

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT) INSTRUMENT
2001**

Powers exercised

- A. The Financial Services Authority alters the Conduct of Business sourcebook in the exercise of the powers listed in Schedule 4 to the Conduct of Business sourcebook (Powers exercised).
- B. The provisions of the Financial Services and Markets Act 2000 (the "Act") relevant to making rules and identified in paragraph A are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force immediately.

Amendment of the Conduct of Business sourcebook

- D. The Conduct of Business sourcebook is amended as set out in Annex 1 to this instrument.
- E. The transitional rules in the Conduct of Business sourcebook are amended as set out in Annex 2 to this instrument.

Citation

- F. This instrument may be cited as the Conduct of Business Sourcebook (Amendment) Instrument 2001.

By order of the Board
20 September 2001

ANNEX 1

Amendments to the Conduct of Business Sourcebook

In this Annex, where amendments are shown rather than described, underlining indicates new text and striking through indicates deleted text.

COB 1.4 General application: where?

1. COB 1.4.3R (b) Amend as shown below:

COB 6.5, COB 6.7 and COB 6.8 (Content of key features, Cancellation and withdrawal, Insurance contracts; life and general) but only in relation to long term insurance business carried on with a customer habitually resident in the United Kingdom; and

- if relevant, the provisions in (c)

Otherwise, *COB* applies in full

2. COB 1.4.3R (d) Amend as shown below:

Only the following apply:—

- *COB 5.5.7R and COB 5.5.8R (Overseas business); and*
- *COB 6.5, COB 6.7 and COB 6.8 (Content of key features, Cancellation and withdrawal, Insurance contracts - life and general) but only in relation to long term insurance business carried on with a customer habitually resident in the United Kingdom*

COB 1.6 Application to stock lending activity, corporate finance business and oil market participants

1. COB 1.6.4R Amend as shown below:

Corporate finance business

Chapter 3 Financial promotion, except COB 3.8.6G – COB 3.8.20G and COB 3.9

COB 2.2 Inducements and soft commission

1. COB 2.2.7G In the heading to the table, delete "- joint marketing exercises".

2. COB 2.2.16R Delete from "If a *firm*" to "in writing of:" and replace with the following:

Before a *firm* enters into a *client agreement* authorising it to *deal* for a *customer*, either directly or indirectly, with or through the agency of another *person*, under a *soft commission agreement* which the *firm* has, or knows, or ought reasonably to know, that another member of its *group* has, with that other *person*, the *firm* must inform the *customer* in writing of:

3. COB 2.2.18R Delete from "If a *firm*" to "the *firm* must:" and replace with the following:

If a *firm* has, or knows, or ought reasonably to know, that another member of its *group* has a *soft commission agreement* with another *person* under which either the *firm* or that other member of its *group* *deals* for a *customer*, the *firm* must:

COB 2.4 Chinese Walls

1. COB 2.4.4R Amend as shown below:

(1)...but only to the extent that the business of one of those parts involves the carrying of *designated investment business* or related ancillary activities.

COB 3 Financial Promotion

1. COB 3.2.4R (2)(c) Amend as shown below:

(except where COB 3.2.3R applies) if the *firm*.....
2. COB 3.2.4R (3) Amend as shown below:

(except where COB 3.2.3R applies) if the *firm*.....
3. COB3 Ann 4G Table B Amend the following provision as shown below:

A *direct offer financial promotion* for a *PEP* or *ISA transfer* should include details of the likely advantages and disadvantages of transferring an existing *PEP* or *ISA* holding, including:
4. COB 3.1.5R Insert a new heading for COB 3.1.5R as follows:

Authorised professional firms
5. COB 3.3.4G Amend as shown below:

There is no need for a *financial promotion* which is indicated in ~~COB 3.3.3~~ COB 3.3.1R to be outside the territorial scope of the application of the chapter to be *approved* before being *communicated* by an

unauthorised person (because the restriction in section 21 of the *Act* does not apply).

6. COB 3.5.6R (3)

Amend as shown below:

a "recipient" of a communication is the *person* to whom the communication is made or, in the case of a *non-real time communication* financial promotion which is directed at *persons* generally, any *person* who reads or hears the communication.

7. COB 3.8.7G

Amend the heading for this provision as shown below:

Non-real time financial promotions: guidance on ~~fair, clear~~ clear, fair and not misleading

8. COB 3.10.3R (2)(b)

Delete the full stop at the end and replace with "; or".

9. COB 3.10.3R

Insert the following new provision after COB 3.10.3R(2):

(3) the *financial promotion*:

- (a) relates to a *controlled activity* to be carried on by an *authorised person* or *exempt person*; and
- (b) the only *controlled investments* involved or which reasonably could be involved are:
 - (i) *readily realisable securities* (other than *warrants*); and
 - (ii) generally marketable non-g geared *packaged products*.

