

General Provisions

General Provisions

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Chapter 1

FCA approval and emergencies

1.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access. See www.fca.org.uk]

1.1.1

R

- (1) This chapter applies to every *firm*. ■ GEN 1.3 (Emergency) also applies to an *unauthorised person* to whom a *rule* in the *Handbook* applies.
- (2) For a *UCITS qualifier*, this chapter applies only with respect to the *communication* and *approval* of *financial promotions* to which ■ COBS 4 (Communicating with clients, including financial promotion) applies and to the maintenance of facilities to which ■ COLL 9.4 (Facilities in the United Kingdom) applies.

1.1.2

G

■ GEN 1.1.1 R (2) reflects section 266 of the *Act* (Disapplication of rules).



1.2 Referring to approval by the FCA

- 1.2.1 **G** The purpose of ■ GEN 1.2.2AR is to prevent *clients* being misled about the extent to which the FCA has approved a *firm's* affairs.
- 1.2.2 **R** [deleted]
- 1.2.2A **R**
- (1) Unless required to do so under the *regulatory system*, a *firm* must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a client, expressly or by implication, that its affairs, or any aspect of them, have the approval or endorsement of the FCA or another competent authority.
 - (1A) Paragraph (1) does not apply to a *firm* to the extent that it is incompatible with the *United Kingdom's* obligations under article 44(8) of the *MiFID Org Regulation*.
 - (2) Paragraph (1) does not apply to statements that explain, in a way that is fair, clear and not misleading, that:
 - (a) the *firm* is an *authorised person*;
 - (b) [deleted]
 - (c) the *firm* has *permission* to carry on a specific activity;
 - (d) an *authorisation order* has been made in relation to an *AUT, ACS* or *ICVC*;
 - (e) a *recognised scheme* has that status;
 - (f) the *firm's approved persons* have been approved by the *appropriate regulator* for the purposes of section 59 of the *Act* (Approval for particular arrangements);
 - (g) the *firm* has been given express written approval by the *appropriate regulator* in respect of a specific aspect of the *firm's* affairs.
 - (3) Paragraph (1) applies with respect to the carrying on of both *regulated activities* and *unregulated activities*.
 - (4) [deleted]
- 1.2.3 **G** ■ GEN 1.2.2AR(2)(g) is confined to written approval because of the need for clarity as to the scope of any approval given by the *appropriate regulator*.

1.2.4

G

A firm that carries on MiFID, equivalent third country or optional exemption business should have regard to the requirement in article 44(8) of the MiFID Org Regulation which is reproduced at ■ COBS 4.5A.16EU.

1.3 Emergency

1.3.1 **G** The *FCA* recognises that there may be occasions when, because of a particular emergency, a *person* (generally a *firm*, but in certain circumstances, for example in relation to *price stabilising rules*, an *unauthorised person*) may be unable to comply with a particular *rule* in the *Handbook*. The purpose of **■ GEN 1.3.2 R** is to provide appropriate relief from the consequences of contravention of such a *rule* in those circumstances.

1.3.2 **R**

(1) If any emergency arises which:

- (a) makes it impracticable for a *person* to comply with a particular *rule* in the *Handbook*;
- (b) could not have been avoided by the *person* taking all reasonable steps; and
- (c) is outside the control of the *person*, its *associates* and agents (and of its and their *employees*);

the *person* will not be in contravention of that *rule* to the extent that, in consequence of the emergency, compliance with that *rule* is impracticable.

(2) Paragraph (1) applies only for so long as:

- (a) the consequences of the emergency continue; and
- (b) the *person* can demonstrate that it is taking all practicable steps to deal with those consequences, to comply with the *rule*, and to mitigate losses and potential losses to its *clients* (if any).

(3) The *person* must notify the *FCA* as soon as practicable of the emergency and of the steps it is taking and proposes to take to deal with the consequences of the emergency.

(4) A notification under (3) must be given to or addressed and delivered in accordance with **■ SUP 15.7** (Form and method of notification) (whether or not the *person* is a *firm*). If the *person* is not a *firm*, the notification must be given to or addressed for the attention of: Contact Centre, The Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS (tel: 0300 500 0597).

1.3.2A **R**

- 1.3.3** **G** A *firm* should continue to keep the *FCA* informed of the steps it is taking under ■ GEN 1.3.2 R (3), in order to comply with its obligations under *Principle 11* (Relations with regulators).
- 1.3.4** **G** In the context of ■ GEN 1.3.2 R, an action is not practicable if it involves a *person* going to unreasonable lengths.
- 1.3.5** **G** ■ GEN 1.3.2 R operates on the *FCA's rules*. It does not affect the *FCA's* powers to take action against a *firm* in an emergency, based on contravention of other requirements and standards under the *regulatory system*. For example, the *FCA* may exercise its *own-initiative power* in appropriate cases to vary a *firm's Part 4A permission* based on a failure or potential failure to satisfy the *threshold conditions* (see ■ SUP 7 (Individual requirements) and ■ EG 8 (Variation and cancellation of permission and imposition of requirements on the *FCA's* own initiative and intervention against incoming firms)).

Chapter 2

Interpreting the Handbook

2.1 Introduction

Application

- 2.1.1 G [deleted]
- 2.1.2 R This chapter applies to every *person* to whom any provision in the *Handbook* applies. In relation to a provision other than a *rule*, the *rules* in this chapter apply as if they were part of that provision.
- 2.1.3 P [deleted]
- 2.1.4 E [deleted]
- 2.1.5 D [deleted]
- 2.1.6 G [deleted]
- 2.1.7 R [deleted]
- 2.1.8 R This chapter applies to all rules made by *FOS Ltd.*
- 2.1.9 G The effect of ■ GEN 2.1.8 R is that this chapter applies with respect to those provisions in ■ DISP 2 (Jurisdiction of the Financial Ombudsman Service), ■ DISP 3 (Complaint handling procedures of the Financial Ombudsman Service), ■ DISP 4 (Standard terms) and ■ FEES 5 (Financial Ombudsman Service Funding) made by *FOS Ltd.*

The Reader's Guide

- 2.1.10 G The Reader's Guide supplements this chapter. It provides an introduction to the structure and contents of the *Handbook* and its related materials, explaining how the different modules fit together and how to interpret and use the *Handbook*.



2.2 Interpreting the Handbook

Purposive interpretation

2.2.1 **R** Every provision in the *Handbook* must be interpreted in the light of its purpose.

2.2.2 **G** The purpose of any provision in the *Handbook* is to be gathered first and foremost from the text of the provision in question and its context among other relevant provisions. The *guidance* given on the purpose of a provision is intended as an explanation to assist readers of the *Handbook*. As such, *guidance* may assist the reader in assessing the purpose of the provision, but it should not be taken as a complete or definitive explanation of a provision's purpose.

Evidential provisions

2.2.3 **R** Any *rule* in the *Handbook* which has the status letter "E" in the margin or heading:

- (1) is to be taken also to provide that contravention of the *rule* does not give rise to any of the consequences provided for by provisions of the Act other than section 138C (Evidential provisions); and
- (2) incorporates the status letter "E" in the margin or heading as part of the *rule*.

2.2.4 **G**

- (1) The *rules* to which section 138C of the Act applies ("evidential provisions") are identified in the *Handbook* by the status letter "E" in the margin or heading.
- (2) Other provisions in the *Handbook*, although also identified by the status letter "E" in the margin or heading, are actually not *rules* but provisions in codes and ■ GEN 2.2.3 R does not apply to them.

2.2.5 **G** Chapter 6 of the Reader's Guide contains an explanation of the significance of the status letters R, E, G, D, UK, EU, P and C, and includes further information on *Handbook* provisions, including *evidential provisions*.

Use of defined expressions

2.2.6 **G** Expressions with defined meanings appear in italics in the *Handbook*, unless otherwise stated in individual sourcebooks or manuals.

- 2.2.7 **R** In the *Handbook* (except *IPRU*, unless otherwise indicated):
- (1) an expression in italics which is defined in the *Glossary* has the meaning given there; and
 - (2) an expression in italics which relates to an expression defined in the *Glossary* must be interpreted accordingly.
- 2.2.8 **G** Examples of related expressions are:
- (1) "*advice on investments*" and "*advise on investments*", which should be interpreted by reference to "*advising on investments*";
 - (2) "*closely linked*", which should be interpreted by reference to "*close links*";
 - (3) "*controls*" and "*controlled*", which should be interpreted by reference to "*control*";
 - (4) "*effect*", as for example in "*effect a life policy*", which should be interpreted by reference to "*effecting contracts of insurance*"; and
 - (5) "*employment*", which should be interpreted by reference to "*employee*".
- 2.2.9 **G** Unless the context otherwise requires or unless otherwise stated in a particular sourcebook or manual, where italics have not been used, an expression bears its natural meaning (subject to the Interpretation Act 1978; see ■ GEN 2.2.11 R to ■ GEN 2.2.12 G).
- 2.2.10 **G** The Interim Prudential sourcebooks (*IPRU*) have individual arrangements for defined terms and each contains *rules* or *guidance* on its own arrangements. In respect of those sourcebooks, reliance should not be placed on the definitions which appear in the *Glossary* unless otherwise indicated.
- Application of the Interpretation Act 1978**.....
- 2.2.11 **R** The Interpretation Act 1978 applies to the *Handbook*.
- 2.2.12 **G** The application of the Interpretation Act 1978 to the *Handbook* has the effect, in particular, that:
- (1) expressions in the *Handbook* used in the *Act* have the meanings which they bear in the *Act*, unless the contrary intention appears;
 - (2) where reference is made in the *Handbook* to an enactment, it is a reference to that enactment as amended, and includes a reference to

that provision as extended or applied by or under any other enactment, unless the contrary intention appears; and

- (3) unless the contrary intention appears:
 - (a) words in the *Handbook* importing the masculine gender include the feminine and words importing the feminine gender include the masculine;
 - (b) words in the *Handbook* in the singular include the plural and words in the plural include the singular.

Civil partnership - references to stepchildren etc

2.2.12A **R** Any reference in a provision of the *Handbook* made before 5 December 2005 to a stepchild, step-parent, stepdaughter, stepson, stepbrother or stepsister is to be interpreted in accordance with section 246 of the Civil Partnership Act 2004.

