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 on 1 July 2011.

Amendments to the Handbook

D. The modules listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
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</thead>
<tbody>
<tr>
<td>Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)</td>
<td>Annex A</td>
</tr>
<tr>
<td>Supervision manual (SUP)</td>
<td>Annex B</td>
</tr>
<tr>
<td>Decision Procedure and Penalties manual (DEPP)</td>
<td>Annex C</td>
</tr>
</tbody>
</table>

Amendments to material outside the Handbook

E. The Enforcement Guide (EG) is amended in accordance with Annex D to this instrument.

Citation

F. This instrument may be cited as the Handbook Administration (No 22) Instrument 2011.

By order of the Board
23 June 2011
Annex A

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

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

TP 29 Liquid assets buffer scalar: simplified ILAS BIPRU firms

... 

Transitional provisions

29.3 R A simplified ILAS BIPRU firm falling into BIPRU TP 29.1 must ensure that:

(1) at all times between 1 October 2010 and 29 February 2012, its liquid assets buffer is no less that 30% of the amount of its simplified buffer requirement;

...
Annex B

Amendments to the Supervision manual (SUP)

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

2.4.1 G Representatives or appointees of the FSA (which may include individuals engaged by a market research firm) may approach a firm, its agents or its appointed representatives in the role of potential retail consumers with any authorisation under the Regulation of Investigatory Powers Act 2000 that is considered appropriate. This is known as ‘mystery shopping’.

In SUP 16 Annex 24R (Data items for SUP 16.12), the following data items are deleted and replaced in each case by “[deleted]”. The deleted text is not shown.

FSA020
FSA021
FSA022
FSA023
FSA024
FSA025
FSA026

In SUP 16 Annex 25G (Guidance notes for data items in SUP 16 Annex 24R), the guidance notes relating to the following data items are deleted and replaced in each case by “[deleted]”. The deleted text is not shown.

FSA020
FSA021
FSA022
FSA023
FSA024
FSA025
FSA026

Amend the following as shown.

TP 1.6  Electronic Money Transitional Provision

<table>
<thead>
<tr>
<th></th>
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<tr>
<td>2</td>
<td>The changes to SUP 16 Annex 24R and SUP 16 Annex 25G set out in the Handbook Administration (No 22) Instrument 2011</td>
<td>In relation to a person deemed to have been granted authorisation by virtue of regulation 74 of the <em>Electronic Money Regulations</em>, the changes referred to in column (2) do not apply and the provisions of SUP, as they were in force as at 29 April 2011, will apply for as long as that person is deemed to be authorised by virtue of regulation 74 of the <em>Electronic Money Regulations</em>.</td>
<td>Indefinitely</td>
<td>1 July 2011</td>
<td></td>
</tr>
</tbody>
</table>
Annex C

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2.5.2 G ... Similarly, in enforcement cases the RDC might take the decision to give a warning notice, but the decision to give a decision notice could be taken by the settlement decision makers on the basis that the person concerned does not contest the action proposed (see DEPP 5).

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

<table>
<thead>
<tr>
<th>Section of the Act</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>88(4)/(6)</td>
<td>when the FSA is proposing or deciding to (1) refuse a person’s application for approval as a sponsor; or (2) on its own initiative, cancel a person’s approval as a sponsor</td>
<td>LR 8</td>
<td>RDC</td>
</tr>
</tbody>
</table>

Step 2 – the seriousness of the market abuse

6.5C.2 G ...
Annex D

Amendments to the Enforcement Guide (EG)

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

1.8 The material in this guide does not form part of the FSA Handbook and is not guidance on rules, but it is ‘general guidance’ as defined in section 158 of the Act. …

2.5 Other than in the area of a firm’s failure to satisfy the FSA’s Threshold Conditions for authorisation (as to which, see paragraph 2.11), the selection method for cases involving firms and approved persons, market abuse and listing matters (for example, breaches of the listing, prospectus or disclosure rules) occurs at two main levels:

2.18 The FSA’s approach to regulation involves a combination of high-level principles and detailed rules and guidance. While this broad structure is both necessary and desirable, the FSA is moving towards a more principles-based approach. This is because the FSA believes an approach that is based less on detailed rules and that focuses more on outcomes will allow it to achieve its regulatory objectives in a more efficient and effective way. …

2.20 … This has sometimes been described as the “reasonable predictability test” or “condition of predictability”, but it would be wrong to think of this as a legal test to be met in deciding whether there has been a breach of FSA rules. …

2.23 Guidance is not binding on those to whom the FSA’s rules apply. Nor are the variety of materials (such as case studies showing good or bad practice, FSA speeches, and generic letters written by the FSA to Chief Executives in particular sectors) published to support the rules and guidance in the Handbook. Rather, such materials are intended to illustrate ways (but not the only ways) in which a person can comply with the relevant rules.