COB 4.1 Client classification

1. COB 4.1.11E (1)(a)(i)

Amend as shown below:

COB 3.9 (Direct offer financial promotions), COB 3.12-4 (Communication and approval of financial promotions of overseas or an unauthorised person) and COB 3.13 (Additional requirements for financial promotions for an overseas long-term insurer);

COB 5.7 Disclosure of charges, remuneration and commission

1. COB 5.7.5R Amend as shown below:
 - (1) Before effecting a transaction in a *life policy* with or for a *private customer*, and subsequently on request of the *private customer*, a *firm* must disclose to that *private customer*, in cash terms:
 - (a) except where the firm is an independent intermediary, any remuneration payable by it or its *associates* to its *employees* or agents; and
 - (b) any remuneration or commission receivable by it, in connection with the transaction;unless COB 5.7.9R or COB 5.7.10R ~~apply~~ applies.
 - (2) Before effecting a transaction in any other *packaged product* with or for a *private customer*, ~~or~~ and subsequently on request of the *private customer*, an *independent intermediary* or *product provider* must disclose to that *private customer*, in cash terms:
 - (a) except where the firm is an independent intermediary, any remuneration payable by it or its *associates* to its *employees* or agents; and
 - (b) any remuneration or commission receivable by it, in connection with the transaction;unless COB 5.7.9R or COB 5.7.10R ~~apply~~ applies.
2. COB 5.7.17G (2)(d)(i) Add "or" at the end of this provision.
3. COB 5.7.17G (2)(d)(ii) Renumber this provision as (iii) and insert above it the following:
 - (ii) for arranging this policy xyz Ltd expect to incur sales costs of £ ..."; or

COB 6.3 Post-sale confirmation: life policies

1. COB 6.3.1R Amend as shown below:

COB 6.3 applies to a *firm* in accordance with COB 6.1.1R, in respect of life policies.

COB 6.5 Content of key features and important information

1. COB 6.5.21G Amend as shown below:

~~A firm should set out the following information:~~ The information required by COB 6.5.20R should include:

COB 6.6 Projections

1. COB 6.6.34R (2) Amend as shown below:

The relevant *premium* must be accumulated to the *projection date* at the rate of return for its class of business as detailed in COB 6.6.50R - COB 6.6.52R, subject to charges and expenses (as described in COB 6.6.23R) and the cost of risk benefits. The intermediate projection rate need not be used for an existing contract.

2. COB 6.6.36R (2) Amend as shown below:

The relevant contribution must be accumulated to the *projection date* at the rates of return for the relevant class of business as detailed in COB 6.6.50R, subject to charges and expenses (as described in COB 6.6.23R). The intermediate rate of return need not be used for an existing contract.

3. COB 6.6.81R Amend as shown below

Factor	Formula
(1)	$(1+E)*[\ddot{a}_n^{(12)} + D_{x+n}/D_x * \ddot{a}_{x+n}^{(12)}]$
(2)	$(1+E)*[\ddot{a}_n^{(12)} + D_{x+n}/D_x * \ddot{a}_{x+n}^{(12)}]$
(3)	$(1+E)*[a_y - a_{x:y}]$
(4)	$(1+E)*[\ddot{a}_f^{(12)} + .045 * 0.45*(a_m - a_{m:t})]$
(5)	$(1+E)*[\ddot{a}_f^{(12)} + 0.50*(a_m - a_{m:t})]$
(6) namely $a_x^{(12)}$	$= a_x + 13/24$
(7) namely $\ddot{a}_{x:t}^{(12)}$	$= 13/24 * \ddot{a}_{x:t} + 11/24 * a_{x:t}$

COB 6.9 With-Profits Guides

1. COB 6.9.4R (1) Amend as shown below:

not later than six months after its financial year end or, if later, two months after the end of the lodgement period for annual regulatory returns, produce a separate and self-contained guide for each with-profits fund that it maintains, unless the fund is closed to new policyholders;

COB 7.1 Conflict of interest and material interest

1. COB 7.1.7G Amend as shown below:

When it is not practical for a *firm* to act in accordance with COB 7.1.6E, it may demonstrate that it has taken reasonable steps to ensure fair treatment for its ~~private~~ *customers* by relying on a policy of independence....

COB 7.9 Lending to private customers

1. COB 7.9.5R (2) Delete the full stop and replace it with "; or".
2. COB 7.9.5R Insert after COB 7.9.5R (2):
 - (3) a *long-term insurer* lends *money* or grants *credit* to a *private customer*, or arranges for any other *person* to do so, in connection with a *life policy*.

