

HANDBOOK ADMINISTRATION (NO 20) INSTRUMENT 2010**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the 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 F (COMP) comes into force on 31 December 2010;
 - (2) Annex B (Glossary) and Annex E (ICOBS) come into force on 1 January 2011;
 - (3) the remainder of this instrument comes into force on 6 January 2011.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
General provisions (GEN)	Annex D
Insurance: Conduct of Business sourcebook (ICOBS)	Annex E
Compensation sourcebook (COMP)	Annex F
Listing Rules sourcebook (LR)	Annex G
Prospectus Rules sourcebook (PR)	Annex H

Citation

- F. This instrument may be cited as the Handbook Administration (No 20) Instrument 2010.

By order of the Board
16 December 2010

Annex A

Amendments to various modules of the Handbook

The text of Schedule 6 (Rules that can be waived) in each of the modules listed below is deleted and replaced with the following text.

Sch 6 **Rules that can be waived**

Sch 6.1G As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the *FSA* has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

The modules of the Handbook in which this amendment is made are as follows:

The Principles for Businesses	PRIN
Senior Management Arrangements, Systems and Controls sourcebook	SYSC
Financial Stability and Market Confidence sourcebook	FINMAR
Fees manual	FEES
Conduct of Business sourcebook	COBS
Mortgages and Home Finance: Conduct of Business sourcebook	MCOB
Client Assets sourcebook	CASS
Market Conduct sourcebook	MAR
Training and Competence sourcebook	TC
Supervision manual	SUP
Dispute Resolution: Complaints sourcebook	DISP
Compensation sourcebook	COMP
Professional Firms sourcebook	PROF
Disclosure Rules and Transparency Rules sourcebook	DTR

Annex B

Amendments to the Glossary of definitions

This Annex comes into force on 1 January 2011.

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

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

Consolidated Motor Insurance Directive the European Parliament and Council Directive of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (No 2009/103/EC). This Directive codifies Council Directives 72/166/EEC, 84/5/EEC, 90/232/EEC, 2000/26/EC and 2005/14/EC.

Amend the following as shown.

Fourth Motor Insurance Directive ~~the Directive of the European Parliament and the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (No 2000/26/EC).~~

Fifth Motor Insurance Directive ~~the European Parliament and Council Directive of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and European Parliament and Council Directive 2006/26/EC relating to insurance against civil liability in respect of the use of vehicles (No 2005/14/EC).~~

IMA SORP the Statement of Recommended Practice for financial statements of *authorised funds* issued by the Investment Management Association in ~~November 2008~~ October 2010.

information centre a centre established by an *EEA State* to meet its obligations under article 5 23 of the ~~*Fourth Motor Insurance Directive*~~ *Consolidated Motor Insurance Directive* (Information Centres).

Motor Insurers' Information Centre the information centre appointed to meet the *United Kingdom's* obligations under article 5 23 of the ~~*Fourth Motor Insurance Directive*~~ *Consolidated Motor Insurance Directive* (Information Centres).

State of the risk (in accordance with paragraph 6(3) of Schedule 12 to the *Act* (Transfer schemes: certificates)) (in relation to the *EEA State* in which a risk is situated):

- (a) ...
- (b) ...
- (ba) if the insurance relates to a *vehicle* dispatched from one *EEA State* to another, in respect of the period of 30 days beginning with the day on which the purchaser accepts delivery, the *EEA State* of destination (and not, as provided by sub-paragraph (b), the *EEA State* of registration);
[**Note:** article 4(4)(4a) 15(1) of the *Fifth Motor Insurance Directive Consolidated Motor Insurance Directive*]

...

UK Corporate Governance Code (~~in LR and DTR~~) the UK Corporate Governance Code published in May 2010 by the Financial Reporting Council.

