

Energy Market Participants and Oil Market Participants (Consequential Amendments) Instrument 2001

- A. The Financial Services Authority (the “FSA”) amends the Conduct of Business sourcebook, the Supervision manual, and the Glossary, in the ways indicated in Annexes A, B and C to this instrument.
- B. The FSA makes this instrument in the exercise of the powers and related provisions in or under the Financial Services and Markets Act 2000 (the “Act”) listed in Annex D.
- C. The provisions of the Act relevant to altering rules and listed in Annex D are specified for the purpose of section 153(2) of the Act (Rule-making instruments).
- D. This instrument comes into force immediately.
- E. This instrument may be cited as the Energy Market Participants and Oil Market Participants (Consequential Amendments) Instrument 2001.

By order of the Board
20 September 2001

Annex A

Changes to the Conduct of Business sourcebook

A.1 Amend the title of COB 1.6 in the following way:

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

A.2 Replace COB 1.6.6R – COB 1.6.7R with the following:

OIL MARKET ACTIVITY AND ENERGY MARKET ACTIVITY

1.6.6 R Only the provisions of COB listed in COB 1.6.7R apply in respect of:

(1) *oil market activity*; and

(2) *other energy market activity*;

undertaken by any *firm* (but see COB 1.6.8R).

1.6.7 R Table Provisions applied to oil market activity and energy market activity

This table belongs to COB 1.6.6R.

COB	Subject
Chapter 1	Application and general provisions
2.1	Clear, fair and not misleading
2.3	Reliance on and responsibility for others
2.4	Chinese walls
2.5	Exclusion of liability
Chapter 3	Financial promotion
4.1	Client classification
7.1	Conflict of interest and material interest
7.13	Dealing ahead
7.15	Non-market-price transactions
8.1	Confirmation of transactions
Chapter 9	Client assets

1.6.8 R Despite COB 1.6.6R, only the provisions of COB listed in COB 1.6.9R apply to:

(1) *oil market activity*; or

(2) *other energy market activity*;

undertaken by any *firm* where, if the *firm* were not *authorised*, the activity would not be a *regulated activity* because of:

(3) article 16 of the *Regulated Activities Order* (Dealing in contractually based investments); or

(3) article 22 of the *Regulated Activities Order* (Deals with or through authorised persons etc.).

- 1.6.9 R Table Oil market activity and energy market activity: provisions applied to certain dealings with or through authorised persons etc.

This table belongs to 1.6.8R.

COB	Subject
Chapter 1	Application and general provisions
2.3	Reliance on and responsibility for others
2.4	Chinese walls
2.5	Exclusion of liability
3.11	Unregulated collective investment schemes
7.15	Non-market-price transactions
Chapter 9	Client assets

- 1.6.10 G Article 16 of the *Regulated Activities Order* (Dealing in contractually based investments) sets out an exclusion for *unauthorised persons* who *deal in investments as principal* in *contractually based investments*. The exclusion relates to dealings:
- (1) with or through an *authorised person* or, in certain cases, an *exempt person*; or
- (2) in certain cases, through an office outside the *United Kingdom* maintained by a party to the transaction.
- 1.6.11 G Article 22 of the *Regulated Activities Order* (Deals with or through authorised persons) sets out an exclusion for *unauthorised persons* who *deal in investments as agent*. The exclusion relates to dealings with or through an *authorised person* if:
- (1) the transaction is entered into on advice given to the client by an *authorised person*; or
- (2) it is clear, in all the circumstances, that the client, in his capacity as an investor, is not seeking and has not sought advice from the agent as to the merits of the client's entering into the transaction (or the agent has declined to give such advice but has recommended the client seek such advice from an *authorised person*); and
- in either case, the agent does not receive from any person other than the client any pecuniary reward or advantage for which he does not account to the client.

Annex B

Changes to the Supervision manual

B.1 Amend note 1 to SUP 3.1.2R in the following way:

3.1.2 R Table

...