2.2.12B **G** ■ GEN 2.2.12A R and sections 246 and 247 of the Civil Partnership Act 2004 amend each reference in the *Handbook* to a stepchild, step-parent and certain related expressions to take account of civil partnerships. As a result a reference (for example) to a stepchild of a person (A) includes a reference to the child of the civil partner of A where that child is not A's child.

Cross-references in the Handbook

2.2.13 **R**

- (1) A reference in the *Handbook* to another provision in the *Handbook* is a reference to that provision as amended from time to time.
- (2) Unless a contrary intention appears, a reference in the *Handbook* to a provision in the PRA Rulebook is a reference to that provision as amended from time to time.

2.2.13A **R** Unless a contrary intention appears, to the extent that a provision made by the *FCA* ('the referring provision') contains a cross-reference to another provision that is not made by the *FCA* including a provision formerly made by the *PRA* which the *PRA* has now deleted ('the referred provision'), the referred provision as amended from time to time (excepting deletion in its entirety) is to be treated as having been made by the *FCA* to the extent necessary to make the referring provision function with the full effect indicated by the reference.

2.2.13B **G** The purpose of ■ GEN 2.2.13AR is to ensure that cross references in the *FCA Handbook* to provisions outside the *FCA Handbook* are effective, including cross references to material that was formerly in the *PRA Handbook* but which the *PRA* has now deleted.

References to writing

2.2.14 **R** If a provision in the *Handbook* refers to a communication, notice, agreement or other *document* "in writing" then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper,

irrespective of the medium used. Expressions related to writing must be interpreted accordingly.

2.2.15 **G** ■ GEN 2.2.14 R means that, for example, electronic media may be used to make communications which are required by a provision of the *Handbook* to be "in writing", unless a contrary intention appears, or the use of electronic media would contravene some other requirement. ■ GEN 2.2.14 R does not, however, affect any other legal requirement which may apply in relation to the form or manner of executing a *document* or agreement.

2.2.15A **G** An example of a requirement relevant to whether a communication required by a provision of the *Handbook* to be "in writing" may be made by use of electronic media is the requirement to treat *customers* fairly under *Principle 6*.

2.2.16 **G** "*Document*" is a defined term in the *Glossary*, the definition of which includes information recorded in any form, including electronic form.

Activities covered by general rules

2.2.17 **R** A *general rule* (that is a *rule* made by the *FCA* the *general rule making powers*) is to be interpreted as:

- (1) applying to a *firm* with respect to the carrying on of all *regulated activities*, except to the extent that a contrary intention appears; and
- (2) not applying to a *firm* with respect to the carrying on of *unregulated activities*, unless and then only to the extent that a contrary intention appears.

Continuity of authorised partnerships and unincorporated associations

2.2.18 **R** (1) If a *firm*, which is a partnership or unincorporated association, is dissolved, but its authorisation continues to have effect under section 32 of the *Act* (Partnerships and unincorporated associations) in relation to any partnership or unincorporated association which succeeds to the business of the dissolved *firm*, the successor partnership or unincorporated association is to be regarded as the same *firm* for the purposes of the *Handbook* unless the context otherwise requires.

(2) [deleted]

(3) [deleted]

2.2.19 **G** In principle, it is possible to view a change of partners in a partnership, or a change in the membership of the unincorporated association, as the formation of a new partnership or association. ■ GEN 2.2.18 R reflects section 32 of the *Act* (Partnerships and unincorporated associations), which provides for the continuing *authorisation* of partnerships and unincorporated associations following a change in partners or members if certain conditions are satisfied. ■ GEN 2.2.18 R ensures a similar effect to section 32 in relation to

the status of the partnership or unincorporated associations as a "firm" or "authorised person" for the purposes of the Handbook.

Designated investment exchanges

2.2.20 **G** In the *Glossary*, the definition of *designated investment exchange* lists certain investment exchanges. Further information on *designated investment exchanges*, including *guidance* on the addition of an investment exchange to the list, is set out in ■ GEN 2 Annex 1 G and the obligation to pay the application fee is set out in ■ FEES 3.2.

European Economic Area (EEA)

2.2.21 **G** The agreement on the *European Economic Area*, signed at Oporto on 2 May 1992, extends certain *EU* legislation to those *EEA States* which are not Member States of the *EU*, namely Norway, Iceland and Liechtenstein. References in the *Handbook* concerning the territorial scope of *EU* law should therefore be read as extending throughout the *EEA* where the context requires.

Treaty of Lisbon

2.2.22 **G** As a result of the Treaty of Lisbon, the European Union has replaced and succeeded the European Community. References in the *Handbook* to the European Community should therefore be interpreted as references to the European Union, where the context requires. In particular, references which are copied out directly from *EU* or *UK* legislation may contain references to the Community which should be read in conjunction with section 3 of the European Union (Amendment) Act 2008.

EU Regulations and third country firms

2.2.22A **R**

- (1) Unless exempted in (2) and subject to (3), *MiFIR*, and any *EU regulation* adopted as at 3 January 2018 under *MiFIR* or *MiFID*, apply to a *third country investment firm* as if it were a *UK MiFID investment firm* when the following conditions are met:
 - (a) when it carries on *MiFID* or equivalent *third country business*; and
 - (b) it carries on the business in (a) from an establishment in the *United Kingdom*.
- (2) Paragraph (1) does not apply:
 - (a) to the extent *MiFIR* or an *EU regulation* adopted under *MiFIR* or *MiFID* imposes a specific requirement in relation to a *third country investment firm*; and
 - (b) to *EU regulations* adopted under articles 7, 34 and 35 of *MiFID*.
- (3) Paragraph (1) is modified by the application provisions in individual *Handbook* chapters for particular purposes.

2.2.22B **G**

- (1) The purpose of ■ GEN 2.2.22AR is to ensure consistency with the principle referred to in recital 109 to *MiFID* that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*. A *third country investment firm* does not, however,

benefit from passporting rights in the manner envisaged for *EEA firms* and its *authorisation* requires consideration of other issues, including the nature and extent of regulation provided by its *Home State regulator*.

- (2) ■ GEN 2.2.22AR may be overridden where the application provisions at the beginning of individual *Handbook* chapters qualify its effect.

Application of provisions where there are commensurate PRA provisions

2.2.23

R

- (1) This *rule* applies to *Handbook* provisions where the *PRA* have made commensurate provisions in the *PRA* Rulebook. It may affect their application by the *FCA* to *PRA-authorised persons* and *PRA approved persons*.
- (2) Where a *Handbook* provision (or part of one) goes beyond the *FCA*'s powers or regulatory responsibilities, it is to be interpreted as applied to the extent of the *FCA*'s powers and regulatory responsibilities only.
- (3) The extent of a *Handbook* provision is to be interpreted as cut back under (2) by the minimum degree necessary.
- (4) [deleted]

2.2.24

G

The published Memorandum of Understanding between the *FCA* and the *PRA* describes their regulatory responsibilities.

2.2.25

G

An example of a *rule* being interpreted as cut back by ■ GEN 2.2.23R is ■ SYSC 6.1.1R, which requires a *firm* to maintain adequate policies and procedures to ensure compliance with its obligations under the *regulatory system*; ■ SYSC 6.1.1R should be interpreted as applied by the *FCA* in respect of a *PRA-authorised person's* compliance with regulatory obligations that are the responsibility of the *FCA* (for example, in respect of a *bank* maintaining policies and procedures to ensure compliance with banking conduct requirements in *BCOBS*).

- (1) [deleted]
- (2) [deleted]
- (3) [deleted]

Designated investment exchanges

Introduction

1. A *designated investment exchange* is an exchange appearing in the list of such exchanges in the *Glossary*.

Benefits of designation

2. Under certain *rules*, *firms* may treat transactions effected on a *designated investment exchange* in the same way as transactions on *RIEs* (for example, see [CASS 2](#)).

Criteria for inclusion in the list of designated investment exchanges

3. Before adding an investment exchange to the list of *designated investment exchanges* in the *Handbook*, the *FCA* will comply with all the requirements imposed by the *Act* in relation to the exercise of its rule-making powers. This will include consulting on the proposed amendment to the list.
4. In considering compatibility of the proposed addition with the *statutory objectives*, the *FCA* will determine whether the investment exchange provides an appropriate degree of protection for *consumers* having regard in particular to:
 - (1) the relevant law and practice, including the regulatory framework in which the investment exchange operates, in the country or territory in which the investment exchange's head office is situated and any other relevant country or territory; and
 - (2) the rules and practices of the investment exchange.
5. Only investment exchanges which do not carry on a *regulated activity* in the *United Kingdom* and are not *regulated markets* may be added to the list. This is because an investment exchange carrying on a *regulated activity* in the *United Kingdom* will need to apply for recognition as an *RIE*, or authorisation, and because a regulated market is usually treated in the same way as an *RIE* in the *rules*.

Applications to be added to the list of designated investment exchanges

6. An application to be added to the list should be in writing and delivered to the *FCA* by:
 - (1) post to:
 - The Financial Conduct Authority
 - 25 The North Colonnade
 - Canary Wharf
 - London
 - E14 5HS; or
 - (2) leaving the application at that address.
7. In support of the application, an investment exchange should provide information on the questions set out in the table below.
8. An application will not be considered by the *FCA* until the application fee has been paid. See [FEES 3.2](#)

Designated investment exchange questionnaire	
1	In what way are members subject to formal supervision by the exchange or another supervisory or regulatory body? Describe how capital resources of members are monitored on an ongoing basis and how this is related to business done.
2	What powers does the exchange or any other supervisory or regulatory body have to intervene in a member's business in the event of misconduct, financial difficulties or otherwise?
3	What are the clearing arrangements of the exchange? How does the exchange ensure performance of a contract between its members? If relevant, what type of contract guarantee is available?
4	How is price information in respect of contracts effected on the exchange disseminated to investors, particularly those investors in the <i>United Kingdom</i> ?
5	What are the exchange's arrangements for reporting and recording of transactions effected on the exchange? Please describe.
6	Does the exchange, or any other supervisory or regulatory body, require members to segregate the money and assets of the member's <i>clients</i> from the money and assets of the member? If so, please describe in outline how this operates. If not, are investors protected in any other way in the event of the insolvency of a member or the exchange?
7	Does the exchange have procedures for the investigation of complaints? Please describe what they are.
8	Does the exchange classify the different contracts traded on it in terms of liquidity? Is it possible to identify certain contracts which are more liquid than others and in which a ready market might be considered to exist?

