

HANDBOOK ADMINISTRATION (NO 22) INSTRUMENT 2011**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).

(1)	(2)
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex A
Supervision manual (SUP)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C

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 through 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 ~~28~~ 29 February 2012, its liquid assets buffer is no less than 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

(1)	(2) Material to which the transitional provision	(3)	(4) Transitional provision	(5) Transitional provisions: dates in force	(6) Handbook provision: coming into
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	applies				force
1	...				
<u>2</u>	<u>The changes to SUP 16 Annex 24R and SUP 16 Annex 25G set out in the Handbook Administration (No 22) Instrument 2011</u>	<u>R</u>	<u>In relation to a person deemed to have been granted authorisation by virtue of regulation 74 of the <i>Electronic Money Regulations</i>, 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 <i>Electronic Money Regulations</i>.</u>	<u>Indefinitely</u>	<u>1 July 2011</u>

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~~ 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

...

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

...

Step 2 – the seriousness of the ~~market abuse~~ 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~~ guidance on ~~rules~~ 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~~ rules) occurs at two main levels:

...

...

2.18 The FSA’s approach to regulation involves a combination of high-level principles and detailed ~~rules~~ rules and ~~guidance~~ 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~~ 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~~ 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~~ 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~~ rules.

2.24 ... However, *guidance* does not set out the minimum standard of conduct needed to comply with a ~~rule~~ rule, nor is there any presumption that departing from *guidance* indicates a breach of a ~~rule~~ rule. If a *firm* has complied with the *Principles* and other ~~rules~~ 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~~ 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~~ firms must have scope to exercise their own judgement about what FSA ~~rules~~ rules require, and that Industry Guidance should not become a new prescriptive regime in place of detailed FSA ~~rules~~ rules. ...

...

2.35 The FSA attaches considerable importance to the timely submission by *firms* of reports required under FSA ~~rules~~ 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~~ 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~~ 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~~ Part 6 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~~ Part 6 rules, under section 91 of the *Act*;

...

...

- 7.8 Chapter 6 of the General Provisions module of the FSA Handbook contains ~~rules~~ 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~~ 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~~ 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~~ 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~~ 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). ... ;

...

...

16.8 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~~ 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*;

...

...

19.5 ... As registrant-only societies are not subject to the ~~rules~~ 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. ...

...

19.27 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~~ rules. ...

...

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

...

19.73 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~~ rules and requirements (for example, under Principle 3 or SYSC 3.2.6R or SYSC 6.1.1R); and

...

19.74 ... In the majority of cases where both the Regulations and the FSA ~~rules~~ 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~~ *regulated activity*, under s.56 of the 2000 Act;