Note 1 = This note applies in relation to an *oil market participant* to which *IPRU(INV) 3* does not apply and in relation to an *energy market participant* to which *IPRU(INV) 3* does not apply. In SUP 3:

(a) Only SUP 3.1, SUP 3.2 and SUP 3.7 are applicable to such a *firm*; and

(b) only SUP 3.1, SUP 3.2 and SUP 3.8 are applicable to its auditor;

and, in each case, only if it has an auditor.

B.2 Amend SUP 3.2.4 G in the following way:

3.2.4 G SUP 3.1.1R and SUP 3.1.2R limit the application of this chapter in relation to *authorised professional firms* and certain *oil market participants* and certain *energy market participants*. Such a *firm* is not required, under this chapter, to appoint an auditor. If such a *firm* appoints an auditor, for example, under the Companies Act 1985, SUP 3.7 and SUP 3.8 nevertheless apply to help the FSA discharge its functions under the Act.

B.3 Amend SUP 10.1.21R and SUP 10.1.22G in the following way:

OIL MARKET PARTICIPANTS, AND SERVICE COMPANIES AND ENERGY MARKET PARTICIPANTS

10.1.21 R The descriptions of *significant influence functions*, other than the *required functions*, do not extend to activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:

(1) an *oil market participant*; or

(2) a *service company*; or

(3) an *energy market participant*.

- 10.1.22** G It will be a matter of fact in each case whether, having regard to all the circumstances, including in particular where the balance of the business lies, a *firm's* principal purpose is to carry on activities other than *regulated activities* ~~having regard to all the circumstances, including in particular where the balance of the business lies.~~ If a *firm* wishes to rely on SUP 10.1.21R, it should be in a position to demonstrate that its principal purpose is to carry on activities other than *regulated activities*.
- B.4 In SUP 17.1.1R, replace “***oil market investment activities***” with “***oil market activities***”.
- B.5 In the table in SUP App 1, 1.3.1G, in the column headed “Prudential sub-categories”, insert the expression “Energy market participant” after “Derivative fund manager” in the row headed “Securities and futures firm”.

Annex C

Changes to the Glossary

C.1 In the *Glossary*, insert the following definitions in the appropriate alphabetical order:

Definition title	Definition text
<i>Balancing and Settlement Code</i>	the document designated by the Secretary of State and adopted by the National Grid Company plc as the Balancing and Settlement Code as modified from time to time in accordance with the terms of the transmission licence granted under section 6(1)(b) of the Electricity Act 1989 in respect of England and Wales, or any subsequent similar instrument or arrangements.
<i>electricity</i>	(a) electricity in any form, including electricity as deliverable through the <i>Balancing and Settlement Code</i> ; (b) any right that relates to electricity, for example the right under a contract or otherwise to require a person to take any action in relation to electricity, including: <ul style="list-style-type: none"> (i) supplying electricity to any person or accepting supply of electricity; or (ii) providing any information or notice in relation to electricity; or (iii) making any payment in relation to the supply or non-supply, or acceptance or non-acceptance of supply, of electricity.
<i>EMPS</i>	the Special guide for energy market participants, forming part of the <i>Handbook</i> .
<i>energy</i>	coal, <i>electricity</i> , <i>natural gas</i> (or any by-product or form of any of them) or <i>oil</i> .
<i>energy collective investment scheme</i>	a <i>collective investment scheme</i> , the property of which consists only of <i>energy</i> , <i>energy investments</i> , <i>greenhouse gas emissions allowances</i> , <i>tradable renewable energy credits</i> or cash awaiting investment.
<i>energy investment</i>	any of the following: <ul style="list-style-type: none"> (a) a <i>unit</i> in an <i>energy collective investment scheme</i>; (b) an <i>option</i> to acquire or dispose of an <i>energy investment</i>; (c) a <i>future</i> or a <i>contract for differences</i> where the commodity or property of any other description in question is: <ul style="list-style-type: none"> (i) <i>energy</i>; or (ii) an <i>energy investment</i>; or (iii) a <i>greenhouse gas emissions allowance</i>; or (iv) a <i>tradable renewable energy credit</i>; (d) a <i>contract for differences</i> where the index or other factor in question is linked to or otherwise dependent upon fluctuations in the value or price of any of (c)(i) to (iv) (including any prices or charges in respect of imbalances under the <i>Network Code</i> or the <i>Balancing and Settlement Code</i>); (e) a <i>weather derivative</i>; (f) a <i>greenhouse gas emissions allowance</i>, if it is a <i>specified</i>

