

**MiFID (DEFERRED MATTERS AND CONSEQUENTIAL AMENDMENTS) (NO 3)  
INSTRUMENT 2007**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 14 December 2007.

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the MiFID (Deferred Matters and Consequential Amendments) (No 3) Instrument 2007.

By order of the Board  
6 December 2007

## Annex A

### Amendments to the Glossary of definitions

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

*approved index*

in relation to *permitted links*:

- (a) an index that is:
  - (i) calculated independently;
  - (ii) published at least once every week;
  - (iii) based on constituents that are *permitted links*; and
  - (iv) calculated on a basis that is made available to the public, and that ~~excludes~~ includes both the rules for including and excluding constituents and the rules for valuation which must use an arithmetic average of the value of the constituents; or
- (b) a national index of retail prices published by or under the authority of a government of a State belonging to Zone A as defined in the *Banking Consolidation Directive*; or
- (c) an index that is:
  - (i) based on constituents that are *permitted links*; and
  - (ii) in respect of which a *derivative* contract is *listed*.

## Annex B

### Amendments to the Conduct of Business sourcebook (COBS)

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

#### COBS TP 2: Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
2.4 A	<i>COBS 11.2</i>	R	<p><del><i>COBS 11.2 (Best execution) does not apply to an order from an ISA manager when acting as such which is not a MiFID investment firm or a third country investment firm for the purchase of or sale of units in a regulated collective investment scheme from or to the operator of that scheme.</i></del></p> <p><u><i>COB 7.5, as it was in force on 31 October 2007, continues to apply (and COBS 11.2 will not apply) during the transitional period to a firm when executing a customer order in a designated investment when such business is not MiFID or equivalent third country business unless the firm decides to comply with COBS 11.2 before 1 May 2008.</i></u></p>	From 1 November 2007 to <del>31 October</del> <u>30 April 2008</u>	1 November 2007
2.4B	<i>COBS 11.2</i>	<u>R</u> <del>G</del>	<p><del><i>COBS 11.2 (Best execution) does not apply to a client order for the purchase of or sale of units in a regulated collective investment scheme directly</i></del></p>	From 1 November 2007 to <del>31 October</del> <u>30 April 2008</u>	1 November 2007

			<p>from or to the <i>operator</i> of that <i>scheme</i>.</p> <p>The effect of TP 2.4AR is that for a <i>firm</i> which carries on the activities set out in TP 2.4AR <i>COB 7.5</i> will continue to apply until 1 May 2008 (and <i>COBS 11.2</i> will not apply), unless the <i>firm</i> decides to comply with <i>COBS 11.2</i> before 1 May 2008. From 1 May 2008 a <i>firm</i> to which TP 2.4AR applies must comply with the best execution provisions in <i>COBS 11.2</i>.</p>		
2.4C	<u>COBS 11.2</u>	R	<p>If a <i>firm</i> carrying out the activities set out in TP 2.4AR decides to comply with <i>COBS 11.2</i> before 1 May 2008:</p> <p>(1) it must make a record of the date of the decision and the date from which it is to be effective; and</p> <p>(2) from the effective date it must comply with <i>COBS 11.2</i></p>	From 1 November 2007 to 30 April 2008	<u>1 November 2007</u>
<u>2.4 D</u>	<u>COBS 11.2</u>	R	<p><i>COBS 11.2</i> (Best execution) does not apply to a <i>client</i> order for the purchase of or sale of <i>units</i> in a <i>regulated collective investment scheme</i> from or to the <i>operator</i> of that <i>scheme</i> which is not <i>MiFID</i> or <i>equivalent third country business</i></p>	From 1 May 2008 to 31 October 2008	<u>1 May 2008</u>
2.4C <u>E</u>	COBS 12.2 and COBS 12.3	R	<p><i>COB 7.16</i>, as it was in force on 31 October 2007, continues to apply (and <i>COBS 12.2</i> and <i>12.3</i> will not apply during the transitional period) to a <i>firm</i> which is not a <i>MiFID investment firm</i> or a <i>third country investment firm</i> which prepares <i>investment research</i> for publication or distribution to its <i>clients</i>, or that publishes or distributes <i>investment</i></p>	From 1 November 2007 to 30 April 2008	1 November 2007

