

Chapter 5

Non-mainstream regulated activities



5.1 Application and purpose

Application

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This chapter applies to an *authorised professional firm* that carries on *non-mainstream regulated activities*.

Purpose

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This chapter:

(1) contrasts "*exempt regulated activities*" with "*non-mainstream regulated activities*";

(2) sets out the conditions which must be satisfied for a *regulated activity* of an *authorised professional firm* to constitute a *non-mainstream regulated activity*;

(3) refers to other parts of the *Handbook* in which provisions are disapplied or modified in relation to *authorised professional firms* when carrying on *non-mainstream regulated activities*;

(4) gives effect to the *Distance Marketing Regulations* with respect to the *non-mainstream regulated activities* of *authorised professional firms*.

Exempt regulated activities contrasted with non-mainstream regulated activities

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(1) The *FCA's* policy is designed to provide so far as possible a level playing field for authorised and unauthorised members of the professions in relation to the carrying on of similar activities.

(2) Subject to conditions (see ■ PROF 2), members of *designated professional bodies* that are not authorised can carry on particular *regulated activities*, known as *exempt regulated activities*, and obtain the benefit of the exemption under section 327 of the *Act* from the *general prohibition*.

(3) In contrast, *non-mainstream regulated activities* are particular *regulated activities* carried on by an *authorised professional firm*. If the *professional firm* were not authorised under the *Act*, these same activities would be *exempt regulated activities* which, if the *firm* could meet the necessary conditions in section 327, would enable it to benefit from the section 327 exemption.

- (4) Therefore, a number of provisions of the *Handbook* (see ■ PROF 5.3) have been disapplied or modified in respect of these *non-mainstream regulated activities* of *authorised professional firms*.

5.1.4

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A "*non-mainstream regulated activity*" is defined in the *Glossary* as "a *regulated activity* of an *authorised professional firm* in relation to which the conditions in ■ PROF 5.2.1 R are satisfied". Conditions (1) to (6) of ■ PROF 5.2.1 R replicate section 327(1)(b)(i), (3), (4), (5) and (6) of the *Act*, as if those conditions applied to an *authorised professional firm*.

5.2 Nature of non-mainstream regulated activities

Conditions for non-mainstream regulated activity

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A "non-mainstream regulated activity" is a regulated activity of an authorised professional firm in relation to which the following conditions are satisfied:

- (1) the firm must not receive from a person other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of the carrying on of the regulated activity;
- (2) the manner of the provision by the firm of any service in the course of carrying on the regulated activity must be incidental to the provision by it of professional services (see ■ PROF 5.2.2 R);
- (3) the regulated activity must not be of a description, or relate to an investment of a description, specified in The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227) or in any other order made by the Treasury under section 327(6) of the Act (see ■ PROF 2 Annex 2 GG);
- (4) there must not be in force any direction under section 328 of the Act (Directions in relation to the general prohibition) in relation to:
 - (a) a class of person which would have included the firm were it not an authorised person; or
 - (b) a description of regulated activity which includes the regulated activity the firm proposes to carry on;
- (5) the regulated activity must be an activity which exempt professional firms which are members of the same designated professional body as the authorised professional firm are permitted to carry on under rules made by that body as required by section 332(3) of the Act; and
- (6) the authorised professional firm is subject to the rules referred to in (5).

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5.2.2

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In ■ PROF 5.2.1 R (2), "professional services" means services:

- (1) which do not constitute a regulated activity; and

- (2) the provision of which is supervised and regulated by a *designated professional body*.

5.3

Reference to other sourcebooks and manuals

		Introduction
5.3.1	G	The parts of the <i>Handbook</i> in which provisions are disapplied or modified in relation to <i>authorised professional firms</i> when carrying on <i>non-mainstream regulated activities</i> include those described in ■ PROF 5.3.1A G to ■ PROF 5.3.9 G
		General provisions
5.3.1A	G	■ 4.3.5 R provides that ■ 4.3.1 R (Disclosure in letters to private customers) does not apply to an <i>authorised professional firm</i> with respect to its <i>non-mainstream regulated activities</i> .
		Conduct of Business sourcebook
5.3.2	G	■ COBS 18.11 provides that COBS does not apply to an <i>authorised professional firm</i> with respect to its <i>non-mainstream regulated activities</i> , except for: <ul style="list-style-type: none">(1) the <i>fair, clear and not misleading rule</i>;(1A) the <i>financial promotion rules</i>, but only in limited circumstances;(2) (where these are <i>insurance distribution activities</i>) the parts of COBS set out in ■ COBS 18.11.2R(3)(a) to (i) which implemented the <i>IDD</i> apply unless:<ul style="list-style-type: none">(a) the <i>designated professional body</i> of the <i>firm</i> has made rules which implemented some or all of articles 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the <i>IDD</i>;(b) those rules have been approved by the <i>FCA</i> under section 332(5) of the <i>Act</i>; and(c) the <i>firm</i> is subject to the rules in the form in which they were approved;(3) ■ COBS 8.1.3 R (Client agreements), except for the requirement to provide information on conflicts of interest; and(4) ■ COBS 5.2 (E-commerce).
		Training and Competence sourcebook
5.3.3	G	■ TC Appendix 3 provides that <i>TC</i> , which imposes the substantive training and competence requirements for <i>retail clients</i> or <i>customers</i> , does not apply to

an authorised professional firm with respect to its non-mainstream regulated activities.

