HANDBOOK ADMINISTRATION (NO 35) INSTRUMENT 2014

Powers exercised

A. The Financial Conduct 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 138G(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

   (2) Part 3 of Annex C (CASS) comes into force on 1 June 2015.
   (3) The remainder of this instrument comes into force on 1 October 2014.

Amendments to the FCA Handbook

D. The modules of the FCA’s 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>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary of definitions</td>
<td>Annex A</td>
</tr>
<tr>
<td>Conduct of Business sourcebook (COBS)</td>
<td>Annex B</td>
</tr>
<tr>
<td>Client Assets sourcebook (CASS)</td>
<td>Annex C</td>
</tr>
<tr>
<td>Market Conduct sourcebook (MAR)</td>
<td>Annex D</td>
</tr>
<tr>
<td>Supervision manual (SUP)</td>
<td>Annex E</td>
</tr>
<tr>
<td>Compensation sourcebook (COMP)</td>
<td>Annex F</td>
</tr>
<tr>
<td>Consumer Credit sourcebook (CONC)</td>
<td>Annex G</td>
</tr>
<tr>
<td>Listing Rules sourcebook (LR)</td>
<td>Annex H</td>
</tr>
</tbody>
</table>

Citation

E. This instrument may be cited as the Handbook Administration (No 35) Instrument 2014.

By order of the Board of the Financial Conduct Authority
25 September 2014
Annex A

Amendments to the Glossary of definitions

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

related designated investment

(in relation to a designated investment (the “first investment”)) a designated investment whose value might reasonably be expected to be directly affected by:

(a) any fluctuation in the value of the first investment; or

(b) any published recommendation that concerns the first investment. [deleted]
Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

The provisions in COBS 4.14 are deleted and transferred to COBS 22. The deleted text is not shown.

4.14 Temporary product intervention rules

After COBS 21 insert the following new chapter. The new text is shown below. All the provisions shown are moved from COBS 4.14 (4.14.1R becomes 22.1.1R et seq). The amendments shown below are against the text of the original provisions.

22 Restrictions on distribution of contingent convertible instruments

22.1 Temporary restrictions on contingent convertible instruments

22.1.1 R (1) A firm must not

(a) sell a contingent convertible instrument to a retail client in the EEA; or

(b) do anything that would or might result in the buying of a contingent convertible instrument or the holding of a beneficial interest in a contingent convertible instrument by a retail client in the EEA.

(2) The prohibition in (1) does not apply if the firm has taken reasonable steps to ensure that one or more of the exemptions in COBS 4.14.2R 22.1.2R applies.

(3) In this section a retail client of the firm includes a person who would be a retail client if he were receiving services from the firm in the course of carrying on a regulated activity.

(4) The rules in this section cease to have effect on 1 October 2015.

Exemptions

<table>
<thead>
<tr>
<th>22.1.2</th>
<th>R</th>
<th>Title</th>
<th>Type of retail client</th>
<th>Additional conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Certified high net worth investors</td>
<td>An individual who meets the requirements set out in COBS 4.12.6R, or a person (or persons) legally</td>
<td>The firm must consider the contingent convertible instrument is likely to be suitable for that individual,</td>
</tr>
</tbody>
</table>
| **Empowered to make investment decisions on behalf of such individual.** | Based on a preliminary assessment of that individual’s profile and objectives.  
(See **COBS 4.12.5G(2).**)

| **Exempt persons** | **Not applicable.**  
An exempt *person* (other than a *person* exempted only by section 39 of the *Act* (Exemption of appointed representatives)) if the activity relates to a *regulated activity* in respect of which the *person* is exempt from the general prohibition.

| **Certified sophisticated investors** | **Not applicable.**  
An individual who meets the requirements set out in **COBS 4.12.7R**, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another *person* who is the *firm's client*.

| **Self-certified sophisticated investors** | The *firm* must consider the *contingent convertible instrument* is likely to be suitable for that individual, based on a preliminary assessment of that individual’s profile and objectives.  
(See **COBS 4.12.5G(2).**)  
An individual who meets the requirements set out in **COBS 4.12.8R**, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another *person* who is the *firm's client*.

| **Solicited advice** | The prohibition does not apply provided all of the following requirements are met:  
(a) there is no *financial promotion* other than a *personal recommendation* on the *contingent convertible instrument*;  
(b) the *personal recommendation* is made  
Any *retail client*. |
following a specific request by that client for advice on the merits of investing in the contingent convertible instrument; and (c) the client has not previously received a financial promotion or any other communication from the firm (or from a person connected to the firm) which is intended to influence the client in relation to investment in contingent convertible instruments. (See Note 1.)

