

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

- C. (1) Part 2 of Annex C (CASS) comes into force on 1 December 2014.
 (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).

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Client Assets sourcebook (CASS)	Annex C
Market Conduct sourcebook (MAR)	Annex D
Supervision manual (SUP)	Annex E
Compensation sourcebook (COMP)	Annex F
Consumer Credit sourcebook (CONC)	Annex G
Listing Rules sourcebook (LR)	Annex H

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~~ [deleted]

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* ~~*instruments 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

22.1.2 R	Title	Type of retail client	Additional conditions
	Certified high net worth investors	An individual who meets the requirements set out in <i>COBS 4.12.6R</i> , or a <i>person</i> (or <i>persons</i>) legally	The <i>firm</i> must consider the <i>contingent convertible instrument</i> is likely to be suitable for that individual,

	empowered to make investment decisions on behalf of such individual.	based on a preliminary assessment of that individual's profile and objectives. (See <i>COBS</i> 4.12.5G(2).)
Exempt persons	An exempt <i>person</i> (other than a <i>person</i> exempted only by section 39 of the Act (Exemption of appointed representatives)) if the activity relates to a <i>regulated activity</i> in respect of which the <i>person</i> is exempt from the <i>general prohibition</i> .	Not applicable.
Certified sophisticated investors	An individual who meets the requirements set out in <i>COBS</i> 4.12.7R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another <i>person</i> who is the <i>firm's client</i> .	Not applicable.
Self-certified sophisticated investors	An individual who meets the requirements set out in <i>COBS</i> 4.12.8R, including an individual who is legally empowered (solely or jointly with others) to make investment decisions on behalf of another <i>person</i> who is the <i>firm's client</i> .	The <i>firm</i> must consider the <i>contingent convertible instrument</i> is likely to be suitable for that individual, based on a preliminary assessment of that individual's profile and objectives. (See <i>COBS</i> 4.12.5G(2).)
Solicited advice	Any <i>retail client</i> .	The prohibition does not apply provided all of the following requirements are met: (a) there is no <i>financial promotion</i> other than a <i>personal recommendation</i> on the <i>contingent convertible instrument</i> ; (b) the <i>personal recommendation</i> is made

		<p>following a specific request by that <i>client</i> for advice on the merits of investing in the <i>contingent convertible instrument</i>; and</p> <p>(c) the <i>client</i> has not previously received a <i>financial promotion</i> or any other communication from the <i>firm</i> (or from a <i>person</i> connected to the <i>firm</i>) which is intended to influence the <i>client</i> in relation to investment in <i>contingent convertible instruments</i>. (See Note 1.)</p>
<i>MiFID or equivalent third country business other than financial promotions</i>	<i>Any retail client.</i>	If the prohibited activities amount to <i>MiFID or equivalent third country business</i> , that rule only applies to the extent that the prohibited activity is the <i>communication or approval of a financial promotion</i> .
Prospectus	<i>Any retail client.</i>	<u>The prohibition</u> does not prohibit apply to the distribution of a prospectus required under the <i>Prospectus Directive</i> .
Issuers	<i>Any retail client</i>	To the extent that the <i>firm</i> is acting as issuer of a <i>contingent convertible instrument</i> , the prohibition only applies to the original issuance of the <i>contingent convertible instrument</i> and not to subsequent trading in the secondary market.
Clearing, custodial and processing services	<i>Any retail client</i>	The prohibition does not apply to the extent that the <i>firm's</i> activities relate to clearing, registration or settlement of transactions in <i>contingent convertible instruments</i> (or rights to or interests in such

		instruments), any back office processing or reporting of such transactions, or custody of <i>contingent convertible instruments</i> .
Indirect investment	Any <i>retail client</i>	The prohibition does not apply in relation to a beneficial interest in a <i>contingent convertible instrument</i> held from participation in a <i>regulated collective investment scheme</i> , investment in a <i>non-mainstream pooled investment</i> , or membership of an <i>occupational pension scheme</i> .
Note 1	A <i>person</i> is connected with a <i>firm</i> if it acts as an <i>introducer</i> or <i>appointed representative</i> for that <i>firm</i> or, if it is any other <i>person</i> , regardless of <i>authorisation</i> status, who has a relevant business relationship with the <i>firm</i> .	
Note 2	See <i>COBS 2.4</i> for rules and guidance on agent as <i>client</i> 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

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- 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

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- 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

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- 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.

Part 2: Comes into force on 1 December 2014

9 Prime brokerage

9.1 Application

- 9.1.1 R This chapter applies ~~to a firm~~ as follows:

- (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 9.1.1R 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

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The normal approach

- 7.13.6 R Unless otherwise permitted by any other *rule* in ~~CASS 7.13~~ 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

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

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- (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 R 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 ~~applies~~ 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 ~~does~~ 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

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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

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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~~ 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:

Description of data item	Prudential category of firm, applicable data items and reporting format (Note 1)							
	UK bank	Building society	Non-EEA bank	EEA bank that has permission to accept deposits, other than one with permission for cross border services only	EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only	deleted	Credit union	Dormant account fund operator (note 15)
...								
...								

...

16 Annex 25G Guidance notes for data items in SUP 16 Annex 24R

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FIN066 – Capital Adequacy (for *collective portfolio management firms*)

...

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element	
...		
1	7A	= $\sum(1A:6A)$
2	10A	= $\frac{8A - 9A}{8A + 9A}$
3	14A	= $\frac{\sum(11A:12A) - 13A}{\sum(11A:13A)}$
4	15A	= $7A + 10A + 14A$
5	16A	= $15A$
6	21A	= $\frac{(\text{higher of } 17A \text{ and } 18A) + 19A + 20A}{(\text{higher of } 17A \text{ and } 18A) + 19A \text{ or } 20A}$
7	22A	= $16A - 21A$
8	25A	= $24A - 23A$

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

...

Internal validations

Data elements are referenced by row, then column.

Validation number	Data element	
1	6A	= $\frac{(\text{Higher of } 2A \text{ and } 3A) + 4A + 5A}{(\text{Higher of } 2A \text{ and } 3A) + 4A \text{ or } 5A}$
2	8A	= Higher of 6A and 7A
3	9A	= $1A - 8A$
4	12A	= $11A - 10A$

FIN068 – Capital Adequacy – supplemental (for *collective portfolio management investment firms* subject to *GENPRU/BIPRU*)

...

Internal validations

Data elements are referenced by row, then column.

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

Annex F

Amendments to the Compensation sourcebook (COMP)

In this Annex, striking through indicates deleted text.

12.4 The compensation calculation

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~~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

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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.]

$$\sum_{k=1}^m C_k (1 + X)^{-t_k} = \sum_{l=1}^{m'} D_l (1 + X)^{-s_l}$$

(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.]

$$s = \sum_{k=1}^n A_k (1 + X)^{-t_k}$$

...

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

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9 Continuing obligations

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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.