[deleted]

Chapter 3

FSA Fees: General Provisions

Chapter 4

Statutory status disclosure

4.1 Application

Who? What?

4.1.1

R

This chapter applies to every *firm* and with respect to every *regulated activity*, except that:

- (1) for an *incoming ECA provider*, this chapter does not apply when the *firm* is acting as such;
- (2) for an *incoming EEA firm* which has *permission* only for *cross-border services* and which does not carry on *regulated activities* in the *United Kingdom*, this chapter does not apply;
- (3) for an *incoming firm* not falling under (1) or (2), this chapter does not apply to the extent that the *firm* is subject to equivalent rules imposed by its *Home State*;
- (4) for a *UCITS qualifier*, this chapter does not apply; and
- (5) only **■ GEN 4.5** (Statements about authorisation and regulation by the appropriate regulator) applies in relation to *MiFID or equivalent third country business* and only where that *MiFID or equivalent third country business* is not business falling within paragraph 2 (Transactions between an MTF operator and its users), 3 (Transactions concluded on an MTF) or 4 (Transactions concluded on a regulated market) of Part 1 of **■ COBS 1 Annex 1**.

Where?

4.1.2

R

■ GEN 4.3 (Letter disclosure) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, subject to **■ GEN 4.3.4 R** (Exception: insurers).

4.1.3

R

■ GEN 4.4 (Business for private customers from non-UK offices) applies in connection with a *regulated activity* carried on from an establishment of the *firm* (or its *appointed representative*) that is not in the *United Kingdom*.

4.1.4

R

■ GEN 4.5 (Statements about authorisation and regulation by the *appropriate regulator*) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, provided that, in the case of the *MiFID business* of an *EEA MiFID investment firm* or the activities of an *EEA UCITS management company*, it only applies to business conducted within the territory of the *United Kingdom*.



4.2 Purpose

- 4.2.1** **G** This chapter requires the provision of appropriate minimum information about the identity of the regulator that authorised a *firm*. It also governs the way in which a *firm* may describe its regulation by the *appropriate regulator*.
- 4.2.1A** **G** [deleted]
- 4.2.1B** **G** This chapter builds upon *Principle 7 (Communications with clients)*, which requires a *firm* to pay due regard to the information needs of its *clients*. This assists in the achievement of the *statutory objectives*, including the *FCA's* strategic objective of ensuring that relevant markets function well and the consumer protection and integrity objectives.
- 4.2.1C** **G**
- 4.2.2** **G** There are other pre-contract information requirements outside this chapter, including:
- (1) for *financial promotions*, in the *financial promotion rules*;
 - (2) for *designated investment business*, in **COBS 8** and **COBS 8A** (Client agreements), **COBS 5** (Distance Communications), **COBS 6** (Information about the firm, its services and remuneration), **COBS 13** and **14** (which relate to product information) and CASS (Client assets);
 - (2A) for *PRIIPs*, a requirement under the *PRIIPs Regulation* to provide retail investors (as defined in that Regulation) with a *key information document*;
 - (3) for *non-investment insurance contracts*, distance communication requirements in **ICOB 3**, initial disclosure requirements in **ICOB 4**, disclosures relating to client needs and advice in **ICOB 5** and product information requirements in **ICOB 6**;
 - (4) for *electronic commerce activities* carried on from an *establishment* in the *United Kingdom*, in **COBS 5.2**, **ICOB 3.2** and **MCOB 2.8**;
 - (5) for *regulated mortgage contracts* and *home purchase plans*, initial disclosure requirements in **MCOB 4**, pre-application disclosure requirements in **MCOB 5**, and disclosure at the offer stage in **MCOB 6**;

- (6) for *equity release transactions*, initial disclosure requirements in ■ MCOB 8.4, pre-application disclosure requirements in ■ MCOB 9.4 and disclosure at the offer stage in ■ MCOB 9.5;
- (7) for *regulated sale and rent back agreements*, initial disclosure requirements in ■ MCOB 4.11, pre-sale disclosure requirements in ■ MCOB 5.9 and disclosure at the offer stage requirements in ■ MCOB 6.9; and
- (8) for *regulated credit agreements*, the pre-contract information requirements in the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013) and in the Consumer Credit (Disclosure of Information) Regulations 2004 (SI 2004/1481).



4.3 Letter disclosure

Disclosure in letters to retail clients

- 4.3.1** R A *firm* must take reasonable care to ensure that every letter (or electronic equivalent) which it or its *employees* send to a *retail client*, with a view to or in connection with the *firm* carrying on a *regulated activity*, includes the disclosure in ■ GEN 4 Annex 1 R (firms that are not PRA-authorized persons) or GEN 4 Annex 1AR (PRA-authorized persons) as applicable.
- 4.3.1A** G Where a letter covers both activities to which this section applies and activities to which this section does not apply, the *firm* should comply with the *rules* in this chapter in relation to the business to which it applies.
- 4.3.1B** G An example for ■ GEN 4.3.1A G would be where a letter covers business for which the *FCA* is the *competent authority* under the *Insurance Mediation Directive* and under *MiFID*.
- 4.3.2** G [deleted]
- 4.3.2A** G For a *UK domestic firm* that is not a *PRA-authorized person*, the required disclosure in ■ GEN 4 Annex 1 R is "Authorized and regulated by the Financial Conduct Authority".
- 4.3.2B** G For a *UK domestic firm* that is a *PRA-authorized person*, the required disclosure in GEN 4 Annex 1AR is "Authorized by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority".
- 4.3.3** G

 - (1) ■ GEN 4.3.1 R (Disclosure in letters to retail clients) covers letters delivered by hand, sent by *post* and sent by fax and also electronic mail, but not text messages, account statements, business cards or compliment slips (used as such).
 - (2) ■ GEN 4.3.1 R (Disclosure in letters to retail clients) applies in relation to letters sent by any of the *firm's employees*, which includes its *appointed representatives* and their *employees*.
 - (3) *Firms* are likely to find it convenient to include the required disclosure in their letterhead.

Exception: insurers

- 4.3.4 **R** ■ GEN 4.3.1 R (Disclosure in letters to retail clients) does not apply in relation to:
- (1) *general insurance business* if:
 - (a) the *State of the risk* is an *EEA State* other than the *United Kingdom*; or
 - (b) the *State of the risk* is outside the *EEA* and the *client* is not in the *United Kingdom* when the *contract of insurance* is entered into; or
 - (2) *long-term insurance business* if:
 - (a) the *client* is *habitually resident* in an *EEA State* other than the *United Kingdom*; or
 - (b) the *client* is *habitually resident* outside the *EEA* and is not present in the *United Kingdom* when the *contract of insurance* is entered into.

Exception: authorised professional firms

- 4.3.5 **R** For an *authorised professional firm*, ■ GEN 4.3.1 R (Disclosure in letters to retail clients) does not apply with respect to its *non-mainstream regulated activities*.

Exception: use of third party processors in home finance and insurance mediation activities

- 4.3.6 **R**
- (1) Where a *firm* has outsourced activities to a *third party processor* other than *advising on life policies*, ■ GEN 4.3.1 R does not apply to that *third party processor* when acting as such, so long as the outsourcing *firm* ensures that the *third party processor* and its *employees* comply with that *rule* as if it was the *firm* and they were *employees* of the *firm*.
 - (2) Where an *appointed representative* has outsourced *insurance mediation activities* other than *advising on life policies* or *home finance mediation activities* to a *third party processor*, ■ GEN 4.3.1 R does not apply to that *third party processor* when acting as such, so long as the *appointed representative's principal* ensures that the *third party processor* and its *employees* comply with that *rule* as if it was the *appointed representative* and they were the *employees* of the *appointed representative*.
 - (3) Where an *appointed representative* of a *firm* is carrying on:
 - (a) *insurance mediation activities* other than *advising on life policies*; or
 - (b) *home finance mediation activities*;
 which have been outsourced to it by the *firm*, ■ GEN 4.3.1 R does not apply to the *firm* when the *appointed representative* is carrying on the outsourced activities, so long as the *firm* ensures that the *appointed representative* and its *employees* comply with that *rule* as if it was the *firm* and they were *employees* of the *firm*.

Exception: credit firms

- 4.3.7** R ■ GEN 4.3.1 R (Disclosure in letters to retail clients) does not apply to a *credit firm* (other than a *firm with a limited permission*) with respect to the activity of *entering into a regulated credit agreement as lender* to which the *Consumer Credit Directive* applies, to the extent it would be contrary to the *United Kingdom's* obligations under an EU instrument.
- 4.3.8** G A *credit firm* which carries on the activity of *entering into a regulated credit agreement as lender* , in respect of an agreement to which articles 5 and 6 of the *Consumer Credit Directive* apply is under an obligation to disclose pre-contract information in the form and to the extent required by the *Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013)*. *Firms* which carry on *credit broking* may take on the same obligation. A *credit firm* must also ensure specified information is included in *credit agreements* to which the *Consumer Credit Directive* applies in the form and to the extent required by the *Consumer Credit (Agreements) Regulations 2010 (SI 2010/1014)*.
- 4.3.9** G The effect of ■ GEN 4.3.7 R is that a *credit firm* in relation to a *regulated credit agreement* covered by the *Consumer Credit Directive* does not need to comply with ■ GEN 4.3.1 R in relation to those letters (or electronic equivalents) that accompany the information required under the Regulations referred to in ■ GEN 4.3.8 G.
- 4.3.10** G *Regulated activities* covered by a *limited permission* (see the "relevant credit activities" set out in paragraph 2G of Schedule 6 to the *Act*) do not fall within the scope of articles 5 and 6 of the *Consumer Credit Directive*, therefore ■ GEN 4.3.7 R and the guidance related to it are not relevant to those activities.

4.4 Business for retail clients from non-UK offices

4.4.1

R

(1) If, in any communication:

(a) made to:

- (i) (in relation to a *non-investment insurance contract*) a *consumer*;
- (ii) (in relation to a *home finance transaction*) a *customer*; or
- (iii) (in all other cases) a *retail client*; and

(b) in connection with a *regulated activity* carried on from an establishment of the *firm* (or its *appointed representative*) that is not in the *United Kingdom*;

the *firm* indicates that it is an *authorised person*, it must also, where relevant, and with equal prominence, give the information in (2) in writing.