<table>
<thead>
<tr>
<th>MiFID or equivalent third country business other than financial promotions</th>
<th>Any retail client.</th>
<th>If the prohibited activities amount to MiFID or equivalent third country business, that rule only applies to the extent that the prohibited activity is the communication or approval of a financial promotion.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prospectus</td>
<td>Any retail client.</td>
<td>The prohibition does not apply to the distribution of a prospectus required under the Prospectus Directive.</td>
</tr>
<tr>
<td>Issuers</td>
<td>Any retail client</td>
<td>To the extent that the firm is acting as issuer of a contingent convertible instrument, the prohibition only applies to the original issuance of the contingent convertible instrument and not to subsequent trading in the secondary market.</td>
</tr>
<tr>
<td>Clearing, custodial and processing services</td>
<td>Any retail client</td>
<td>The prohibition does not apply to the extent that the firm’s activities relate to clearing, registration or settlement of transactions in contingent convertible instruments (or rights to or interests in such</td>
</tr>
<tr>
<td>Indirect investment</td>
<td>Any retail client</td>
<td>The prohibition does not apply in relation to a beneficial interest in a <em>contingent convertible instrument</em> held from participation in a <em>regulated collective investment scheme</em>, investment in a <em>non-mainstream pooled investment</em>, or membership of an <em>occupational pension scheme</em>.</td>
</tr>
</tbody>
</table>

**Note 1** A *person* is connected with a *firm* if it acts as an *introducer* or *appointed representative* for that *firm* or, if it is any other *person*, regardless of *authorisation* status, who has a relevant business relationship with the *firm*.

**Note 2** See *COBS* 2.4 for rules and guidance on agent as *client* and reliance on others.

---

**Adaptation of rules and guidance to contingent convertible instruments**

**22.1.3 R** (1) For the purposes of compliance with this section and with any assessments or certifications required by the exemptions set out in *COBS* 4.14.2R 22.1.2R, any references in *COBS* 4.12 provisions to *non-mainstream pooled investments* must be read as though they are references to *contingent convertible instruments*.

(2) If the *firm* is relying on the high net worth investor exemption, the sophisticated investor exemption or the self-certified sophisticated investor exemption for the purposes of compliance with *COBS* 4.14.1R 22.1.1R, the statement the investor must sign should have references to *non-mainstream pooled investments* replaced with references to *contingent convertible instruments*.

(3) The *firm* must give the *retail client* a written copy of any statements that individual has been asked to sign as part of certification as a high net worth, sophisticated or self-certified sophisticated investor for the purposes of compliance with *COBS* 4.14.1R 22.1.1R.

**22.1.4 R** If a *firm communicates or approves* an invitation or inducement to acquire or underwrite a *contingent convertible instrument* (or rights to interests in that instrument) which is addressed to, or disseminated in such a way that
it is likely to be received by, a *retail client*, it must comply with the record-keeping requirements in *COBS 4.11.1R*, adapted as follows:

1. references to *non-mainstream pooled investments* should be read as references to *contingent convertible instruments*; and

2. references to *COBS 4.12.3R* should be read as references to *COBS 4.14.1R 22.1.1R*. 
Annex C

Amendments to the Client Assets sourcebook (CASS)

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

Part 1: Comes into force on 1 October 2014

6.5 Records, accounts and reconciliations

... 6.5.15 G Firms that use an alternative reconciliation method are reminded that the firm’s auditor must confirm to the FCA in writing that the firm has in place systems and controls which are adequate to enable it to use another method effectively (see CASS 6.5.5R). [deleted]

... 7.7 Statutory trust

... 7.7.3 R A trustee firm which is subject to the client money rules by virtue of CASS 7.1.1R(4) 7.1.1AR(2) receives and holds client money as trustee on the terms in CASS 7.7.2R, subject to its obligations to hold client money as trustee under the relevant instrument of trust.