Annex C

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

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

4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

	Question	Answer
...		
14	What if generally accepted principles of good corporate governance recommend that the <i>chief executive</i> should not be involved in an aspect of corporate governance?	The Note to SYSC 4.4.5R provides that the <i>chief executive</i> or other executive director or <i>senior manager</i> need not be involved in such circumstances. For example, the Combined Code developed by the Committee on Corporate Governance <u>UK Corporate Governance Code</u> recommends that the board of a listed company should establish an audit committee of non-executive directors to be responsible for oversight of the audit. That aspect of the oversight function may therefore be allocated to the members of such a committee without involving the <i>chief executive</i> . Such individuals may require approval by the <i>FSA</i> in relation to that function (see Question 1).
...		

...

TP 4 Combined Code

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provisions: coming into force
1.	SYSC 2.1.6G, and SYSC 3.1.3G and SYSC 4.4.6G	R	References to provisions in the <i>UK Corporate Governance Code</i> are to be read as references to the equivalent provisions in the <i>Combined Code</i> for accounting periods	From 29 June 2010 to 28 December 2011	6 August 2010

			beginning before 29 June 2010.		
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Annex D

Amendments to the General Provisions (GEN)

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

Sch 6 Rules that can be waived

Sch 6.1	G	1	<p>GEN 1.2.2R (Referring to approval by the FSA) and the rules in GEN 4 (Statutory status disclosure) can be waived by the FSA under section 148 of the ACT (Modification or waiver of rules). <u>As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its rules, other than rules made under section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the rules incorporate requirements laid down in European directives, it will not be possible for the FSA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives. It therefore follows that if a rule contains provisions which derive partly from a directive, and partly not, the FSA will be able to consider a waiver of the latter requirements only, unless the directive provisions are optional rather than mandatory.</u></p>
		...	

Annex E

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

This Annex comes into force on 1 January 2011.

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

1 Annex 1 Application (see ICOBS 1.1.2R)

...		
Part 4: Guidance		
...		
6.1	G	The scope of the Fourth Motor Insurance Directive and Fifth Motor Insurance Directive <u>Consolidated Motor Insurance Directive</u> covers <i>insurers</i> conducting <i>motor vehicle liability insurance business</i> . The rules in this sourcebook within the Directives' <u>Directive's</u> scope are those regarding the appointment of claims representatives and handling of claims by <i>injured parties</i> (see ICOBS 8.2).
6.2	G	The Directives require <u>Directive requires</u> a <i>motor vehicle liability insurer</i> to appoint a claims representative in each <i>EEA State</i> other than its <i>Home State</i> . They specify <u>It specifies</u> minimum requirements regarding function and powers of claims representatives in handling claims and regarding the settlement of claims by <i>injured parties</i> .
6.3	G	The Directives' <u>Directive's</u> provisions apply to <i>motor vehicle liability insurers</i> for which the <i>United Kingdom</i> is the <i>Home State</i> . (See article 4 of the Fourth Motor Insurance Directive <u>articles 21 and 22 of the Consolidated Motor Insurance Directive</u>).
...		

...

2.2.4 G (1) ...

(2) Such a *financial promotion* should:

...

(c) comply with other legislative requirements, including ~~The Control of Misleading Advertisements Regulations 1988~~ the Consumer Protection from Unfair Trading Regulations 2008

and the Business Protection from Misleading Marketing Regulations 2008.

...

TP 1

Transitional Provisions

	Fifth Motor Insurance Directive <u>Consolidated Motor Insurance Directive</u>	
1	R	In relation to a claim by an <i>injured party</i> received by a <i>motor vehicle liability insurer</i> or its claims representative on or before 10 June 2007, the motor vehicle liability claims handling rules (see <i>ICOBS 8.2.6R</i> to <i>ICOBS 8.2.11G</i>) only apply if the claim results from an accident occurring in an <i>EEA State</i> other than the <i>injured party's EEA State</i> of residence which was caused by the use of a <i>vehicle</i> insured through an establishment in, and <i>normally based</i> in, an <i>EEA State</i> other than the <i>injured party's EEA State</i> of residence.
...		