Senior Management Arrangements, Systems and Controls

5.3.4 **G** The following provisions do not apply to authorised professional firms when carrying on non-mainstream regulated activities:

- (1) ■ SYSC 6.3 (Financial crime), in relation to money laundering;
- (2) ■ SYSC 10.1 (Application), in relation to conflicts of interest;
- (3) ■ SYSC 10.2 (Chinese walls);
- (4) ■ SYSC 19F.2 (IDD remuneration incentives) where the designated professional body of the firm has made rules, approved by the FCA, that implemented article 17(3) of the IDD and that apply to the firm; and
- (5) ■ SYSC 28.2 ((Knowledge and ability requirements) except ■ SYSC 28.2.1R(1)).

Supervision manual

5.3.5 **G** ■ SUP 10C Annex 1 2.1R provides that SUP 10C (FCA senior managers regime for approved persons in SMCR firms) does not apply (except in respect of the FCA required functions) to an authorised professional firm in respect of its non-mainstream regulated activities. So a person such as a partner, whose only regulated activities are incidental to their professional services, in an authorised professional firm whose principal purpose is to carry on activities other than regulated activities, need not be an approved person.

Dispute resolution: Complaints sourcebook

5.3.6 **G** ■ DISP 1.1.5R (3) provides that ■ DISP 1 (Treating complainants fairly) only applies to an authorised professional firm in so far as its mainstream regulated activities are concerned. ■ DISP 2.3.4 R further provides that a complaint about an authorised professional firm cannot be handled under the Compulsory Jurisdiction of the Financial Ombudsman Service if it relates solely to non-mainstream regulated activity and can be handled by a designated professional body. This is because such a complaint will be handled by the relevant professional body.

Market Conduct sourcebook

5.3.7 **G** ■ MAR 4.4.1 R (3) provides that ■ MAR 4, which deals with the endorsement of the City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisitions of Shares, does not have effect in relation to an authorised professional firm in respect of non-mainstream regulated activity.

Mortgages: Conduct of business sourcebook

5.3.8 **G** ■ MCOB 1.2.10 R provides that MCOB does not apply to an authorised professional firm with respect to its non-mainstream regulated activities

except for ■ MCOB 3A (Financial promotions and communications with customers).

Client Assets

5.3.9

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■ CASS 1.2.4 R provides that with the exception of ■ CASS 1 and the *insurance client money chapter*, CASS does not apply to *authorised professional firms* when carrying on *non-mainstream regulated activities*. ■ CASS 1.2.5 R further provides that if the *non-mainstream regulated activities* are *insurance distribution activity*, ■ CASS 5 (the *insurance client money chapter*) does not apply to an *authorised professional firm*, if the *firm's designated professional body* has rules applicable to the *firm* which implemented the *IDD* and which are in the form approved by the *FCA* under section 332(5) of the *Act*.

Insurance: Conduct of Business sourcebook

5.3.10

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- (1) *ICOB*S does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* (see ■ *ICOB*S 1 Annex 1, Part 1, paragraph 3.1R, except for:
- (a) the provisions on communications to *clients* and *financial promotions* (■ *ICOB*S 2.2);
 - (b) the e-commerce provisions (■ *ICOB*S 3.2);
 - (c) status disclosure requirements in relation to complaints procedures (■ *ICOB*S 4.1); and
 - (d) provisions in *ICOB*S which implemented articles 1(4), 17, 18, 19, 20, 23, and 24 of the *IDD* (see ■ *ICOB*S 2.2.2R (communication to customers and financial promotions), ■ *ICOB*S 2.2.2AR (marketing communications), ■ *ICOB*S 2.5.-1R (the customer's best interests rule), ■ *ICOB*S 2.6 (Distribution of connected contracts through exempt persons), ■ *ICOB*S 4.1 (Information about the firm, its services and remuneration), ■ *ICOB*S 4.1A (Means of communicating to customers), ■ *ICOB*S 4.3 (remuneration disclosure), ■ *ICOB*S 5.2 (Demands and needs), ■ *ICOB*S 5.3.3R (Advice on the basis of a fair analysis), ■ *ICOB*S 5.3.4R (Personalised explanation), ■ *ICOB*S 6A.1.4R (Ensuring the customer can make an informed decision) and ■ *ICOB*S 6A.3 (Cross-selling)), except to the extent that the *firm* is subject to equivalent *rules* of its *designated professional body* which have been approved by the *FCA*.
- (2) [deleted]

5.4 Application of the Distance Marketing Regulations

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- (1) In addition to those provisions of the *Distance Marketing Regulations* which apply directly, an *authorised professional firm* must, with respect to its *non-mainstream regulated activities*, comply with regulations 7 to 11 and 15 of the *Distance Marketing Regulations*. Those regulations have effect to cancel *distance contracts* the making or performance of which by such *firms* constitutes a *non-mainstream regulated activity*.
- (2) Paragraph (1) does not apply in relation to regulations 7 to 8 and 15 if the *designated professional body* of the *authorised professional firm* has rules equivalent to some or all of those regulations and:
 - (a) those rules have been approved by the *FCA* under section 332(5) of the *Act*; and
 - (b) the *authorised professional firm* is subject to those rules in the form in which they have been approved;in which case those regulations are disapplied to the extent that they are implemented by the rules of the *designated professional body*.

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The effect of ■ PROF 5.4.1 R is that it allows *designated professional bodies* to make rules which allow an *authorised professional firm* to comply with the *Distance Marketing Regulations* in respect of its *non-mainstream regulated activities* in the same way as an *exempt professional firm* which is a member of the same *designated professional body* in respect of its *exempt regulated activities*.

