

**EXITING THE EUROPEAN UNION: MISCELLANEOUS (AMENDMENTS) (No 2)
INSTRUMENT 2020**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) regulation 3 of the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018; and
 - (2) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on IP completion day as defined in the European Union (Withdrawal Agreement) Act 2020.

Amendments to the Handbook

- C. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Cross-cutting changes to Schedule 4 and 6 of sourcebooks	Annex A
Amendments to the Supervision manual (SUP)	Annex B
Listing Rules sourcebook (LR)	Annex C
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex D

Citation

- D. This instrument may be cited as the Exiting the European Union: Miscellaneous (Amendments) (No 2) Instrument 2020.

By order of the Board
30 September 2020

Annex A

Cross-cutting changes to Schedule 4 and 6 of sourcebooks

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

Amend the text of Schedule 6.1A, Schedule 6.1 or Schedule 6, as relevant, of the following Handbook modules as follows:

Principles for Businesses (PRIN)

Training and Competence sourcebook (TC)

General Provisions (GEN)

Fees manual (FEES)

Conduct of Business sourcebook (COBS)

Insurance: Conduct of Business sourcebook (ICOBS)

Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

Banking: Conduct of Business sourcebook (BCOBS)

Client Assets sourcebook (CASS)

Market Conduct sourcebook (MAR)

Dispute Resolution: Complaints sourcebook (DISP)

Compensation sourcebook (COMP)

Professional Firms sourcebook (PROF)

Disclosure Rules and Transparency Rules sourcebook (DTR)

Sch 6 Rules that can be waived

6.1/6.1AG As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*. ~~However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.~~

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Amend the text of Schedule 6 of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) and the Supervision manual (SUP) and as follows:

Sch 6 Rules that can be waived

6.1AG As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 64A (rules of conduct), 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*. ~~However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.~~

Amend the text of Schedule 6 of the General Prudential sourcebook (GENPRU) as follows:

Sch 6G Rules that can be waived

The rules in *GENPRU* may be waived by the *appropriate regulator* under section 138A of the *Act* (Modification or waiver of rules). ~~However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *appropriate regulator* to grant a *waiver* that would be incompatible with the *United Kingdom's* responsibilities under those directives. It therefore follows that if a *rule* in *GENPRU* contains provisions which derive partly from a directive, and partly not, the *appropriate regulator* will be able to consider a *waiver* of the latter requirements only, unless the directive provisions are optional rather than mandatory.~~

Amend the text of Schedule 6 of the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) as follows:

Sch 6G Rules that can be waived

The rules in *BIPRU* may be waived by the *appropriate regulator* under section 138A of the *Act* (Modification or waiver of rules). ~~However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *appropriate regulator* to grant a *waiver* that would be incompatible with the *United Kingdom's* responsibilities under those directives. It therefore follows that if a *rule* in *BIPRU* contains provisions which derive partly from a directive, and partly not, the *appropriate regulator* will be able to consider a *waiver* of the latter requirements only, unless the directive provisions are optional rather than mandatory.~~

Amend the text of Schedule 6 of the Prudential sourcebook for Investment Firms (IFPRU) as follows:

Sch 6 Rules that can be waived

6.1G The rules in *IFPRU* may be waived by the *FCA* under section 138A of the *Act* (Modification or waiver of rules). ~~However, if the rules incorporate requirements laid down in European directives or regulations, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *UK's* responsibilities under those directives and regulations. It therefore follows that if a rule in *IFPRU* contains provisions which derive partly from a directive or regulation, and partly not, the *FCA* will be able to consider a waiver of the latter requirements only, unless the directive or regulation provisions are were optional rather than mandatory.~~

Amend the text of Schedule 6 of the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) as follows:

Sch 6 Rules that can be waived

6.1G The rules in *MIPRU* may be waived by the *appropriate regulator* under section 138A and 138B of the *Act* (Modification or waiver of rules). ~~However, if the rules incorporate requirements laid down in European directives, it will not be possible for the *appropriate regulator* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.~~

~~It therefore follows that if a rule in *MIPRU* contains provisions which derive partly from a directive, and partly not, the *appropriate regulator* will be able to consider a waiver of the latter requirements only, unless the directive provisions are optional rather than mandatory.~~

Amend the text of Schedule 6 of the Consumer Redress Schemes sourcebook (CONRED) as follows:

Sch 6 Rules that can be waived

6.1G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the *Act* the *FCA* has power to waive all its rules. ~~However, if the rules incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.~~

Amend the text of Schedule 6 of Collective Investment Schemes (COLL) as follows:

Sch 6 Rules that can be waived

6.1G ...

