

Chapter 4

Statutory status disclosure

4.1 Application

Who? What?

4.1.1

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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;
- (5) only ■ GEN 4.1 (Application) and ■ GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator) apply 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; and
- (6) only ■ GEN 4.1 (Application) and ■ GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator) apply in relation to *administering a benchmark*.

Where?

4.1.2

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■ 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

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■ 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

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■ 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 *PRIPs*, a requirement under the *PRIPs 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 *IDD* 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 "Authorised 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 "Authorised 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 distribution 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 distribution 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 distribution 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

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(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.

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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-authorized persons*:

	Type of firm	Required disclosure (Note 5)
(1)	<i>UK domestic firm; or overseas firm (which is not an incoming firm)</i>	"Authorized and regulated by the Financial Conduct Authority" (Note 1)
(2)	<i>Incoming firm without a top-up permission</i>	(a) "Authorized by [name of Home State regulator] or (b) "Authorized 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>	"Authorized 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 office)]. 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>