Annex F

Amendments to the Compensation sourcebook (COMP)

This Annex comes into force on 31 December 2010.

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

- 5.5.2 R *COMP* 5.5.1R only applies if the *protected investment business* was carried on from:
- (1) ...
 - (2) a *branch* of a *UK firm* which is:
 - (a) a *MiFID investment firm* established in another EEA State; or
 - (b) ...
 and the *claim* is an *ICD claim*; or
 - (3)
- ...
- 7.2.6 G As an example of the circumstances which *COMP* 7.2.5R is designed to address, take two claimants, A and B.
- (1) Both A and B have a *protected investment business claim* of £60,000 against a *relevant person in default*. The *FSCS* offers both claimants ~~£48,000~~£50,000 compensation (the maximum amount payable for such claims *COMP* 10.2.3R). A accepts immediately, and assigns his rights against the *relevant person* to the *FSCS*, but B delays accepting the *FSCS's* offer of compensation.
 - (2) ...
 - (3) However, if the payment were made by the liquidator after A had accepted the *FSCS's* offer of compensation and assigned his rights to the *FSCS*, but before B accepted the *FSCS* offer of compensation, A would be disadvantaged relative to B even though he has received ~~£48,000~~£50,000 compensation from the *FSCS*. A would be disadvantaged relative to B because he promptly accepted the *FSCS's* offer and assigned his rights to the *FSCS*. Because A has assigned his rights to the *FSCS*, any payment from the liquidator will be made to the *FSCS* rather than A. In this case the *FSCS* has paid A more than £30,000, so the £30,000 from the liquidator that would have been payable to A will be payable in full to the *FSCS* and not to A.

- (4) B is able to exercise his rights against the liquidator because he delayed accepting the *FSCS's* offer and receives £30,000 from the liquidator. B can then make a *claim* for the remaining £30,000 to the *FSCS* which the *FSCS* can pay in full (see *COMP 10.2.2G*). B therefore suffers no loss whereas A is left with a loss of ~~£12,000~~10,000, being the difference between his *claim* of £60,000 and the compensation paid by the *FSCS* of ~~£48,000~~50,000.

...

16 Disclosure requirements for firms that accept deposits

16.3 UK domestic firms, non-EEA firms and incoming EEA firms

UK domestic firms and non-EEA firms

- 16.3.1 R A *firm* that is a *UK domestic firm* or a *non-EEA firm* must disclose the following information to any *protected deposit* holder with that *firm* who is or is likely to be an *eligible claimant*.

“Important information about compensation arrangements

We are covered by the Financial Services Compensation Scheme (FSCS). The FSCS can pay compensation to depositors if a [bank/building society/credit union - delete as appropriate] is unable to meet its financial obligations. Most depositors - including most individuals and small businesses - are covered by the scheme.

In respect of deposits, an eligible depositor is entitled to claim up to [insert *FSCS* maximum payment for *protected deposits*]. For joint accounts each account holder is treated as having a claim in respect of their share so, for a joint account held by two eligible depositors, the maximum amount that could be claimed would be [insert *FSCS* maximum payment for *protected deposits*] each (making a total of [insert *FSCS* maximum payment for *protected deposits* x 2]). The [insert *FSCS* maximum payment for *protected deposits*] limit relates to the **combined** amount in all the eligible depositor's accounts with the [bank/building society/credit union - delete as appropriate], including their share of any joint account, and not to each separate account.

For further information about the scheme (including the amounts covered and eligibility to claim) please [insert as appropriate one or more of the following:] call us on [insert *firm's* phone number] / contact your firm representative / ask at your local branch, refer to the FSCS website www.FSCS.org.uk or call [insert *FSCS* phone number].”

...

Incoming EEA firms that accept deposits through UK branches and have not obtained top-up cover

16.3.3 R ...

...