(2) The information required is that in some or all respects the *regulatory system* applying will be different from that of the *United Kingdom*. The *firm* may also indicate the protections and complaints or compensation arrangements available under another relevant system of regulation.

(3) A *firm* need not provide the information required by (1) if it has already provided it in writing to the *customer* to whom the communication is made.

4.4.2

G

[deleted]



4.5 Statements about authorisation and regulation by the appropriate regulator

Application

- 4.5.1 **R** This section applies to a *firm*:
- (1) communicating with a *customer*; or
 - (2) *communicating or approving a financial promotion* other than:
 - (a) a *financial promotion* that would benefit from an exemption in the *Financial Promotion Order* if it were *communicated* by an *unauthorised person*;
 - (b) a promotion of an *unregulated collective investment scheme* that would breach section 238(1) of the *Act* if made by an *authorised person* (*firms* may not *communicate or approve* such promotions).

- 4.5.2 **G** ■ GEN 4.5.1 R (1) does not apply to a *firm* when communicating with an *eligible counterparty*.

- 4.5.2A **G** However, misleading statements by a *firm* when communicated with an *eligible counterparty* may involve a breach of *Principle 7* (Communications with clients) or Part 7 (Offences relating to financial services) of the *Financial Services Act 2012*, as well as giving rise to private law actions for misrepresentation.

The duty

- 4.5.3 **R** A *firm* must not indicate or imply that it is authorised by the *FCA* in respect of business for which it is not so authorised.
- 4.5.3A **R** A *firm* must not indicate or imply that it is authorised by the *PRA* in respect of business for which it is not so authorised.
- 4.5.4 **R** A *firm* must not indicate or imply that it is regulated or otherwise supervised by the *FCA* in respect of business for which it is not regulated by the *FCA*.
- 4.5.4A **R** A *firm* must not indicate or imply that it is regulated or otherwise supervised by the *PRA* in respect of business for which it is not regulated by the *PRA*.

- 4.5.5 **G** ■ SUP 13A Annex 1 provides *guidance* on the application of the *Handbook* to an *incoming EEA firm*.
- 4.5.6 **G**
- (1) Neither an *incoming EEA firm* nor an *incoming Treaty firm* is *authorised* by the *FCA* or *PRA* when acting as such.
 - (2) It is likely to be misleading for a *firm* that is not *authorised* by the *FCA* or *PRA* to state or imply that it is so *authorised*. It is also likely to be misleading for a *firm* to state or imply that a *client* will have recourse to the *Financial Ombudsman Service* or the *FSCS* where this is not the case.
 - (3) [deleted]
- 4.5.6A **G** As well as potentially breaching the requirements in this section, misleading statements by a *firm* may involve a breach of *Principle 7* (Communications with clients) or section Part 7 (Offences relating to financial services) of the *Financial Services Act 2012*, as well as giving rise to private law actions for misrepresentation.

Statutory status disclosure

This rule applies to *firms* that are not *PRA-authorised persons*:

	Type of firm	Required disclosure (Note 5)
(1)	<i>UK domestic firm; or overseas firm (which is not an incoming firm)</i>	"Authorised and regulated by the Financial Conduct Authority" (Note 1)
(2)	<i>Incoming firm without a top-up permission</i>	(a) "Authorised by [name of Home State regulator] or (b) "Authorised by [name of Home State regulator] and subject to limited regulation by the Financial Conduct Authority. Details about the extent of our regulation by the Financial Conduct Authority are available from us on request" (Notes 1, 2, 2a and 3)
(3)	<i>Incoming firm with a top-up permission</i>	"Authorised by [name of Home State regulator] and authorised and subject to limited regulation by the Financial Conduct Authority. Details about the extent of our authorisation and regulation by the Financial Conduct Authority are available from us on request" (Notes 1, 2 and 3)
(4)	<i>Appointed representative of a firm</i>	"[Name of appointed representative] is an appointed representative of [name of firm] which is [then continue with the required disclosure of the firm]" (Note 4)

Note 1 = A *firm* must use the formulation "Financial Conduct Authority" and not the abbreviated formulation "FCA".

Note 2 = An *incoming firm* is free to translate the name of its *Home State regulator* into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.

Note 2a = An *incoming firm without a top-up permission* may make either disclosure (a) or disclosure (b) unless it otherwise indicates or implies to the *customer* that it is regulated or supervised by the *FCA*, in which case it must make disclosure (b).

Note 3 = If a *firm* offers to make details about the extent of its authorisation or regulation by the *FCA* available on request and a *customer* requests such details, it must provide those details in a way that is clear, fair and not misleading.

Note 4 = If the *appointed representative* has more than one *principal*, the disclosure must relate to the *principal* or *principals* responsible for the *regulated activity* or activities concerned. The required disclosure of the *firm* is that which would apply were the *firm* to make the disclosure under the *rules* applicable to it.

	Type of firm	Required disclosure (Note 5)
<p>Note 5 = Any <i>firm</i> listed in this table is permitted to add words to the relevant required disclosure statement but only if the <i>firm</i> has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received. For example, an <i>authorised professional firm</i> may wish to make it clear that it is also regulated by its professional body.</p>		

Statutory status disclosure (PRA-authorised persons)

This rule applies to *firms* that are *PRA-authorised persons*:

Type of firm	Required disclosure (Note 5)
(1) UK domestic firm	"Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority" (Note 1)
(2) overseas firm (which is not an incoming firm)	"[Authorised and regulated by [name of the <i>overseas regulator</i> of the overseas firm in the jurisdiction of that overseas firm's registered office (or, if it has no registered office, its head of-fice)]. Authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us on request." (Notes 1, 2, 3, and 3a)
(3) Incoming firm without a top-up permission	(a) "Authorised by [name of <i>Home State regulator</i>]" or (b) "Authorised by [name of <i>Home State regulator</i>] and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our regulation by the Financial Conduct Authority and Prudential Regulation Authority are available from us on request" (Notes 1, 2, 2a and 3)
(4) Incoming firm with a top-up permission	"Authorised by [name of <i>Home State regulator</i>] and the Prudential Regulation Authority and subject to limited regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of our authorisation and regulation by the Prudential Regulation Authority, and regulation by the Financial Conduct Authority are available from us on request" (Notes 1, 2 and 3)
(5) <i>Appointed representative of a firm</i>	"[Name of <i>appointed representative</i>] is an <i>appointed representative</i> of [name of <i>firm</i>] which is [then continue with the required disclosure of the <i>firm</i>]" (Note 4)
(6) Society of Lloyd's	"Authorised under the Financial Services and Markets Act 2000"

Note 1 = A *firm* must use the formulation "Financial Conduct Authority" or "Prudential Regulation Authority" and not the abbreviated formulation "FCA" or "PRA" respectively.

Note 2 = An incoming firm or overseas firm is free to translate the name of its *Home State regulator* or *overseas regulator* into English if it wishes. In doing so, it must ensure that the State in which the regulator is based is clear.

Note 2a = An incoming firm without a top-up permission may make either disclosure (a) or disclosure (b) unless it otherwise indicates or implies to the *customer* that it is regulated or supervised by the *FCA* or *PRA*, in which case it must make disclosure (b).

Type of firm	Required disclosure (Note 5)
	<p>Note 3 = If a <i>firm</i> offers to make details about the extent of its authorisation by the <i>PRA</i> or regulation by the <i>FCA</i> or <i>PRA</i> available on request and a <i>customer</i> requests such details, it must provide those details in a way that is clear, fair and not misleading.</p>
	<p>Note 3a = An overseas firm that is not an incoming firm is only required to disclose its authorisation and/or regulated by an <i>overseas regulator</i> if it is so authorised and/or regulated.</p>
	<p>Note 4 = If the <i>appointed representative</i> has more than one <i>principal</i>, the disclosure must relate to the <i>principal</i> or <i>principals</i> responsible for the <i>regulated activity</i> or activities concerned. The required disclosure of the <i>firm</i> is that which would apply were the <i>firm</i> to make the disclosure under the <i>rules</i> applicable to the <i>firm</i>.</p>
	<p>Note 5 = Any <i>firm</i> listed in this table is permitted to add words to the relevant required disclosure statement but only if the <i>firm</i> has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, be fair, clear and not misleading and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received.</p>

Chapter 5

Regulators' logos and the Key facts logo



5.1 Application and purpose

Application

5.1.1

G

This chapter contains:

- (1) *guidance for firms, authorised payment institutions, registered account information service providers and authorised electronic money institutions and their appointed representatives, agents or tied agents on the circumstances in which the FCA permits them to reproduce the FSA and FCA logos;*
- (2) *rules on the use by firms of the Key facts logo.*

Purpose

5.1.2

G

The FSA logo is a registered UK service mark, with number 2150560. The FCA logo is a registered UK service mark, with number 2629534. The Key facts logo is a registered Community trade mark, with the number EU3866688. All are the property of the FCA. They are also subject to copyright and may be used or reproduced with permission of the FCA only. If the FSA, FCA, or Key facts logos are reproduced or otherwise used by any person without such permission the FCA may seek to enforce its rights over its property through the Courts.

5.1.3

G

■ GEN 5 Annex 1 G is a general licence, which sets out the circumstances in which the FCA permits a *person* to whom this chapter applies to reproduce the FSA and Key facts logos. Such a *person* need not apply for an individual licence if it uses or reproduces the logos in accordance with the general licence.

5.1.3A

G

No general licence is granted by the FCA in respect of the FCA logo.

5.1.4

G

The FCA has no policy to allow use of the FSA or Key facts logos by a *person* to whom this chapter applies other than as set out in ■ GEN 5 Annex 1 G. If, however, such a *person* wishes to use or reproduce either of the logos other than in accordance with the general licence, it may apply to the FCA for an individual licence, giving full reasons why it considers the FCA should grant the licence.

The Key facts logo

5.1.5 R A firm must not use the Key facts logo other than as and when it is required or expressly permitted to be used by the rules, and in accordance with the general licence in GEN 5 Annex 1 G.

5.1.6 R A firm must take all reasonable steps to ensure that its representatives do not use the Key facts logo other than as and when the logo is required to be used by the rules.

5.1.7 R A firm must take all reasonable steps to ensure that the Key facts logo is not reproduced on any document that the firm, or any person acting on its behalf, provides to a customer unless the reproduction is required by the rules.

