

**HANDBOOK ADMINISTRATION (NO 13) INSTRUMENT 2009****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Act:
    - (a) section 138 (General rule-making power);
    - (b) section 139 (Miscellaneous ancillary powers);
    - (c) section 145 (Financial promotion rules);
    - (d) section 156 (General supplementary powers); and
    - (e) section 157(1) (Guidance); and
  - (2) the other 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 J (DTR) comes into force on 1 June 2009;
  - (2) the remainder of this instrument comes into force on 6 May 2009.

**Amendments to the Handbook and related material**

- D. The Insurance: New Conduct of Business sourcebook (ICOBS) is renamed the Insurance: Conduct of Business sourcebook (ICOBS).
- E. The modules of the FSA Handbook of rules and guidance 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 A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Fit and Proper test for Approved Persons sourcebook (FIT)	Annex C
Fees manual (FEES)	Annex D
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex E
Prudential sourcebook for UCITS Firms (UPRU)	Annex F
Complaints against the FSA sourcebook (COAF)	Annex G
Supervision manual (SUP)	Annex H
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex I

**Notes**

- F. In the Annexes to this instrument, the Notes (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- G. This instrument may be cited as the Handbook Administration (No 13) Instrument 2009.

By order of the Board  
23 April 2009

## Annex A

### Amendments to the Glossary of definitions

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

*close links*

- (1) (in relation to *MiFID business*) a situation in which two or more persons are linked by:
- (a) participation which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;
  - (b) control which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings.

**[Note:** article 4(1)(31) of *MiFID*]

A situation in which two or more persons are permanently linked to one and the same person by a control relationship is also to be regarded as constituting a close link between such persons.

- (2) (except where (1) applies, and except in *SUP 3* (Auditors) and *SUP 4* (Actuaries)) (in accordance with paragraph 3(2) in Schedule 6 to the *Act* (Close links)) the relationship between a *person* (“A”) and another *person* (“CL”) which exists if:

...

...

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

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

- 8.1.8 R *A common platform firm* must in particular take the necessary steps to ensure that the following conditions are satisfied:
- ...
- (5) the *firm* must retain the necessary expertise to supervise the *outsourced* functions effectively and to manage the risks associated with the *outsourcing*, ~~and must manage those risks~~ and must supervise those functions and manage those risks;
- ...

## Annex C

### Amendments to the Fit and Proper test for Approved Persons sourcebook (FIT)

In this Annex, underlining indicates new text.

- 1.2.4A G Under Article 5(1)(d) of the *MiFID Implementing Directive* and Article 31 and 32 of *MiFID*, the requirement to employ personnel with the knowledge, skills and expertise necessary for the discharge of the responsibilities allocated to them is reserved to the *firm's Home State*. Therefore, in assessing the fitness and propriety of a *person* to perform a *controlled function* solely in relation to the *MiFID business* of an *incoming EEA firm*, the *FSA* will not have regard to that *person's* competence and capability. Where the *controlled function* relates to matters outside the scope of *MiFID*, for example money laundering responsibilities (see CF11), or to business outside the scope of the *MiFID* business of an *incoming EEA firm*, for example *insurance mediation activities* in relation to *life policies*, the *FSA* will have regard to a *candidate's* competence and capability as well as his honesty, integrity, reputation and financial soundness.

## Annex D

### Amendments to the Fees manual (FEES)

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

- 2.1.5 G Paragraph 17 of Schedule 1 to and section 99 ~~to~~ of the *Act* enable the *FSA* to charge fees to cover its costs and expenses in carrying out its functions. ...

## Annex E

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

In this Annex, underlining indicates new text.

- 4.4.59 R For *exposures* to companies where the total annual sales for the consolidated group of which the firm is a part is less than EUR 50 million a *firm* may use the following correlation formula for the calculation of *risk weights* for *corporate exposures*. In this formula S is expressed as total annual sales in millions of Euros with EUR 5 million < = S < = EUR 50 million. Reported sales of less than EUR 5 million must be treated as if they were equivalent to EUR 5 million. In accordance with *BIPRU* 4.8.21R, for purchased receivables the total annual sales are the weighted average by individual *exposures* of the pool. The formula for the calculation of correlation (R) is:

$$0.12 \times (1 - \text{EXP}(-50 * PD)) / (1 - \text{EXP}(-50)) + 0.24 *$$

$$[1 - (1 - \text{EXP}(-50 * PD)) / (1 - \text{EXP}(-50))]$$

$$-0.04 * (1 - (S - 5) / 45)$$

[**Note:** *BCD* Annex VII Part 1 point 5 (part)]

## Annex F

## Amendments to the Prudential sourcebook for UCITS Firms (UPRU)

In this Annex, striking through indicates deleted text.