Definition title	Definition text
	<p><i>investment</i>;</p> <p>(g) a <i>tradable renewable energy credit</i>, if it is a <i>specified investment</i>;</p> <p>(h) <i>rights to or interests in investments</i> in (a) – (g).</p>
<i>energy market activity</i>	<p>(a) any <i>regulated activity</i> in relation to an <i>energy investment</i> or to <i>energy</i> which:</p> <p>(i) is the <i>executing of own account transactions</i> on any <i>recognised investment exchange</i> or <i>designated investment exchange</i>; or</p> <p>(ii) if it is not the <i>executing of transactions</i> on such exchanges, is performed in connection with or for persons who are not <i>private customers</i>;</p> <p>(b) <i>establishing, operating or winding up a collective investment scheme</i> which is an <i>energy collective investment scheme</i> in which <i>private customers</i> do not participate.</p>
<i>energy market participant</i>	<p>a <i>firm</i>:</p> <p>(a) whose permission:</p> <p>(i) includes a <i>requirement</i> that the firm must not carry on any <i>designated investment business</i> other than <i>energy market activity</i>;</p> <p>(ii) does not include a <i>requirement</i> that it comply with <i>IPRU(INV) 5</i> (Investment management firms) or <i>13</i> (Personal investment firms); and</p> <p>(b) which is not an <i>authorised professional firm, bank, building society, credit union, friendly society, ICVC, insurer, ISD investment firm, media firm, oil market participant, service company, incoming EEA firm</i> (without a <i>top-up permission</i>), or <i>incoming Treaty firm</i> (without a <i>top-up permission</i>).</p>
<i>greenhouse gas emissions allowance</i>	<p>an allowance, licence, permit, right, note, unit, credit, asset, certificate or instrument (the "allowance") where:</p> <p>(a) the allowance confers or may result in a benefit or advantage to its holder or another <i>person</i>; and</p> <p>(b) the allowance, or the benefit or advantage in (a), is linked to the emission or non-emission of quantities of carbon dioxide or other greenhouse gases into the environment by the holder of the allowance or someone else.</p>
<i>natural gas</i>	<p>(a) natural gas in any form, including natural gas as deliverable through the <i>Network Code</i>; and</p> <p>(b) any right that relates to natural gas, for example the right under a contract or otherwise to require a person to take any action in relation to natural gas, including:</p> <p>(i) delivering natural gas to any person or taking delivery of natural gas; or</p> <p>(ii) providing any information or notice in relation to natural gas; or</p> <p>(iii) making any payment in relation to the delivery or non-delivery, or the taking or non-taking of delivery, of natural gas.</p>

Definition title	Definition text
<i>Network Code</i>	the network code prepared by Transco plc in accordance with condition 7 of the public gas transporter licence granted or treated as granted to Transco plc under section 7(2) of the Gas Act 1986, as in force from time to time, or any subsequent similar instrument or arrangement.
<i>OMPS</i>	the Special guide for oil market participants, forming part of the <i>Handbook</i> .
<i>tradable renewable energy credit</i>	an allowance, licence, permit, right, note, unit, credit, asset, certificate or instrument (the "credit") where: (a) the credit confers or may result in a benefit or advantage to its holder or someone else; and (b) the credit, or the benefit or advantage in (a), is linked to the supply, distribution or consumption of energy derived from renewable sources by the holder of the credit or someone else.
<i>weather derivative</i>	a <i>contract for differences</i> where the index or other factor in question is a climatic variable.