COB 8.1 Confirmation of transactions

1. COB 8.1.17E Amend as shown below:

Content of a confirmation of transaction - additional content relating to transactions in units in a regulated collective investment scheme	
1.	If the <i>firm</i> is not the <i>operator</i> and the transaction was <i>executed</i> with the <i>customer</i> by the <i>firm</i> as <i>principal</i> , that fact.
2.	The name of the <i>scheme</i> and the type and number of <i>units</i> involved.
3.	The amount of:
	(a) the <i>operator's</i> initial <i>charges</i> if any (in cash or percentage terms), if any; and
	(b) any <i>charges</i> (other than the initial <i>charges</i>) made by the <i>firm</i> to the <i>customer</i> in respect of the transaction and, unless such <i>charges</i> to the <i>customer</i> are made on the same basis, the basis on which the amount of the <i>charges</i> was determined.
4.	A statement that the price at which the transaction has been <i>executed</i> is on an

COB 9.3 General transactions

1. COB 9.3.105R (2) Amend as shown below:

the total ~~contingent liability investment~~ margined transaction requirement, which is calculated in accordance with COB 9.3.115R.

2. COB 9.3.118G Amend the following provision as shown below:
- The terms '*client* equity balance' in COB 9.3.113R and '*firm's* equity balance' in COB 9.3.114R refer to cash values and do not include non-cash *collateral* or other *designated investments* held in respect of a ~~*contingent liability investment*~~ *margined transaction*.

COB 9.5 Client money distribution

1. COB 9.5.5R Amend as shown below:
- A *primary pooling event* occurs:
- (1) on the *failure* of the *firm*; or
- (2) on the vesting of assets in a *trustee* in accordance with an '*assets requirement*' imposed under section ~~46-48~~ (1)(b) of the *Act*; or

COB 10.2 Application of general COB rules

1. COB 10.2.1R Amend as shown below:
- An *operator* when it is undertaking *scheme management activity*:
- (1) must comply with the *rules* specified in COB 10.2.5R as modified by COB 10.2.3R and in COB 10.2.5R; and
- (2) need not comply with any other rule in COB; ~~and~~ .

2. COB 10.2.2G Define "operator" as shown below:
- Firms* which are ~~operators~~ *operators* are reminded that under the *Glossary*:

COB 10.3 Modification of the allocation rule

1. COB 10.3.2G Amend the following provision as shown below:
- COB 10.3.3E replaces COB 7.7.6E. COB 10.3.3E modifies the general *rule* on the timing of allocation (~~ie that is~~, COB 7.7.5R) to take into account the kind of *scheme* in which no *participant* is a *private customer*.

COB 10.7 Periodic Statements for an unregulated collective investment scheme

1. COB 10.7.5R Before "if the *participant* has so requested", delete "(1)".

ANNEX 2

Amendments to the Transitional Rules

In this Annex, where amendments are shown rather than described, underlining indicates new text and striking through indicates deleted text.

COB Table TR1: COB Transitional Provisions

1. 1.4 ETP2 R Delete the wording in columns (2) to (6) and insert "[deleted]" in column (4).
2. 1.5 ETP2 G In column (2), amend "ETP2" to "ETP1".
3. 1.13 ETP8 R (2) Delete the current wording and replace with the following:
 - (2) A *pre-N2 firm* which, before *commencement*, was an appointed representative under the Financial Services Act 1986, but has now become an *authorised person*, must, if it wishes to take advantage of the transitional relief in (1), take reasonable steps to ensure that it does not mislead *customers* as to its status as an *authorised person* in any of the written material in (1).
4. 1.14 ETP8 G Number the existing text as (1) and insert below it the following:
 - (2) A statement that the *firm* is a 'representative' of another *firm* is unlikely, on its own to mislead. But if written materials refer to the *firm* as an appointed representative, reasonable steps under COB TR1 1.13 R (2) could include notifying the *firm's private customers* of the change in its status to an *authorised person*; or modifying the *firm's* existing stationery.
5. 2.3 TTP3 R Amend as shown below:

A *pre-N2 firm* will not contravene any of the provisions labelled *TTP3* in Table *COB TR 2* to the extent that it is able to demonstrate that, on or after *commencement*, it has provided its *customers* with a *periodic statement* required by *COB 8.2.4R* (Requirement for a periodic statement) or a *client statement* required by *COB 9.1.59R* (Production and despatch of client

statements) for the period in which *commencement* falls, in accordance with the *corresponding rules* of its *previous regulator*.

6. 3.2 TSP2 R (1) Amend as shown below:

(1) Subject to (2) and (3), a *pre-N2 firm* will not contravene any of the provisions in Table *COB TR 2* labelled *TSP2* to the extent that, on or after *commencement*, it is able to demonstrate that it has continued to use, or rely upon, *terms of business* (including a *client agreement*), or a *soft commission agreement*, given to, or made with, a *person* before the end of the *transitional period* in accordance with the *corresponding rule* of its *previous regulator*.