6.2G ~~2. Although the FCA has the formal power of waiver under the Act in relation to these rules, much of COLL implements the requirements of the UCITS Directive by ensuring that relevant authorised funds comply with such requirements. Accordingly, while formal power may exist to waive such UCITS Directive derived rules, the FCA's ability to do so is severely constrained. [deleted]~~

Amend the text of Schedule 6 of the Credit Unions sourcebook (CREDS) as follows:

Sch 6 Rules that can be waived

6.1G The rules made in CREDS can be waived by the appropriate regulator under sections 138A and 138B (Modification or waiver of rules) of the Act. As a result of section 138A of the Act (Modification or waiver of rules) the FCA has the power to waive all its rules, other than rules made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules) section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the Act. ~~However, if the rules incorporate requirements laid down in European directives, it will not be possible for the FCA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.~~

CREDS includes guidance on rules made in other parts of the Handbook. Reference should be made to those parts of the Handbook concerning waiver of those rules.

Amend the text of Schedule 6 of the Consumer Credit sourcebook (CONC) as follows:

Sch 6.1G Rules that can be waived

As a result of section 138A of the Act (Modification or waiver of rules) the FCA has power to waive all its rules, other than rules made under section 137O (Threshold condition code), 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 FCA to grant a waiver that would be incompatible with the UK's responsibilities under those directives.~~

Amend the text of Schedule 4 of Investment Funds sourcebook (FUND) as follows:

Sch 4G Rules that can be waived

The *FCA* has ~~the formal~~ power to waive *rules* under section 138A or section 250 of the *Act* (Modification or waiver of rules). ~~However, the large majority of the *rules* in *FUND* are derived from *AIFMD* and it is not possible for the *FCA* to grant a *waiver* that would be incompatible with the *UK's* responsibilities under that directive. In practice, the ability of the *FCA* to waive *rules* in *FUND* is, therefore, severely constrained.~~

Amend the text of Schedule 6 of the Listing Rules sourcebook (LR) sourcebook as follows:

Sch 6 Rules that can be waived

Sch 6.1G As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*. ~~However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a *waiver* that would be incompatible with the *United Kingdom's* responsibilities under those directives.~~

Sch 6.2G ...

Amend the text of Schedule 6 of the Prospectus Regulation Rules sourcebook (PRR) sourcebook as follows:

Sch 6 Rules that can be waived

Sch 6.1G As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*. ~~However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a *waiver* that would be incompatible with the *United Kingdom's* responsibilities under those directives.~~

Sch 6.2G ...

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, striking through indicates deleted text.

8 Waiver and modification of rules

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8.3 Applying for a waiver

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- 8.3.1A G Even if the conditions in section 138A(4) of the *Act* are satisfied, the *appropriate regulator* will consider other relevant factors before giving a *waiver*, ~~such as whether the *waiver* would be compatible with European law, including relevant EC Directives.~~

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8.6 Publication of waivers

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Matters for consideration

- 8.6.2 G When considering whether it is satisfied under section 138B(2), the *appropriate regulator* is required by section 138B(3) of the *Act*:

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- (3) to consider whether its publication would be contrary to an international obligation of the *United Kingdom* ~~(for example, the confidentiality obligations in the *Single Market Directives*); and~~

...

...

Annex C

Amendments to the Listing Rules sourcebook (LR)

In this Annex, striking through indicates deleted text.

1 Preliminary: All securities

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1.2 Modifying rules and consulting the FCA

Modifying or dispensing with rules

- 1.2.1 R (1) The *FCA* may dispense with, or modify, the *listing rules* in such cases and by reference to such circumstances as it considers appropriate (subject to ~~the terms of EU directives and the Act~~).

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Annex D

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

In this Annex, striking through indicates deleted text.

1 Introduction

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1A.2 Modifying rules and consulting the FCA

Modifying or dispensing with rules

- 1A.2.1 R (1) The *FCA* may dispense with, or modify, the *transparency rules* in such cases and by reference to such circumstances as it considers appropriate (subject to ~~the terms of directives and~~ the *Act*).

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