The FSA logo

5.1.8 R A firm must not use the FSA logo (and must take all reasonable steps to ensure that its representatives do not use the FSA logo) in any communication with a client other than in accordance with the general licence in GEN 5 Annex 1 G or any individual licence granted by the FCA to the firm or its representatives.

5.1.9 G The general licence in GEN 5 Annex 1 G to use the FSA logo will continue till 1 April 2014 whereupon the general licence is revoked by GEN 5 Annex 1 G, 7.1.

The FCA logo

5.1.10 R A firm must not use the FCA logo (and must take all reasonable steps to ensure that its representatives do not use the FCA logo) in any communication with a client other than in accordance with any individual licence granted by the FCA to the firm or its representatives.

Licence for use of the FSA and Key facts logos

Application

- 1.1 The FCA grants this licence to *firms, authorised payment institutions, authorised electronic money institutions, appointed representatives, agents and tied agents*.

The FSA logo

- 2.1 The FSA logo is made up of two elements which together make up the registered UK service mark, with number 2150560:
- (1) the symbol (the scroll and globe device); and
 - (2) the FSA letters.
- 2.2 The Key facts logo is made up of two elements which together make up the registered Community trade mark, with number E3866688:
- (1) the symbol (the rectangular speech bubble); and
 - (2) the word 'Key facts'.
- 2.3 There are two versions of the FSA logo, version A and a smaller version B in which the scroll has been simplified. There are two versions of the Key facts logo, a low resolution version and a high resolution version.
- 2.4 Copyright subsists in the FSA logo.
- 2.5 Copies of the FSA logo that are capable of being reproduced for printing can be found on the FCA's website at www.fca.org.uk

Permission to use the FSA logo

- 3.1 A UK domestic firm, its appointed representatives and tied agents, an authorised payment institution and its agents and an authorised electronic money institution and its agents are permitted to use the FSA logo:
- (1) as part of a statement by that person, in a letter or electronic equivalent, that it or, in relation to an appointed representative, agent or tied agent, its principal, is authorised and regulated by the FSA; or
 - (2) if required to do so by the FCA.
- 3.1A [deleted]
- 3.2 The disclosure required by GEN 4.3.1 R (Disclosure in letters to retail clients) as continued in GEN TP 1.3(3).13 is an example of a statement within paragraph 3.1 above.
- 3.3 Business cards, compliment slips, text messages, account statements and other similar documents are not letters (or electronic equivalents). Therefore, the licence does not extend to documents such as these.

Permission to use the Key facts logo

- 3A.1 A firm, its appointed representatives and tied agents are permitted to use the Key facts logo as and when it is required or permitted to be used by the rules.
- 3A.2 The following are examples of places where the rules require or permit the Key facts logo to be used:

- (1) [deleted]
- (2) In *ICOB*S:
 - (a) [deleted]
 - (b) in a *policy summary*; and
 - (c) in a *key features* as an alternative to a *policy summary*.
- (3) In *MCOB*
 - (a) [deleted]
 - (b) in an *illustration* (*MCOB* 5.6.2 R and *MCOB* 9.4.2 R); and
 - (c) in a risks and features statement (*MCOB* 4.10.11 R) and financial information statement (*MCOB* 5.8.7 R).

Conditions on appearance of the FSA logo

- 4.1 The permission in paragraph 3.1 is subject to the following conditions:
- (1) the regulatory mark is attached to the FSA logo;
 - (2) the FSA logo and regulatory mark appear in black type, or reversed out white on a coloured background;
 - (3) the FSA letters appear in type which is not more than three times the size of the accompanying script;
 - (4) the two elements of the FSA logo appear together in the same way, and in the same proportion, as in the registered service mark;
 - (5) the FSA logo is not redrawn in any way, or matched by a typesetter;
 - (6) version B of the FSA logo is used only at sizes below 10 mm in overall height; and
 - (7) if the FSA logo is reproduced electronically, no hyperlink is incorporated.

Conditions on appearance of the Key facts logo

- 4A.1 The permission in paragraph 3A.1 is subject to the following conditions:
- (1) the regulatory mark (®) is attached to the Key facts logo;
 - (2) the Key facts logo and regulatory mark appear:
 - (a) in black type;
 - (b) reversed out white on a coloured background; or
 - (c) in colour provided that this does not diminish their prominence;
 - (3) the two elements of the Key facts logo appear together in the same way, and in the same proportion, as in the Community trade mark;
 - (4) the Key facts logo is not redrawn in any way, or matched by a typesetter;

- (5) the low resolution version of the Key facts logo is used only in documents intended to be read on a computer, television or other screen; and
- (6) if the Key facts logo is reproduced electronically, no hyperlink is incorporated.

Further conditions on the use of the FSA and Key facts logos

- 5.1 The permissions in paragraphs 3.1 and 3A.1 are also subject to the conditions that any material, whether produced on paper or electronically, on which the FSA or Key facts logos are displayed does not:
- (1) in any way imply that the *FCA* is endorsing the licensee or its products, services or communications (see also [GEN 1.2.2 R \(1\)](#)); or
 - (2) misrepresent the licensee's relationship with the *FCA* or present false information about the *FCA*; or
 - (3) contain content that could be construed as distasteful, offensive or controversial; or
 - (4) infringe any intellectual property or other rights of any *person* or otherwise not comply with any relevant law or regulation.

6.1 [deleted]

Commencement and duration

- 7.1 This licence comes into effect on 1 May 2003 except that in relation to the Key facts logo it comes into effect on 6 November 2006. In relation to the FSA logo, this licence ceases to have effect and is revoked on 1 April 2014.
- 7.2 The *FCA* may alter or revoke this licence at any time, by giving at least two months' notice on the *FCA*'s website.

Interpretation

- 8.1 This licence is to be interpreted in accordance with chapter 2 of the General provisions (Interpreting the Handbook) of the *Handbook*. In particular, expressions in italics are defined in the Handbook Glossary.

Governing law and jurisdiction

- 9.1 This licence is governed by and interpreted in line with English law. The courts of any jurisdiction in the United Kingdom have the exclusive jurisdiction to settle any dispute in connection with this licence.

Chapter 6

Insurance against financial penalties

6.1 Payment of financial penalties

Application

- 6.1.1 **R** This chapter applies to every *firm*, but only with respect to business that can be regulated under section 137A (The FCA's general rules) of the *Act*.
- 6.1.2 **G** For the purposes of **■ GEN 2.2.17 R** (Activities covered by general rules), the chapter applies to *regulated* and *unregulated activities* carried on in the *United Kingdom* or overseas.

Purpose

- 6.1.3 **G** The purpose of this section is to ensure that financial penalties are paid by the *person* on whom they are imposed.

Interpretation

- 6.1.4 **R** In this chapter 'financial penalty' means a financial penalty that the *FCA* has imposed, or may impose, under the *Act*. It does not include a financial penalty imposed by any other body.

Payment of a penalty imposed on an employee

- 6.1.4A **R** No *firm*, except a *sole trader*, may pay a financial penalty imposed by the *FCA* on a present or former *employee*, *director* or *partner* of the *firm* or of an *affiliated company*.

Insurance against financial penalties

- 6.1.5 **R** No *firm* may enter into, arrange, claim on or make a payment under a *contract of insurance* that is intended to have, or has or would have, the effect of indemnifying any *person* against all or part of a financial penalty
- 6.1.6 **R** The *Society*, *managing agents* and *members' agents* must not cause or permit any *member*, in the conduct of his *insurance business* at Lloyd's, to enter into, arrange, claim on or make a payment under a *contract of insurance* that is intended to have, or has or would have, the effect of indemnifying any *person* against all or part of a financial penalty.

6.1.7

G

■ GEN 6.1.4A R, ■ GEN 6.1.5 R and ■ GEN 6.1.6 R do not prevent a *firm* or *member* from entering into, arranging, claiming on or making any payment under a *contract of insurance* which indemnifies any *person* against all or part of the costs of defending FCA enforcement action or any costs they may be ordered to pay to the FCA .

Chapter 7

Charging consumers for telephone calls



7.1 Application

Who? Where?

7.1.1 **R** This chapter applies to a *firm* carrying on activities from an establishment in the *United Kingdom*.

What?

7.1.2 **R** This chapter applies where a *firm* operates a telephone line for the purpose of enabling a *consumer* to contact the *firm* in relation to a contract that has been entered into with the *firm* in the course of, or in connection with:

- (1) *regulated activities*; or
- (2) *payment services*.

MiFID firm exception

7.1.3 **R** This chapter does not apply for telephone lines provided in respect of contracts relating to the *MiFID business* of a *firm*.

Payment services exception

7.1.4 **R** This chapter does not apply to telephone lines which:

- (1) enable *payment service users* to request information to which paragraph (2) of regulation 56 of the *Payment Services Regulations* applies; or
- (2) relate to the termination of a *framework contract*, unless:
 - (a) the *framework contract* was concluded either for a fixed period of more than 12 *months* or for an indefinite period; and
 - (b) at least 12 *months* of the *framework contract* have expired.

Complaints exception

7.1.5 **R** This chapter does not apply for telephone lines provided by a *respondent* for the purpose of enabling an *eligible complainant* to submit a *complaint*.

7.1.6 **G** ■ DISP 1.3 contains rules that apply for telephone lines provided by *respondents* for the purpose of enabling *eligible complainants* to submit *complaints* to a *respondent*.

Application to firms carrying on credit-related regulated activities

7.1.7 **G** An effect of ■ GEN 7.1.1R and ■ GEN 7.2.1R is that this chapter applies for contracts by which a *firm* provides, or agrees to provide, *credit broking* services. In particular, this chapter applies where a telephone line is operated by a *credit broker* so that following the entry into a contract for the provision of *credit broking* services, a *customer* is able to contact the *firm* with a view to entering into a *credit agreement* or a *consumer hire agreement*.