... 12 Commodity Futures Trading Commission Part 30 exemption order

... 12.2.1 G Under condition 2(g) of the Part 30 exemption order, a firm with exemptive relief represents to the CFTC that it consents to refuse to allow any US customer the option of not having its money treated as client money if it is held or received in respect of transactions on non-US exchanges, unless that US customer is an “eligible contract participant” as defined in section 1a(12) 1a(18) of the Commodity Exchange Act, 7 U.S.C.
(1) *CASS 9.2 and CASS 9.3 apply to a prime brokerage firm* to which 
*CASS 6 (Custody rules) applies; and*

(2) which is a prime brokerage firm, subject to (3) and (4), *CASS 9.4 
applies to a firm to which either or both CASS 6 (Custody rules) and 
CASS 7 (Client money rules) applies;*

(3) *CASS 9.4 does not apply to a firm which only arranges safeguarding 
and administration of assets;*

(4) for a firm to which *CASS 7 (Client money rules) applies as well as 
either or both of CASS 5 (Client money: insurance mediation activity) 
and CASS 11 (Debt management client money chapter), this chapter 
does not apply to client money that a firm holds in accordance with 
*CASS 5 or CASS 11.*

**Part 3:** Comes into force on 1 June 2015

*[Editor’s Note: The change to CASS 9.1.1IR shown below replaces that shown in Part 3 of 
Annex C to the Client Assets Sourcebook (Amendment No 5) Instrument 2014 (FCA 
2014/36).]*

7.13 Segregation of client money

... 

The normal approach

7.13.6 R Unless otherwise permitted by any other rule in *CASS 7.42 this chapter, a 
firm using the normal approach must ensure that all client money it receives 
is paid directly into a client bank account at an institution referred to in 
*CASS 7.13.3R(1) to (3), rather than being first received into the firm’s own 
account and then segregated.*

...

The alternative approach to client money segregation

...

7.13.57 R At least three months before adopting the alternative approach for a 
particular business line, a firm must:

...

(2) if requested by the FCA, make any documents it created under *CASS 
7.13.54R 7.13.55R available to the FCA for inspection.*

...
9 Prime brokerage

9.1 Application

9.1.1 This chapter applies as follows:

1. *CASS 9.2* and *CASS 9.3* apply to a *prime brokerage firm* to which *CASS 6* (Custody rules) applies;

2. subject to (3) and (4), *CASS 9.4* and *CASS 9.5* apply to a *firm* to which either or both *CASS 6* (Custody rules) and *CASS 7* (Client money rules) applies;

3. *CASS 9.4* and *CASS 9.5* do not apply to a *firm* which only *arranges safeguarding and administration of assets*;

4. for a *firm* to which *CASS 7* (Client money rules) applies as well as either or both of *CASS 5* (Client money: insurance mediation activity) and *CASS 11* (Debt management client money chapter), this chapter does not apply to *client money* that a *firm* holds in accordance with *CASS 5* or *CASS 11*. 
Annex D

Amendments to the Market Conduct sourcebook (MAR)

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

5.3 Trading process requirements

...Publication of post-trade information for financial instruments other than shares

5.3.4 G Where a financial instrument other than shares are traded on an MTF, and the same or substantially similar instruments are also traded on a UK RIE, a regulated market or an EEA commodities market, the FSA FCA expects ...
Annex E

Amendments to the Supervision manual (SUP)

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

[Editor’s Note: The change to SUP 10A.1.6R confirms this amendment which has already been made administratively.]

10A FCA Approved Persons

... Overseas firms: UK establishments

10A.1.6 R Only the following FCA controlled functions apply to an overseas firm which maintains an establishment in the United Kingdom from which regulated activities are carried on:

... (6) the significant management function in so far as the function relates to:

(a) designated investment business business other than dealing in investments as principal, disregarding article 15 of the Regulated Activities Order; or

... 16.12.5 R The applicable data items and forms or reports referred to in SUP 16.12.4R are set out according to firm type in the table below:

<table>
<thead>
<tr>
<th>Description of data item</th>
<th>UK bank</th>
<th>Building society</th>
<th>Non-EEA bank</th>
<th>EEA bank that has permission to accept deposits, other than one with permission for cross border services only</th>
<th>EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only</th>
<th>[deleted]</th>
<th>Credit union</th>
<th>Dormant account fund operator (note 15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK bank</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Building society</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-EEA bank</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EEA bank that has permission to accept deposits, other than one with permission for cross border services only</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>[deleted]</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit union</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dormant account fund operator (note 15)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
16 Annex 25G  Guidance notes for data items in SUP 16 Annex 24R

FIN066 – Capital Adequacy (for collective portfolio management firms)

Internal validations

Data elements are referenced by row, then column.