2.24 … However, guidance does not set out the minimum standard of conduct needed to comply with a rule, nor is there any presumption that departing from guidance indicates a breach of a rule. If a firm has complied with the Principles and other rules, then it does not matter whether it has also complied with other material the FSA has issued.
2.29 The FSA does not regard adherence to Industry Guidance as the only means of complying with FSA rules and Principles. …

2.30 Industry Guidance may be relevant to an enforcement case in ways similar to those described at paragraph 2.25. But the FSA is aware of the concern that firms must have scope to exercise their own judgement about what FSA rules require, and that Industry Guidance should not become a new prescriptive regime in place of detailed FSA rules. …

2.35 The FSA attaches considerable importance to the timely submission by firms of reports required under FSA rules. …

3.22 Some themes or issues are common to any discussion about the potential use or value of a report to the FSA. These include:

...(7) whether the investigation will be limited to ascertaining facts or will also include advice or opinions about breaches of FSA rules or requirements;

5.23 The FSA recognises the importance of consistency in its decision-making and that it must consider the approach previously taken to, say, the application of a particular rule or Principle in a given context. …

7.2 The FSA has the following powers to impose a financial penalty and to publish a public censure.

(1) It may publish a statement:

...(d) where there has been a contravention of the Part VI rules, under section 91 of the Act;

(2) It may impose a financial penalty:
(b) where there has been a contravention of the Part 6 rules, under section 91 of the Act;

...

7.8 Chapter 6 of the General Provisions module of the FSA Handbook contains rules prohibiting a firm or member from entering into, arranging, claiming on or making a payment under a contract of insurance that is intended to have, or has, the effect of indemnifying any person against a financial penalty.

...

7.9 Rule 1.5.33 in the FSA’s Prudential Sourcebook for Insurers prohibits a long-term insurer (including a firm qualifying for authorisation under Schedule 3 or 4 to the Act), which is not a mutual, from paying a financial penalty from a long-term insurance fund.

...

7.15 A private warning is not intended to be a determination by the FSA as to whether the recipient has breached the FSA’s rules. ...

...

8.14 … Examples of the types of circumstances in which the FSA may cancel a firm’s Part IV permission include:

...

(7) repeated failures to comply with rules or requirements;

...

...

13.13 In addition, the FSA will consider, where relevant, factors including:

...

(12) in the case of an unauthorised company or partnership carrying on a regulated activity as part of a larger enterprise, the extent to which the company’s or partnership’s survival can be anticipated without the continuance of the unauthorised regulated activity:

...

...

13.29 Exceptionally, the FSA will consider making such a challenge using its powers in sections 356 and 357 of the Act after considering, in particular, the following
matters:

…

(5) the nature and complexity of the regulated activity regulated activity:

…

…

13.36 … These circumstances may include:

(1) where the FSA has relevant information which it believes may not otherwise be drawn to the court’s attention; especially where the FSA has been asked to attend for a particular purpose (for example to explain the operation of its rules rules):

…

…

14.7 … General factors that the FSA may consider include, but are not limited to:

(1) the seriousness of the breach of financial promotion rules rules by the operator (the matters listed at paragraph 14.1(1)(a) to (f) may be relevant in this context); and

…

…

15.1 … The FSA’s power to disqualify auditors in breach of duties imposed by trust scheme rules also assist the FSA to achieve these regulatory objectives by ensuring that auditors fulfil the duties imposed on them by these rules rules.

…

15.3 Actuaries appointed by firms under rule rule 4.3.1 of the FSA’s Supervision Manual are approved persons and as such will be subject to the FSA’s Statements of Principle and Code of Practice for Approved Persons. …

…

15.6 … These may include, but are not limited to, the following factors:

(1) the nature and seriousness of any breach of rules rules and the effect of that breach: the rules rules are set out in SUP 3 (Auditors) and SUP 4 (Actuaries), and in the case of firms which are ICVCs, in COLL 4 (Investor relations) and COLL 7 (Suspension of dealings and termination of authorised funds). … ;

…
When it decides whether to exercise its power to disapply an exemption from the general prohibition in relation to a member, the FSA will take into account all relevant circumstances which may include, but are not limited to, the following factors:

(3) The extent of the member’s compliance with rules made by the FSA under section 332(1) of the Act (Rules in relation to whom the general prohibition does not apply) or by the relevant designated professional body under section 332(3) of the Act;

…

…

As registrant-only societies are not subject to the rules imposed by the Act and by the FSA Handbook, the requirement that they submit annual returns provides an important check that the interests and investments of members, potential members, creditors and other interested parties are being safeguarded.

…

Under the OEIC Regulations, the FSA may also use its disqualification powers against auditors who fail to comply with a duty imposed on them under FSA rules. …

…

Where a failure by a firm to meet the requirements of the Regulations also amounts to a breach of the FSA’s rules, the FSA will consider all the circumstances of the case when deciding whether to take action for a breach of its rules or under the Regulations.

…

The Money Laundering Regulations add to the range of options available to the FSA for dealing with anti-money laundering failures. These options are:

…

- to take regulatory action against authorised firms for failures which breach the FSA’s rules and requirements (for example, under Principle 3 or SYSC 3.2.6R or SYSC 6.1.1R); and

…

In the majority of cases where both the Regulations and the FSA rules apply and regulatory action, as opposed to criminal proceedings, is appropriate,
the FSA generally expects to continue to discipline authorised firms under the Act.

APPENDIX TO THE GUIDELINES ON INVESTIGATION OF CASES OF INTEREST OR CONCERN TO THE FINANCIAL SERVICES AUTHORITY AND OTHER PROSECUTING AND INVESTIGATING AGENCIES

1.4 The FSA has the power to take the following enforcement action:

- prohibit an individual from being employed in connection with a regulated activity under s.56 of the 2000 Act;