Related consumer credit rules

7.1.8 **G** The following provisions of *CONC* continue to apply where a *firm* operates a telephone line in respect of the relevant credit-related regulated activities but the *call charges rule* does not apply (for example, where a telephone line is operated for the purpose of enabling a consumer to contact the *firm* before a contract has been entered into):

- (1) ■ CONC 2.5.8R and ■ CONC 2.5.9G (unfair business practices: credit broking);
- (2) ■ CONC 2.6.3R and ■ CONC 2.6.4G (unfair business practices: debt counselling, debt adjusting and providing credit information services);
- (3) ■ CONC 3.3.9G (financial promotions and communications);
- (4) ■ CONC 3.9.5R and ■ CONC 3.9.6G (financial promotions and communications in relation to debt counselling and debt adjusting);
- (5) ■ CONC 7.9.5R (arrears, default and recovery); and
- (6) ■ CONC 8.7.6R (charging for debt counselling, debt advice and related services).

7.2 Call charges

Call charges rule

7.2.1 **R** A *firm* which operates a telephone line for the purpose of enabling a *consumer* to contact the *firm* in relation to a contract that has been entered into with the *firm*, must not bind the *consumer* to pay more than the basic rate for the telephone call.

7.2.2 **G** The contract entered into with the *firm* may be in writing or otherwise.

Meaning of basic rate

7.2.3 **R** For the purposes of the *call charges rule*, the basic rate is the simple cost of connection and must not provide the *firm* with a contribution to its costs or revenues.

7.2.4 **R** The following numbers, if used by *firms*, would comply with the *call charges rule*:

- (1) geographic numbers or numbers which are always set at the same rate, which usually begin with the prefix 01, 02 or 03;
- (2) calls which can be free of charge to call, for example 0800 and 0808 numbers; and
- (3) standard mobile numbers, which usually begin with the prefix 07, provided that the firm ordinarily uses a mobile number to receive telephone calls.

7.2.5 **R** The following numbers, if used by *firms*, would not comply with the *call charges rule*:

- (1) premium rate numbers that begin with the prefix 09;
- (2) other revenue sharing numbers in which a portion of the call charge can be used to either provide a service or make a small payment to the *firm*, such as telephone numbers that begin with the prefix 084 or 0871, 0872 or 0873; and
- (3) telephone numbers that begin with the prefix 0870 as the cost of making a telephone call on such numbers can be higher than a

geographic cost and will vary depending on the *consumer's* telephone tariff.

General Provisions

GEN TP 1 Transitional provisions

(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
5	GEN 6.1	R	<p>GEN 6.1 does not:</p> <p>(1) apply to an unamended <i>contract of insurance</i>, first entered into on or before 24 July 2003; or</p> <p>(2) prohibit a <i>firm</i> from claiming on, or making a payment under, a <i>contract of insurance</i>:</p> <p>(a) in connection with a financial penalty imposed by the FSA pursuant to a <i>warning notice</i> issued before 25 July 2003; or</p> <p>(b) first entered into between 25 July 2003 and 31 December 2003 in respect of a financial penalty imposed by the FSA by a <i>final notice</i> issued on or before 31 December 2003.</p> <p>(For these purposes only, a <i>contract of insurance</i> will be regarded as unamended if:</p> <p>(i) it was amended on or before 24 July 2003; or</p> <p>(ii) it was amended after 24 July 2003, but the amendments did not affect the duration or scope of any indemnity against a financial penalty imposed by the FSA under the Act.)</p>	From 1 January 2004	1 January 2004
9	GEN 5 An-	G	[expired]		

(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
	nex 1 G				
10	GEN 4.3.1 R	R	[expired]		
11	GEN 4.5	R	[expired]		
12	GEN 4 Annex 1 R	R	[expired]		
13	GEN 4.3.1 R, GEN 4 Annex 1 R and GEN 4 Annex 1A	R	[expired]		
14	GEN 4.5.3 R and GEN 4.5.4 R	R	[expired]		
15	Rules and directions implementing <i>MiFID II</i>	R	A <i>firm</i> that is required or wishes to make any notification, application or undertake any other administrative procedure enabling it to carry on <i>MiFID, equivalent third country or optional exemption business</i> in the UK from 3 January 2018, may do so before that date subject to the requirements of any applicable statutory provision, <i>rule, direction or EU regulation</i> that will be in force on 3 January 2018.	3 July 2017 to 2 January 2018	3 July 2017
16	Rules and directions imple-	G	(1) The purpose of this transitional provision is to help a <i>firm</i> to take the necessary administrative or regulatory steps to enable them to carry on <i>investment services or activities</i> in the UK from 3 January 2018.	3 July 2017 to 2 January 2018	3 July 2017

(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
	menting <i>Mi-FID II</i>		<p>(2) This could take the form, for example, of making notifications to the FCA in the case of <i>algorithmic trading</i> notifications (see MAR 7A.3.6R), before 3 January 2018.</p> <p>(3) It also enables a <i>firm</i> wishing to classify <i>clients</i> in accordance with the client categorisation requirements in COBS 3 (to take effect on 3 January 2018) to take steps towards doing so before 3 January 2018.</p>		

GEN TP 1.3 (4) Transitional Provisions applying to GEN only

The references to "GEN 6.1" in the table above must be read as "GEN 6.1 and General Provisions 7 in the Handbook"

General Provisions

GEN TP 2

Transitional Provisions applying across the FCA Handbook and the PRA Rulebook

- (1) The purpose of these transitional provisions is to assist a smooth transition at cutover. They comprise various technical provisions that will apply across the whole *FCA Handbook* and *PRA Rulebook* and achieve results that most people would probably expect to apply in any event.
- (2) These transitional provisions consist of general transitional provisions, which apply at a high level of generality, and more specific transitional provisions in relation to record keeping and notification rules.
- (3) The more specific transitional provisions relating to record keeping and notification rules override the general transitional provisions. Both the general and the more specific transitional provisions do not apply if the context requires otherwise and are subject to any more specific transitional provision elsewhere in the *FCA Handbook* and *PRA Rulebook* relating to the matter.
- (4) Definitions for these transitional provisions, additional to those in the *Glossary*, are provided at paragraph 15 of the table.

(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	Every provision in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	Acts under pre-cutover provisions Anything done, or having effect as done, under or for the purposes of any pre-cutover provision has effect as if done under or for the purposes of any substantially similar provision in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> .	From cutover	Cutover
2	Paragraph 1	G	For example, a <i>firm</i> may rely on action to establish the best price, taken shortly before cutover for the purposes of the FSA's best execution rule, for the purposes of compliance with the FCA's best execution rule, even if the transaction is <i>executed</i> after cutover.	From cutover	Cutover
3	Every provision in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> , unless the context otherwise requires and subject to any more specific trans-	R	Series of events If the application of any provision in the <i>FCA Handbook</i> or <i>PRA Rulebook</i> is dependent on the occurrence of a series of events, some of which occur before, and some of which	From cutover	Cutover

(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
4	itional provision relating to the matter [deleted]		occur after, cutover, the provision applies with respect to the events that occur after cutover.		
5	Every provision in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	Deemed references to pre-cutover provisions Any reference (express or implied) in a provision in the <i>FCA Handbook</i> or <i>PRA Rulebook</i> to a provision of or made under the Act is to be read (so far as the context permits and according to the context) as being or including, in relation to times, circumstances and purposes before cutover, a reference to any substantially similar pre-cutover provision.	From cutover	Cutover
6	Paragraph 5	G	For example, SUP 11.6.4 R requires a <i>firm</i> authorised by the FCA to notify the FCA when a change in <i>control</i> , previously notified under SUP 11.4.2 R, has taken place. Such a <i>firm</i> must notify a change in <i>control</i> that takes place after cutover, even if previously notified under SUP 11.4.2 R as made by the FSA (and SUP 11.6.4 R is to be read as referring to that pre-cutover provision).	From cutover	Cutover
7	Every provision in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> , unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	Time starting before cutover If, at cutover, time has begun to run for any purpose under any pre-cutover provision applicable to a <i>firm</i> or other person, then: (1) time will be regarded as having started to run, for the purposes of any substantially similar provision in the <i>FCA Handbook</i> or <i>PRA Rulebook</i> , when it started to run for that other purpose; and (2) the <i>firm</i> or other person will be relieved of its obligation to comply with the relevant pre-cutover provision if and to the extent that it complies with the substantially similar provision	From cutover	Cutover

(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
8	Paragraph 7	G	as extended by this transitional provision. For example, certain <i>firms</i> were required to submit product sales data reports within 20 <i>business days</i> of the end of the quarter by SUP 16.11.3 R as made by the FSA. If the quarter end fell five days before cutover, the <i>firms</i> must still submit the report within 20 <i>business days</i> , but in accordance with SUP 16.7.8 R as made by the FCA.	From cutover	Cutover
9	Every <i>rule</i> in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> requiring a record to be made or retained (see schedule 1), unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	Record keeping A <i>firm</i> or other person will not contravene a <i>rule</i> in the <i>FCA Handbook</i> or <i>PRA Rulebook</i> requiring a record to be made or retained to the extent that the <i>firm</i> or other person: (1) made a record of the matter before cutover in accordance with the <i>rule</i> or with a substantially similar pre-cutover provision applicable to the <i>firm</i> or other person; and (2) retains that record as if the <i>rule</i> was in force when the record was made.	From cutover	Cutover
10	Every <i>rule</i> in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> requiring a record to be made or retained (see schedule 1), unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	G	This transitional provision makes specific provision, in relation to record keeping, for the matters covered by paragraph 1. It is included for clarity and overrides those general transitional provisions.	From cutover	Cutover
11	Every <i>rule</i> in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> requiring a record to be made or retained (see schedule 1), unless the context otherwise requires and subject to any more specific transitional provision	R	A <i>firm</i> or other person must retain a record in accordance with a <i>rule</i> in the <i>FCA Handbook</i> or <i>PRA Rulebook</i> requiring a record of that sort to be retained, if the <i>firm</i> or other person was required to make and retain that record before cutover under a substantially similar pre-cutover provision applicable to the <i>firm</i> or other person.	From cutover	Cutover

