tr>
<th>4.1 G</th>
<th>The following powers and related provisions in the <em>Act</em> have been exercised by the <em>FSA</em> to make the <em>rules</em> in <em>REC</em>:</th>
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<tr>
<td></td>
<td>Section 156 (General supplementary powers)</td>
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<tr>
<td></td>
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Annex J

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

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

Comes into force on 1 June 2009

5.1.4 R …

(3) References to a market maker also include a third country investment firm and a credit institution when acting as a market maker and which, in relation to that activity, is subject to regulatory supervision under the laws of a Member State an EEA State.

…

5.3.1 R …

(3) For the purposes of (2) a client-serving intermediary is a person satisfying the following conditions:

(a) (i) it is authorised by its Home State under MiFID or the BCD, or, subject to (iii), as a third country investment firm, to deal as principal, in a client-serving capacity, in financial instruments falling within (1)(b), and to carry on any relevant business connected to such dealing; or

…

(iii) references to a third country investment firm in (i) are limited to relevant business carried on by such firms which is subject to regulatory supervision under the laws of a Member State an EEA State;

…

…

5.3.3 G …

(2) For the purposes of DTR 5.3.1R(1)(b), in the FSA’s view:

…

(c) a financial instrument referenced to a basket or index of shares will not have similar economic effects to a qualifying financial
instrument unless:

(i) the shares in the basket represent both 1% or more of the class in issue and or 20% or more of the value of the securities in the basket or index, or both; and or

(ii) use of the financial instrument is connected to the avoidance of notification;