7. 3.8 TSP6 R Number existing text as (1) and insert below it the following:

(2) A *pre-N2 firm* will not contravene any of the provisions labelled TSP in Table COB TR2 to the extent that it is able to demonstrate that, on or after *commencement*, its auditors have provided its *previous regulator* with written confirmation of the type required by COB 9.3.42R (2)(a) in accordance with the *corresponding rule* of its *previous regulator*.

COB Table TR2: COB provisions to which transitional relief attaches

Amend those parts of the table that follow as shown:

COB Rule	Rule Heading	Label		
		ETP	TTP	TSP
Chapter 2 Rules which apply to all firms conducting designated investment business				
2.2 Inducements and soft commission				
2.2.8R	Requirements when using a soft commission agreement	ETP1		<u>TSP2</u>
Chapter 3 Financial promotion (whole chapter)		<u>ETP1</u>		TSP7
3.6 Confirmation of compliance				
3.6.2R 3.6.3R	Withdrawing confirmation	ETP1		TSP1
3.7 Records		<u>ETP1</u>		

COB Rule	Rule Heading	Label		
		ETP	TTP	TSP
3.8	Form and content of financial promotions	ETP1		
3.9	Direct offer financial promotions	ETP1		
3.10	Unsolicited real time financial promotions			
3.10.1R	Meaning of "solicited" and "unsolicited" real time	ETP1		
3.11	Unregulated collective investment schemes			
3.11.4R	Limited disapplication of this chapter	ETP1		
3.12	Communication and approval of financial promotions for an			
3.12.2R	No approval of real time financial promotions	ETP1		
3.12.3R	Approval of financial promotions when not all the	ETP1		
3.13	Additional requirements for financial promotions for an			
3.13.2R		ETP1		
3.13.3R		ETP1		
Annex 2R	Contents of Enterprise Investment Scheme	ETP1		
Annex 3R	Additional contents of Enterprise Investment Scheme	ETP1		
Annex 5R	Permitted promotion of unregulated investment	ETP1		
Chapter 4 Accepting customers				
4.1 Client classification (whole section)		ETP3		
4.2 Terms of business and client agreements with customers (whole section)		ETP1		TSP2
Chapter 6 Product disclosure and the customers' right to cancel		ETP1		TSP7
6.7 Cancellation and withdrawal (whole section)		ETP1		TSP6
6.9 With-profits guides (whole section)			TTP2	
Chapter 7 Dealing and managing				
Chapter 9 Client assets (whole chapter)		ETP5		
9.1.59R	Production and despatch of client statements	ETP1	TTP1	
9.1.60R			TTP1	
9.1.61R			TTP1	
9.1.78R		ETP1		<u>TSP6</u>
9.3 Client money		ETP7		
<u>9.3.42R</u>				<u>TSP6</u>
9.3.64(2)R		ETP6		<u>TSP6</u>
<u>9.3.138R</u>				<u>TSP6</u>
9.5 Client money distribution (whole section)		ETP7		

COB Rule	Rule Heading	Label		
		ETP	TTP	TSP
Chapter 10 Operators of collective investment schemes				
10.3 Modification of the allocation rule				
10.3.1R		ETP1		
<u>10.4 Suitability of the portfolio of an unregulated collective investment scheme</u>				
<u>10.4.3R</u>		<u>ETP1</u>		
10.7 Periodic statements for an unregulated collective investment scheme (whole section)		ETP1	TTP3	
10.7.2R	The requirement to prepare and issue periodic	ETP1		
10.7.6R	Record keeping requirements	ETP1		

COB Table TR3: Client classification provisions

1. 1.1R (2), (4), (6) and (8) Amend as shown below:

- (2) If a *firm* before *commencement* classified an existing *client*, other than another *firm* or *overseas financial services institution*, as a *market counterparty* in accordance with the rules of its *previous regulator*, it will not contravene a *rule* in the *Handbook* by treating the *client* as a *market counterparty*, unless (3) applies.
- (4) If a *firm* before *commencement* classified an existing *client*, other than another *firm* or *overseas financial services institution* or a *client* within COB TR1 1.6, as a non-private customer in accordance with the rules of its *previous regulator*, it will not contravene a *rule* in the *Handbook* by treating that *client* as an *intermediate customer*.
- (6) If a *firm* before *commencement* classified an existing *client*, other than another *firm* or *overseas financial services institution*, as a *private customer* in accordance with the rules of its *previous regulator*, it will not contravene a *rule* in the *Handbook* by treating that *client* as a *private customer*.
- (8) If a *firm* before *commencement* classified an existing *client*, other than another *firm* or *overseas financial services institution*, as an ordinary business investor in accordance with the rules of its *previous regulator*, it will not

contravene a *rule* in the *Handbook* by treating that *client* as an *intermediate customer*.