For further information about the [insert name of *Home State* compensation scheme] (including the amounts covered and eligibility to claim) please [insert as appropriate one or more of the following:] call us on [insert *firm's* phone number] / contact your firm representative / contact your branch or refer to [insert contact details of the *Home State* compensation scheme].”

TP 1.1 Transitional Provisions Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook Provisions: coming into force
...					
<u>25</u>	<u>COMP 12.2.1R and COMP 12.2.6A and the amendment of all references in COMP (other than in COMP 12.2.1R and the heading in respect of COMP 12.2.4R) to “overall net claim” to “overall claim”</u>	<u>R</u>	<u>The changes referred to in (2) made by the Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009 do not apply in relation to a claim against a relevant person that was in default before 31 December 2010.</u>	<u>From 31 December 2010 indefinitely</u>	<u>From 31 December 2010</u>
<u>26</u>	<u>COMP 12.3.1R and COMP 15.1.12R</u>	<u>R</u>	<u>The changes referred to in (2) made by the Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009 do not apply in relation to a claim against a relevant</u>	<u>From 31 December 2010 indefinitely</u>	<u>From 31 December 2010</u>

			<u>person that was in default before 31 December 2010.</u>		
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Annex G

Amendments to the Listing Rules sourcebook (LR)

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

Early consultation with FSA

1.2.5 G ...

Address for correspondence

Note: The *FSA*'s address for correspondence is:

...

~~Fax: 020 7066 8362~~

...

...

Statement regarding compliance with ~~Combined Code~~ UK Corporate Governance Code

15.6.6 R ...

(2) *A closed-ended investment fund's* statement required by LR 9.8.6R(6) need not include details about the following principles and provisions of the ~~Combined Code~~ UK Corporate Governance Code except to the extent that those principles or provisions relate specifically to non-executive *directors*:

- (a) Principle D.1 (including Code Provisions D.1.1 to D.1.5); and
- (b) Principle D.2 (including Code Provisions D.2.1 to D.2.4).

...

TR 8 Transitional Provisions for the Combined Code

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision coming into force
1.	LR 9.8.6R(5) and (6) LR 9.8.10R(2) LR 15.6.6R(2)	R	References to provisions in the <i>UK Corporate Governance Code</i> are to be read as references to the equivalent provisions in the <i>Combined Code</i> for	From 29 June 2010 to 28 December 2011	6 August 2010

		<p>accounting periods beginning before 29 June 2010. For the avoidance of doubt, in <i>LR 9.8.10R(2)(b)</i> <i>Combined Code</i> provision <i>C.2.1</i> became <i>UK Corporate Governance Code</i> provision <i>C.2.2</i>; <i>LR 15.6.6R(2)</i> <i>Combined Code</i> Principles B.1 and B.2 became <i>UK Corporate Governance Code</i> Principles D.1 and D.2 respectively; and <i>Combined Code</i> provisions B.1.1 to B.1.56 and B.2.1 to B.2.4 became <i>UK Corporate Governance Code</i> provisions D.1.1 to D.1.5 and D.2.1 to D.2.4 respectively.</p>		
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...

Sch 6 ~~[to follow]~~ **Rules that can be waived**

Sch 6.1G As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its rules, other than rules made under section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the rules incorporate requirements laid down in European directives, it will not be possible for the FSA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.

Sch 6.2G In addition section 82 (Exemptions from disclosure) of the Act provides the FSA with discretion to authorise omissions from disclosure requirements derived from the Consolidated Admissions and Reporting Directive in the circumstances specified in that section.

Annex H**Amendments to the Prospectus Rules sourcebook (PR)**

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

Sch 6 ~~[to follow]~~ **Rules that can be waived**

Sch 6.1G As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its rules, other than rules made under section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the rules incorporate requirements laid down in European directives, it will not be possible for the FSA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.

Sch 6.2G In addition section 87B (Exemptions from disclosure) of the Act provides the FSA with discretion to authorise omissions from disclosure requirements derived from the Prospectus Directive in the circumstances specified in that section.