			<i>research</i> to its <i>clients</i> unless the <i>firm</i> decides to comply with <i>COBS</i> 12.2 and 12.3 sooner than 1 May 2008.		
2.4 <del>DF</del>	<i>COBS</i> 12.2 and <i>COBS</i> 12.3	G	The effect of TP 2.4 <del>CE</del> <u>R</u> is that for a <i>firm</i> which is not a <i>MiFID investment firm</i> or <i>third country investment firm</i> carrying on the activities set out in the transitional rule TP 2.4 <del>CE</del> <u>R</u> <i>COB</i> 7.16 will continue to apply ( <u>and <i>COBS</i> 12.2 and 12.3 will not apply</u> ) until 1 May 2008, unless the <i>firm</i> decides to comply with <i>COBS</i> 12.2 and 12.3 <del>sooner than before</del> 1 May 2008. From 1 May 2008 a <i>firm</i> to which TP 2.4 <del>CE</del> <u>R</u> applies must comply with the investment research provisions in <i>COBS</i> 12.2 and 12.3.	From 1 November 2007 to 30 April 2008	1 November 2007
2.4 <del>E</del> <u>G</u>	<i>COBS</i> 12.2 and <i>COBS</i> 12.3	R	If a <i>firm</i> carrying out the activities set out in TP 2.4 <del>CE</del> <u>R</u> decides to comply with <i>COBS</i> 12.2 and 12.3 <del>sooner than before</del> 1 May 2008:  (1) it must make a record of the date of the decision and the date from which it is to be effective; and  (2) from the effective date it must comply with <i>COBS</i> 12.2 and 12.3.	From 1 November 2007 to 30 April 2008	1 November 2007
...					
2.8 A	<i>COBS</i> 18	R	<i>COB</i> , as it was in force on 31 October 2007, continues to apply ( <u>and <i>COBS</i> will not apply</u> ) to the following activities and <i>firms</i> ( <u>as the case may be</u> ) in relation to business which is not <i>MiFID</i> or <i>equivalent third country business</i> and <i>COBS</i> does not apply during the transitional period unless	From 1 November 2007 to 30 April 2008	1 November 2007

			<p>the <i>firm</i> decides to comply with <i>COBS</i> <del>sooner than</del> <u>before</u> 1 May 2008:</p> <p>(1) <i>Energy market activity</i> and <i>oil market activity</i>;</p> <p>(2) activities referred to in the <i>general application rule</i> related to:</p> <p style="padding-left: 40px;">(a) <i>commodity futures</i>;</p> <p style="padding-left: 40px;">(b) <i>commodity options</i>;</p> <p style="padding-left: 40px;">(c) <i>contracts for differences</i> related to an underlying <i>commodity</i>; or</p> <p style="padding-left: 40px;">(d) other <i>futures</i> or <i>contracts for differences</i> which are not related to <i>commodities</i>, <i>financial instruments</i> or <i>cash</i>;</p> <p>which is not <i>energy market activity</i> or <i>oil market activity</i>;</p> <p>(3) <i>corporate finance business</i>;</p> <p>(4) a <i>firm</i> which is an <i>operator</i> of a <i>collective investment scheme</i>;</p> <p>(5) <i>Lloyd's market activities</i>;</p> <p>(6) <i>depositories</i>;</p> <p>(7) <i>OPS firms</i>.</p>		
2.8B	COBS 18	G	<p>The effect of TP 2.8AR is that for <i>firms</i> carrying on the activities set out in the transitional rule TP 2.8AR <i>COB</i> will continue to apply <u>(and <i>COBS</i> will not apply)</u> until 1 May 2008, unless the <i>firm</i> decides to comply with <i>COBS</i> <del>sooner than</del> <u>before</u> 1 May 2008. From 1 May 2008 a <i>firm</i> to which TP 2.8AR applies must comply with <i>COBS</i> as set out in <i>COBS</i> 18.</p>	From 1 November 2007 to 30 April 2008	1 November 2007

2.8C	COBS 18	R	<p>If a <i>firm</i> carrying out the activities set out in TP 2.8AR decides to comply with <i>COBS</i> sooner than 1 May 2008:</p> <p>(1) it must make a record of the date of the decision and the date from which it is to be effective; and</p> <p>(2) subject to TP 2.8ADR, from the effective date it must comply with <i>COBS</i> as set out in the relevant parts of <i>COBS</i> 18.</p>	From 1 November 2007 to 30 April 2008	1 November 2007
2.8D	COBS 18	G	<p><del>In accordance with transitional rules TP 2.8AR and TP 2.8CR, the following provisions of <i>COB</i> will continue to apply to a <i>firm</i> carrying out the activities set out in TP 2.8AR that decides to comply with <i>COBS</i> before 1 May 2008:</del></p> <p><u>If a <i>firm</i> carrying out the activities set out in TP 2.8AR decides to comply with <i>COBS</i> before 1 May 2008 the following provisions of <i>COB</i> will continue to apply to it in accordance with transitional rules TP 2.12R and TP 2.13R if the <i>firm</i> is not a <i>common platform firm</i>:</u></p> <p>(1) <i>COB</i> 2.4 (Chinese walls);</p> <p>(2) <i>COB</i> 5.10 (Corporate finance business issues); and</p> <p>(3) <i>COB</i> 7.1 (Conflicts of interest and material interest).</p>	From 1 November 2007 to 30 April 2008	1 November 2007
...					
2.12	COBS	R	<p><i>COB</i> 2.4 (Chinese walls) and <i>COB</i> 7.1 (Conflicts of interest) as they were in force on 31 October 2007</p>	From 1 November 2007 indefinitely	1 November 2007

			continue to apply to <i>designated investment business</i> carried on by a <i>firm</i> which is not <del><i>MiFID or equivalent third country business</i></del> . <u>a common platform firm.</u>		
2.13	COBS	R	COB 5.10 (Corporate finance business issues) as it was in force on 31 October 2007 continues to apply to <i>corporate finance business</i> carried on by a <i>firm</i> which is not <del><i>MiFID or equivalent third country business</i></del> . <u>a common platform firm.</u>	From 1 November 2007 indefinitely	1 November 2007