<table>
<thead>
<tr>
<th>Validation number</th>
<th>Data element</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>7A = (\sum(1A:6A))</td>
</tr>
<tr>
<td>2</td>
<td>10A = 8A – 9A + 9A</td>
</tr>
<tr>
<td>3</td>
<td>14A = (\sum(11A:12A) – 13A \sum(11A:13A))</td>
</tr>
<tr>
<td>4</td>
<td>15A = 7A + 10A + 14A</td>
</tr>
<tr>
<td>5</td>
<td>16A = 15A</td>
</tr>
<tr>
<td>6</td>
<td>21A = (higher of 17A and 18A) + 19A + 20A</td>
</tr>
<tr>
<td></td>
<td>(higher of 17A and 18A) + 19A or 20A</td>
</tr>
<tr>
<td>7</td>
<td>22A = 16A – 21A</td>
</tr>
<tr>
<td>8</td>
<td>25A = 24A – 23A</td>
</tr>
</tbody>
</table>

FIN067 – Capital adequacy – supplemental) for collective portfolio management investment firms subject to IFPRU

Internal validations

Data elements are referenced by row, then column.

<table>
<thead>
<tr>
<th>Validation number</th>
<th>Data element</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>6A = (Higher of 2A and 3A) + 4A + 5A</td>
</tr>
<tr>
<td></td>
<td>(Higher of 2A and 3A) + 4A or 5A</td>
</tr>
<tr>
<td>2</td>
<td>8A = Higher of 6A and 7A</td>
</tr>
<tr>
<td>3</td>
<td>9A = 1A – 8A</td>
</tr>
<tr>
<td>4</td>
<td>12A = 11A – 10A</td>
</tr>
</tbody>
</table>
Internal validations

Data elements are referenced by row, then column.

<table>
<thead>
<tr>
<th>Validation number</th>
<th>Data element</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$7A = \sum(1A:6A)$</td>
</tr>
<tr>
<td>2</td>
<td>$10A = 8A - 9A$</td>
</tr>
<tr>
<td>3</td>
<td>$14A = \sum(11A:12A) - 13A \cdot \sum(11A:13A)$</td>
</tr>
<tr>
<td>4</td>
<td>$15A = 7A + 10A + 14A$</td>
</tr>
<tr>
<td>5</td>
<td>$16A = 15A$</td>
</tr>
<tr>
<td>6</td>
<td>$21A = \text{(higher of 17A and 18A) + 19A + 20A}$</td>
</tr>
<tr>
<td>7</td>
<td>$22A = 16A - 21A$</td>
</tr>
<tr>
<td>8</td>
<td>$25A = 24A - 23A$</td>
</tr>
<tr>
<td>9</td>
<td>$28A = 26A - 27A$</td>
</tr>
</tbody>
</table>
Annex F

Amendments to the Compensation sourcebook (COMP)

In this Annex, striking through indicates deleted text.

12.4 The compensation calculation

... Protected non-investment insurance mediation

12.4.16 R ...
Annex G

Amendments to the Consumer Credit sourcebook (CONC)

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

[Editor’s Note: The changes to CONC App 1.2.6R confirm these amendments which have already been made administratively.]

App 1  Total charge for credit rules

…

1.2.6  R (1) The annual percentage rate of charge (“APR”) is calculated by means of the equation in (2) which equates, on an annual basis, the total present value of drawdowns with the total present value of repayments and payments of charges.

(2) The equation referred to in (1) is:

[Insert here the following formula in place of the existing one.]

\[ \sum_{k=1}^{m} C_k (1 + X)^{-t_k} = \sum_{i=1}^{m'} D_i (1 + X)^{-s_i} \]

(3) For the purposes of (2):

…

(h) the equation referred to in (g) is:

[Insert here the following formula in place of the existing one.]

\[ s = \sum_{k=1}^{a} A_k (1 + X)^{t_k} \]

…
Annex H

Amendments to the Listing Rules sourcebook (LR)

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

7 Listing Principles: **and Premium listing** Listing Principles

... 

9 Continuing obligations

...

Voting on matters relevant to premium listing

9.2.21 R Where the provisions of LR 5.2, LR 5.4A, LR 9.4, LR 9.5, LR 10, LR 11, LR 12 or LR 15 require a shareholder vote to be taken, that vote must be decided by a resolution of the holders of the listed company's shares that have been **admitted to premium listing**. Where the provisions of LR 5.2.5R(2), LR 5.4A.4R(2) (3)(b)(ii) or LR 9.2.2ER require that the resolution must in addition be approved by the **independent shareholders**, only independent shareholders who hold the listed company's shares that have been **admitted to premium listing** can vote.