(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
12	relating to the matter Paragraph 9	G	This transitional provision makes specific provision, in relation to records, for the matters covered by paragraphs 5 and 7. It is included for clarity and overrides those general transitional provisions.	From cutover	Cutover
13	Every notification rule in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> (see schedule 2), unless the context otherwise requires and subject to any more specific transitional provision relating to the matter	R	Notification <i>A firm</i> (or its auditor, <i>appointed actuary</i> or <i>appropriate actuary</i>) or other person will not contravene a notification rule in the <i>FCA Handbook</i> or <i>PRA Rulebook</i> to the extent that notice of the relevant matter was given to the <i>FSA</i> before cutover in accordance with: (1) the notification rule; or (2) a substantially similar pre-cutover provision applicable to the <i>firm</i> or other person.	From cutover	Cutover
14	Paragraph 13	G	This transitional provision makes specific provision, in relation to notifications, for the matters covered by paragraphs 1 and 3. It is included for clarity and overrides those general transitional provisions.	From cutover	Cutover
15	As paragraphs 1 to 14	R	Definitions In these transitional provisions: (1) "pre-cutover provision" means a provision repealed or revoked by, or under, the Financial Services Act 2012 or a rule or guidance of the <i>FSA</i> , including (where the context permits) any relevant provision which it replaced before cutover; (2) "substantially similar" means substantially similar in purpose and effect; and (3) a reference to a "provision" in the <i>FCA Handbook</i> or <i>PRA Rulebook</i> means every type of provision, including <i>rules</i> , <i>guidance</i> , provisions in codes, and so on.	From cutover	Cutover
16	Paragraph 17	G	Application for provisions which are not rules The purpose of paragraph 17 is to ensure that the transitional provisions in paragraphs 1 to 8 apply	From cutover	Cutover

(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
17	<p><i>Statements of Principle</i>, the Code of Practice for Approved Persons and MAR 1 (Market Abuse) and directions and requirements and guidance and other provisions in the <i>FCA Handbook</i> and <i>PRA Rulebook</i> (that is, provisions with the status letter "D" or "G" in the margin or heading) unless the context otherwise requires and subject to any more specific transitional provision relating to the matter</p>	P	<p>throughout the <i>FCA Handbook</i> and <i>PRA Rulebook</i>.</p> <p>The provisions in paragraphs 1 to 10 apply to every <i>person</i> to whom the provisions referred to in column (2) apply as if the <i>rules</i> in those paragraphs were part of those provisions.</p>	From cutover	Cutover
18	Every provision in the <i>FCA Handbook</i>	G	References in the <i>FCA Handbook</i> to Directive 2004/39, where not otherwise amended, shall be interpreted as references to <i>MiFID II</i> or <i>MiFIR</i> or the corresponding provisions in or under <i>MiFID II</i> or <i>MiFIR</i> , except where the context indicates otherwise.	From 3 January 2018	3 January 2018

General Provisions

GEN TP 3

Transitional Provision in relation to the Alternative Investment Fund Managers Directive Instrument 2013

(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	Every provision in the <i>FCA Handbook</i> , unless the context requires otherwise	R	[expired]		
2	Paragraph 1	G	[expired]		
3	Amendments made to the <i>FCA Handbook</i> by the Alternative Investment Fund Managers Directive Instrument 2013	R	References to the "EEA" must be read as references to the "EU".	From 22 July 2013 until such time as <i>AIFMD</i> is annexed to the EEA Agreement in accordance with article 102 of the EEA Agreement	22 July 2013

General Provisions

Schedule 1 Record keeping requirements

Sch 1.1 G

There are no record keeping requirements in *GEN*.

General Provisions

Schedule 2 Notification requirements

Sch 2.1 G

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting.

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
GEN 1.3.2 R	An emergency which makes it impracticable for a <i>firm</i> to comply with a particular <i>rule</i> .	Notification of the emergency and of the steps the <i>firm</i> is taking and proposes to take to deal with its consequences	An emergency which makes it impracticable for a <i>firm</i> to comply with a particular <i>rule</i> .	Notification as soon as practicable

General Provisions

Schedule 3 Fees and other required payments

Sch 3.1 G

There are no requirements for fees or other payments in *GEN. FEES 2* (General Provisions) contains general provisions relating to the payment of fees.

General Provisions

Schedule 4 Powers exercised

Sch 4.1 G

In this Schedule, references to *GEN* include the *Glossary*.

Sch 4.2 G

Powers to make rules

The following powers and related provisions in or under the *Act* have been exercised by the *FCA* to make the rules in *GEN*:

- Section 59 (Approval for particular arrangements)
- Section 60A (Vetting of candidates by relevant authorised persons)
- Section 63F (Issuing of certificates)
- Section 64A (Rules of conduct)
- Section 73A (Part 6 Rules)
- Section 74 (The official list)
- Section 75 (Applications for listing)
- Section 77 (Discontinuance and suspension of listing)
- Section 79 (Listing particulars and other documents)
- Section 80 (General duty of disclosure in listing particulars)
- Section 81 (Supplementary listing particulars)
- Section 84 (Matters which may be dealt with by prospectus rules)
- Section 85 (Prohibition of dealing etc in transferable securities without approved prospectus)
- Section 87 (Election to have prospectus)
- Section 87A (Criteria for approval of prospectus by competent authority)
- Section 87B (Exemptions from disclosure)
- Section 87G (Supplementary prospectus)
- Section 88 (Sponsors)
- Section 89A (Transparency rules)
- Section 89B (Provision of voteholder information)
- Section 89C (Provision of information by issuers of transferable securities)
- Section 89D (Notification of voting rights held by issuer)
- Section 89E (Notification of proposed amendment of issuer's constitution)
- Section 89F (Transparency rules: interpretation etc)
- Section 89G (Transparency rules: other supplementary provisions)
- Section 89O (Corporate governance rules)

Section 89P (Primary information providers)
Section 96 (Obligations of issuers of listed securities)

Section 101(2) (Part 6 Rules: general provisions)

Section 136(2) (Funding of the legal assistance scheme)
Section 137A (The FCA's general rules)
Section 137B (FCA general rules: clients' money, right to rescind etc)
Section 137C (FCA general rules: cost of credit and duration of credit agreements)
Section 137D (FCA general rules: product intervention)
Section 137F (Rules requiring participation in benchmark)
Section 137FB (FCA general rules: disclosure of information about the availability of pensions guidance)
Section 137H (General rules about remuneration)
Section 137O (Threshold condition code)
Section 137P (Control of information rules)
Section 137Q (Price stabilising rules)
Section 137R (Financial promotion rules)
Section 137T (General supplementary powers)
Section 138C (Evidential provisions)
Section 138D (Actions for damages)
Section 138M (Temporary product intervention rules)
Section 192J (Rules requiring provision of information by parent undertakings)
Section 192JB (Rules requiring parent undertakings to facilitate resolution)
Section 213 (The compensation scheme) (including as referred to in section 216(5) (Continuity of long-term insurance policies) and section 217(7) (Insurers in financial difficulties)
Section 214 (General)
Section 214A (Contingency funding)
Section 214D(13) (Contributions under section 214B: supplementary)
Section 215 (Rights of the scheme in insolvency)
Section 216 (Continuity of long-term insurance policies)
Section 217 (Insurers in financial difficulties)
Section 218(2)(b) (Annual report)
Section 218A (Regulators' power to require information)
Section 223 (Management expenses)
Section 223C (Payments in error)
Section 224F (Rules about relevant schemes)
Section 226 (Compulsory jurisdiction) (including as applied by regulations 117 and 133 of the *Payment Services Regulations* and article 26(1) (Extension of the compulsory jurisdiction of the Financial Ombudsman Scheme to registered consumer buy-to-let mortgage firms) of the *MCD Order*)
Section 229 (Awards)

Section 234 (Industry funding)

Section 238 (Restrictions on promotion)

Section 239 (Single property schemes)

Section 242 (Applications for authorisation of unit trust schemes)

Section 247 (Trust scheme rules)

Section 248 (Scheme particulars rules)

Section 261C (Applications for authorisation of contractual schemes)

Section 261I (Contractual scheme rules)

Section 261J (Contractual scheme particulars rules)

Section 278 (Rules etc as to scheme particulars)

Section 283(1) (Facilities and information in UK)

Section 286(4F) (Qualification of recognition)

Section 293 (Notification requirements)

Section 295 (Notification: overseas investment exchanges and overseas clearing houses)

Section 300B (Duty to notify proposal to make regulatory provision)

Section 332(1) (Rules in relation to persons to whom the general prohibition does not apply)

Section 333Q (Funding of FCA's pensions guidance costs)

Section 333R (Funding of Treasury's pensions guidance costs)

Section 340 (Appointment)

Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority) (including as applied by article 25 (Application of provisions of the Act to the FCA in respect of its supervision of consumer buy-to-let mortgage firms) of the *MCD Order*), and by regulation 15A of the *ADR Regulations*

Paragraph 23 (fees) of Schedule 1ZA as applied by regulation 118(1) of the *Payment Services Regulations*

Paragraph 12 (Funding of the relevant costs by authorised persons or payment service providers) of Part 2 (Funding) of Schedule 1A (Further provision about the Consumer Financial Education Body)

Paragraphs 19 (Establishment), 20 (Services) and 20C (Notice of intention to market an AIF) of Schedule 3 (EEA Passport Rights)

Paragraphs 7(3) (Annual reports), 13 (FCA's procedural rules), 16B (Procedure for complaints etc) and 16D (Enforcement of money awards) of Schedule 17 (The Ombudsman Scheme) (including as applied by article 26(1) (Extension of the compulsory jurisdiction of the Financial Ombudsman Scheme to registered consumer buy-to-let mortgage firms) of the *MCD Order*)

Article 60E(3) of the *Regulated Activities Order*

Regulation 6 (FCA rules) of the *OEIC Regulations*

Article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the *Ombudsman Transitional Order*

Articles 4 (Pending applications), 6 (Post-commencement applications), 9 (Article 9 defaults occurring before commencement), 9A (Contributions in relation to mesothelioma claims), 10 (Applications in respect of compulsory liability insurance), 12 (Applications under the new scheme) and 23 (Record-keeping and reporting requirements relating to pre-commencement) of the *compensation transitionals order*

Regulation 3 (Consumer contract requirements: modification of rule-making powers) of the Electronic Commerce Directive (Financial Services and Markets) Regulations 2002 (SI 2002/1775)

Regulation 2 (Power of the Authority to make rules under section 138 of the Financial Services and Markets Act 2000) of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706)

Article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the *Mortgage and General Insurance Complaints Transitional Order*

Sch 4.3 G

The following additional powers have been exercised by the *FCA* to make the *rules* in *GEN*:

Regulation 2(3) (Application for permission) of the Capital Requirements Regulations 2006 (SI 2006/3221)

Regulations 109 (Reporting requirements), 112 (Proposal to take disciplinary measures) and 118 (Costs of supervision) of and paragraph 1 of Schedule 6 (Disciplinary powers) to the *Payment Services Regulations*