C.2 In the *Glossary*, replace the following definitions with the text indicated:

Definition title	Definition text
<i>oil market activity</i>	(a) any <i>regulated activity</i> in relation to an <i>oil investment</i> or to <i>oil</i> which: (i) is the <i>executing of own account transactions</i> on any <i>recognised investment exchange</i> or <i>designated investment exchange</i> ; or (ii) if it is not the <i>executing</i> of transactions on such exchanges, is performed in connection with or for persons who are not individuals; and (b) <i>establishing, operating or winding up a collective investment scheme</i> which is an <i>oil collective investment scheme</i> in which individuals do not participate.
<i>oil market participant</i>	a <i>firm</i> : (a) whose permission: (i) includes a <i>requirement</i> that the firm must not carry on any <i>designated investment business</i> other than <i>oil market activity</i> ; and (ii) does not include a <i>requirement</i> that it comply with <i>IPRU(INV) 5</i> (Investment management firms) or <i>13</i> (Personal investment firms); and (b) which is not an <i>authorised professional firm, bank, building society, credit union, friendly society, ICVC, insurer, ISD investment firm, media firm, service company, incoming EEA firm</i> (without a <i>top-up permission</i>), or <i>incoming Treaty firm</i> (without a <i>top-up permission</i>).

C.3 In the *Glossary*, amend the following definition in the following way:

Definition title	Definition text
<i>oil investment</i>	any of the following: (a) a <i>unit</i> in an <i>oil collective investment scheme</i> ; (b) an <i>option</i> to acquire or dispose of an <i>oil investment</i> ; (c) a <i>future</i> where the <i>commodity</i> in question is <i>oil</i> ; (d) a <i>contract for differences</i> where the property in question is <i>oil</i> or an <i>oil investment</i> or the index or other factor in question is linked to or otherwise dependent upon fluctuations in the value or price of <i>oil</i> or any <i>oil investments</i> ; (e) rights to and interests in an <i>oil investment</i> <u><i>rights to or interests in investments in (a) – (d).</i></u>

C.4 In the *Glossary*, in the definition of “*investment management firm*”:

- (a) immediately after the expression “*credit union*, ”, insert the expression “*energy market participant*, ”; and
- (b) immediately after the expression “*media firm*, ”, insert the expression “*oil market participant*, ”.

C.5 In the *Glossary*, in the definition of “*investment management firm*”:

- (a) immediately after the expression “*credit union*, ”, insert the expression “*energy market participant*, ”; and
- (b) immediately after the expression “*media firm*, ”, insert the expression “*oil market participant*, ”.

C.6 In the *Glossary*, in the definition of “*securities and futures firm*”:

- (a) amend the following expression in the following way:
 “which is within (a), (b), (c), ~~(d)~~, (e) or (f)”; and
- (b) delete the full stop at the end of paragraph (d) and replace with a semi-colon; and
- (c) immediately after paragraph (d), insert new paragraphs as follows:
 “(e) an *energy market participant*;
 (f) an *oil market participant*.”

Annex D

Powers exercised

The following powers and related provisions in or under the Act have been exercised to alter rules under this instrument:

- Section 59 (Approval for particular arrangements)
- Section 118(8) (Market abuse)
- Section 138 (General rule-making power)
- Section 139(1) and (4) (Miscellaneous ancillary matters)
- Section 141 (Insurance business rules)
- Section 144 (Price stabilising rules)
- Section 145 (Financial promotion rules)
- Section 146 (Money laundering rules)
- Section 147 (Control of information rules)
- Section 149 (Evidential provisions)
- Section 150(2) (Actions for damages)
- Section 156 (General supplementary powers)
- Section 238(5) (Restrictions on promotion)
- Section 247 (Trust scheme rules)
- Section 340 (Appointment)
- Regulation 6(1) (FSA rules) of the Financial Services and Markets Act 2000 (Open-ended Investment Company) Regulations 2001

The following power in the Act has been exercised to alter guidance under this instrument:

- Section 157(1) (Guidance)