## TP1 Transitional Provisions for UPRU

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.	This sourcebook	R	<del>An operator of a UCITS scheme authorised on or before 12 February 2004 need not comply with the provisions in this sourcebook until 12 February 2007 provided it continues to comply instead with the provisions in IPRU(INV) 5 and it continues to restrict its activities to those specified under CIS 16.5.1R(1) to (3) or COLL 6.9.9(1) to (3), as appropriate.</del>	<del>From 01/01/07 to 12/02/07</del>	01/01/07



## Annex G

### Amendments to the Complaints against the FSA sourcebook (COAF)

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

#### 1.5 Procedure

...

- 1.5.1F G For all complaints dealt with under the ‘fast track’ procedure, the *FSA* will advise the complainant of his right to refer his complaint to the *FSA*’s ~~Company Secretariat~~ Corporate Services Division if he believes the complaint has not been resolved or is otherwise dissatisfied with the way it has been dealt with.

Handling of ‘fast track’ complaints referred to the ~~Company Secretariat~~ Corporate Services Division

- 1.5.1G G (1) If the complainant refers his complaint to the *FSA*’s ~~Company Secretariat~~ Corporate Services Division, the *FSA* will acknowledge this complaint within five *business days* of receiving this referral.
- (2) ...

## Annex H

## Amendments to the Supervision manual (SUP)

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

## Auditors' statutory duty to report

- 3.8.10 G (1) Auditors are subject to regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (Information given by auditor or actuary to the *FSA*). Section 343 and the regulations also apply to an auditor of an authorised person in his capacity as an auditor of a person who has close links with the authorised person.
- (2) These regulations oblige auditors to report certain matters to the *FSA*. Sections 342(3) and 343(3) of the *Act* provide that an auditor does not contravene any duty by giving information or expressing an opinion to the *FSA*, if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the *FSA*. ...

...

## Actuaries' statutory duty to report

- 4.5.7 G (1) *Actuaries* appointed under this chapter are subject to regulations made by the Treasury under ~~section~~ sections 342(5) and 343(5) of the *Act* (Information given by ~~auditor~~ auditor or ~~actuary~~ actuary to the Authority). Section 343 and the regulations also apply to an actuary of an authorised person in his capacity as an actuary of a person with close links with the authorised person.
- (2) These regulations oblige *actuaries* to report certain matters to the *FSA*. Sections 342(3) and 343(3) of the *Act* provide that an *actuary* does not contravene any duty by giving information or expressing an opinion to the *FSA*, if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the *FSA*. These provisions continue to have effect after the end of the *actuary's* term of appointment. ...

...

**Sch 4 Powers exercised**

4.1 G

The following powers and related provisions in the *Act* have been exercised by the *FSA* to make the *rules* in *SUP*:

...	
(12)	...
<u>(12A)</u>	<u>Section 178 (Obligation to notify the Authority: acquisitions of control)</u>
<u>(12B)</u>	<u>Section 191D (Obligation to notify the Authority: dispositions of control)</u>
...	

## Annex I

**Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses  
sourcebook (REC)**

In this Annex, underlining indicates new text.

**Sch 4 Powers exercised**

4.1 G

The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>REC</i> :	
	Section 156 (General supplementary powers)
	<u>Section 178 (Obligation to notify the Authority: acquisitions of control)</u>
	<u>Section 191D (Obligation to notify the Authority: dispositions of control)</u>
	...
...	

## Annex J

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

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

Comes into force on 1 June 2009

- 5.1.4 R ...
- (3) References to a *market maker* also include a *third country investment firm* and a *credit institution* when acting as a *market maker* and which, in relation to that activity, is subject to regulatory supervision under the laws of a ~~Member State~~ an EEA State.
- ...
- 5.3.1 R ...
- (3) For the purposes of (2) a client-serving intermediary is a *person* satisfying the following conditions:
- (a) (i) it is authorised by its *Home State* under *MiFID* or the *BCD*, or, subject to (iii), as a *third country investment firm*, to deal as principal, in a client-serving capacity, in *financial instruments* falling within (1)(b), and to carry on any relevant business connected to such dealing; or
- ...
- (iii) references to a *third country investment firm* in (i) are limited to relevant business carried on by such *firms* which is subject to regulatory supervision under the laws of a ~~Member State~~ an EEA State;
- ...
- ...
- 5.3.3 G ...
- (2) For the purposes of *DTR 5.3.1R(1)(b)*, in the *FSA's* view:
- ...
- (c) a *financial instrument* referenced to a basket or index of *shares* will not have similar economic effects to a qualifying *financial*

*instrument* unless:

- (i) the *shares* in the basket represent ~~both~~ 1% or more of the class in issue ~~and~~ or 20% or more of the value of the securities in the basket or index, or both; ~~and~~ or
- (ii) use of the *financial instrument* is connected to the avoidance of notification;

...