Regulations 49 (Reporting requirements) and 59 (Costs of supervision) of the *Electronic Money Regulations*

Regulations 8 (Applications for registration), 9 (Applications for admission to the register of issuers), 18 (Notification requirements), 20 (Material changes to the regulated covered bond), 24 (Requirements relating to the asset pool), 25 (Change of owner), 36 (financial penalties policy statement), 46 (Modifications of primary and secondary legislation) of, and paragraph 5 (fees) to the Schedule (Modifications to primary and secondary legislation) to, the *RCB Regulations*

Paragraph 9 (Funding) of Schedule 4 (The Payment Systems Regulator) to the Financial Services (Banking Reform) Act 2013

Articles 2 (Requirement to give notice in relation to an approved person), 6 (Revision of an article 2 notice), 19 (Power to impose penalties) and 20 (Rules and requirements by a regulator under this Order) of the Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015 (SI 2015/429)

Article 21 (Monitoring and Enforcement) of the *MCD Order*

Sch 4.4 G

Powers to make codes

The following powers and related provisions in the *Act* have been exercised by the *FCA* to issue the parts of the codes in *GEN*:

Section 64(2) (Conduct: statements and codes)

Sch 4.5 G

Powers to issue statements

The following powers and related provisions in the *Act* have been exercised by the *FCA* to issue the parts of the statements in *GEN*:

Section 63ZD (Statement of policy relating to conditional approval and variation)

Section 63C (Statement of policy)

Section 64 (Conduct: statements and codes)

Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 6 to the *Payment Services Regulations*, paragraph 1 of Schedule 3 to the *Electronic Money Regulations*, regulation 29(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635) and regulation 28(1) of the *Immigration Regulations*)

Section 88C (Action under section 88A: statement of policy)

Section 89S (Action under section 89Q: statement of policy)

Section 93 (Statement of policy)

Section 124 (Statement of policy)

Section 131J(1) (Statement of policy)

Section 138N (Temporary product intervention rules: statement of policy)

Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 6 to the *Payment Services Regulations* and paragraph 3 of Schedule 3 to the *Electronic Money Regulations* and by regulation 71(2) of the *AIFMD UK regulation*)

Section 192H (Statement of policy: directions under section 192C)

Section 192N (Imposition of penalties under section 192K: statement of policy)

Section 210 (Statements of policy) (including as applied by regulation 112(6) of the *Payment Services Regulations*, regulation 53 (6) of the *Electronic Money Regulations*, regulation 71(3) of the *AIFMD UK regulation*, regulation 29(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635), regulation 28(2) (Statements of policy) of the *Immigration Regulations* and article 23(4) (Application of provisions of the Act to registered consumer buy-to-let mortgage firms) of the *MCD Order*)

Section 312J (Statement of policy under section 312F)

Section 395 (The FCA's and PRA's procedures) (including as applied by paragraph 9 of Schedule 6 to the *Payment Services Regulations*, paragraph 8 of Schedule 3 to the *Electronic Money Regulations*, regulation 30(7) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 (SI 2013/1635), article 3(11) of the Financial Services Act 2012 (Consumer Credit) Order 2013, regulation 29 (Application of Part 26 of the 2000 Act) of the *Immigration Regulations* and article 24(2) (Application of procedural provisions of the Act) of the *MCD Order*)

Section 404(3) (Consumer redress schemes)

Section 404A (Rules under s404: supplementary)

Sch 4.6 G

The following additional powers and related provisions have been exercised by the FCA to issue the parts of the statements in *GEN*:

Regulation 42 (Guidance) of the *RCB Regulations*

Regulation 44 (Warning notices and decision notices) of the *RCB Regulations*

Regulation 120 (Guidance) of the *Payment Services Regulations*

Regulation 14 (Guidance) of the *Cross-Border Payments in Euro Regulations*

Regulation 60 (Guidance) of the *Electronic Money Regulations*

Section 80 (Statement of policy under sections 73 to 79) of the Financial Services Act 2012

Regulations 70 (Application of procedural provisions of the Act) and 71 (Application of provisions of the Act to unauthorised AIFMs) of the *AIFMD UK regulation*

Article 4 (Statements of policy) of the Financial Services Act 2012 (Consumer Credit) Order 2013
Regulations 28 (Statements of policy) and 29 (Application of Part 26 of the 2000 Act) of the *Immigration Regulations*

Sch 4.7 G**Powers to direct, require or specify**

The following powers and related provisions in the Act have been exercised by the FCA in GEN to direct, require or specify:

Section 55U (Applications under this Part)
Section 60 (Applications for approval)
Section 61 (Determination of applications)
Section 62A (Changes to responsibilities of senior managers)
Section 63ZA (Variation of senior manager's approval at request of relevant authorised person)
Section 63ZB (Variation of senior manager's approval on initiative of regulator)
Section 63E (Certification of employees by relevant authorised persons)
Section 64C (Requirement for relevant authorised persons to notify regulator of disciplinary action)
Section 137S (Financial promotion rules: directions given by FCA)
Section 138A (Modification or waiver of rules)
Section 179 (Requirements for section 178 notices)
Section 218A (Authority's power to require information)
Section 242 (Applications for authorisation of unit trust schemes)
Section 250 (Modification or waiver of rules)
Section 274 (Applications for recognition of individual schemes)
Section 279 (Revocation of recognition)
Section 287 (Application by an investment exchange)
Section 293A (Information: compliance with EU requirements)
Section 294 (Modification or waiver of rules)
Section 316 (Direction by Authority)
Section 317 (The core provisions)
Section 318 (Exercise of powers through Council)
Paragraph 5(4) (Notice to UK Regulator) of Schedule 4 (Treaty Rights)
Regulations 7(3) and (4) (Modification or waiver of FCA rules) and 12 (Application for authorisation) of the *OEIC Regulations*

Sch 4.8 G

The following additional powers and related provisions have been exercised by the FCA in GEN to direct, require or specify:

Regulation 49 (Reporting requirements) of the *Electronic Money Regulations*
Regulations 21 (Disclosure obligations of small registered UK AIFMs), 54 (FCA approval for marketing), 58 (Marketing of AIFs managed by small third country AIFMs) and 60 (Manner and content of notifications) of the *AIFMD UK regulation*

Regulation 9 (Reporting requirements) of the *Immigration Regulations*
 Articles 5 (Regulators' power to impose requirements for an article 2 notice), 7 (Application of section 63ZA to a continuing approval), 8 (Application of section 62A to a statement provided under article 2(3)(c)), 13 (Regulators' power to impose requirements for an article 11 notice), 15 (Application of section 62A to a statement provided under article 11(d)), 17 (Power for the regulators to specify equivalent functions) and 20 (Rules and requirements imposed by a regulator under this Order) of the Financial Services (Banking Reform) Act 2013 (Transitional and Savings Provisions) Order 2015 (SI 2015/429)

Articles 18 (Obligations of registered consumer buy-to-let mortgage firms) and 19 (Power to direct registered consumer buy-to-let mortgage firms to take appropriate action) of the *MCD Order*

Regulations 30(4) and (5) (Supervision of firms exercising passport rights), 71(8) (Limits on the use of payment instruments and access to payment accounts), 98(3) (Management of operational and security risks), 99(2) (Incident reporting), 105(4) (Access to bank accounts) and 109 (Reporting requirements) of the *Payment Services Regulations*

Sch 4.9 G

Powers to set standards

The following powers in or under the *Act* have been exercised by the *FCA* to set standards in *GEN*:

Section 333H (Standards for giving of pensions guidance by designated guidance providers)

Sch 4.10 G

Power to make the complaints scheme

The following power has been exercised by the *FCA* to make the complaints scheme in *GEN*:

Part 6 of the Financial Services Act 2012

Sch 4.11 G

Powers to give guidance

The following powers in or under the *Act* have been exercised by the *FCA* to give the guidance in *GEN*:

Section 139A (Power of the *FCA* to give guidance)

Section 234G (Guidance)

Sch 4.12 G

The following additional powers have been exercised by the *FCA* to give the other guidance in *GEN*:

Article 14 (Guidance on continued provisions) of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501)

Articles 9D (Applications for certificates), 9F (Revocation of certificate on request), 9G (Obtaining information from certified persons etc) and 9H (Rules prohibiting the issue of electronic money at a discount) of the *Regulated Activities Order*

Regulation 120 (Guidance) of the *Payment Services Regulations*

Section 123 (Application of insolvency law) of the Banking Act 2009
Regulation 14 (Guidance) of the *Cross-Border Payments in Euro Regulations*
Regulation 60 (Guidance) of the *Electronic Money Regulations*
Regulation 42 (Guidance) of the *RCB Regulations*
Regulation 15 (Guidance) of the Payments in Euro (Credit Transfers and Direct Debits) Regulations 2012 (SI 2012/3122)
Regulation 5 (Guidance) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012
Article 22 (Guidance) of the *MCD Order*

Sch 4.13 G**Powers exercised by the FOS Ltd**

GEN 2.1.8 R is made by *FOS Ltd* in exercise of its powers referred to in Schedule 4 to *DISP*.

General Provisions

Schedule 5 Rights of action for damages

Sch 5.1 G

The table below sets out the *rules* in *GEN* contravention of which by an *authorised person* may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

Sch 5.2 G

If a 'Yes' appears in the column headed 'For *private person*?', the *rule* may be actionable by a 'private person' under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A 'Yes' in the column headed 'Removed' indicates that the FCA has removed the right of action under section 138D(3) of the Act. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

The column headed 'For other person?' indicates whether the *rule* may be actionable by a person other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.4 G

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed	For other person?
All <i>rules</i> in <i>GEN</i> with the status letter "E"			No	No	No
GEN 2.1.8 R			No	No	No
All other <i>rules</i> in <i>GEN</i>			Yes	No	No

General Provisions

Schedule 6 Rules that can be waived

Sch 6.1 G

[deleted]

Sch 6.1A G

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 6.2 G

- 1 GEN 2.1.8R is made by *FOS Ltd* and not by the *FCA* and cannot be waived by the *FCA*.
- 2 Every other *rule* in *GEN* can be waived by the *FCA* if, and to the extent that, the rules elsewhere in its *Handbook* which it modifies or to which it otherwise relates can be waived by the *FCA*.

