

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT No 3)
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 No 3) Instrument 2001.

By order of the Board
15 November 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 3.2 Application: what?

COB 3.2.4R (2)(b) Amend as shown below:

- (b) COB 3.8.4R (1) (Non-real time financial promotions: ~~fair~~, clear, fair and not misleading) except if the financial promotion is exempt under 3.2.5R (7);

COB 3.2.5R (7) Amend as shown below:

~~a financial promotion in connection with a takeover or related operation~~ which is subject to the *Takeover Code* or the SARs (or exempted from complying with the *Takeover Code* or the SARs by ~~the rules of that Code, those rules,~~ or by a ruling of the *Takeover Panel*) or to the requirements relating to *takeovers or related operations* in another *EEA State*.

COB 3.8 Form and content of financial promotions

COB 3.8.19R Amend as shown below:

A provider firm must ensure that it does not *communicate* or *approve* a *specific non-real time financial promotion* relating to a *packaged product* and containing or offering advice on investments unless it discloses in the *financial promotion* that the *firm* is only able to give *advice on investments* to *private customers* about the *packaged products* of the *firm* or of its *marketing group* and (if it is the case) about *adopted packaged products*.

COB 3.9 Direct offer financial promotions

COB 3.9.5R (2) Amend as shown below:

A direct offer financial promotion must not relate to:

- (a) ~~an unregulated collective investment scheme;~~
(~~b~~) (a) a derivative; or
(~~e~~) (b) a warrant;

unless the *firm* itself has adequate evidence to suggest that the *investment* may be suitable for the *person* to whom the promotion is *communicated*.

COB 3.9.8R (2) After "January 2001 edition of", delete the comma and add "the "Guidance for subscribers" to"

COB 3.11 Unregulated collective investment schemes

COB 3.11.3G (2) Amend as shown below:

Firms are reminded that, even if an invitation or inducement is within COB 3 Ann 5, ~~then all relevant~~ other rules in this chapter may still apply, including in particular COB 3.9.5R (2) (a) (which prohibits the *communication or approval of direct offer financial promotions relating to unregulated collective investment schemes* except in specified circumstances).

COB 4.1 Client classification

COB 4.1.5R Insert the following new paragraph and renumber subsequent paragraphs:

- (3) If there is an agreement under (2) in relation to more than one *client* (C2) represented by C1, F may discharge any requirement to notify, obtain instructions or consent from, or enter into an agreement with each C2 by sending to, or receiving from, C1, a single communication which is expressed to cover each C2, except that:
 - (a) separate risk warnings under COB 5.4 (Customers' understanding of risk);
 - (b) confirmations under COB 8.1 (Confirmation of transactions); and
 - (c) *periodic statements* under COB 8.2 (Periodic statements)are required for each C2.

COB 5.3 Suitability

COB 5.3.9R(2) Amend as shown below:

An independent intermediary must not make a *personal recommendation* to a *private customer* to buy:

- (1)
- (2) a *packaged product* issued or operated by ~~an associate~~ a connected product provider if it ought reasonably to be aware of another generally available *packaged product* which could satisfy the needs and circumstances of the *private customer* as well as the connected *packaged product* (but see COB ~~5.3.11G~~ 5.3.10R).

COB 5.3.10R Amend as shown below:

- (1) COB 5.3.9R(2) does not apply to a *firm* acting as an *investment manager*.

- (2) In COB 5.3.9R(2), a *product provider* ("P") is connected to an *independent intermediary* ("I") if I is an *undertaking* and:
- (a) P and I are members of the same *group*; or
 - (b) P is a *qualifying holder* in I; or
 - (c) P and I have the same *qualifying holder*; or
 - (d) any other member of P's *marketing group* is connected to I in a way described in (a), (b) or (c).
- (3) In (2)(b) and (c), a *qualifying holder* in an *undertaking* is a *person* who:
- (a) has a *direct or indirect holding* in the *undertaking* which represents *10 per cent or more of its capital or voting power*; or
 - (b) has a *direct or indirect holding* in the *undertaking* which makes it possible to exercise a *significant influence over its management*.

5.3.11G Amend as shown below:

- (1) In complying with the requirements of COB 5.3.9R, an *independent intermediary* should have an adequate knowledge of and have regard to the *packaged products* available from the market as a whole.
- (2) *Firms* are reminded that, even if the 10 per cent limit in COB 5.3.10R(3)(a) has not been reached, P may still be connected with I if it can exercise a *significant influence over I's management*. For example, if three otherwise unconnected *product providers*, each with 9 per cent of an *independent intermediary's* capital, are acting in concert, they might each be connected with the *independent intermediary* if such influence exists.

COB 5.4 Customers' understanding of risk

COB 5.4.3R Amend as shown below

A firm must not:

- (1) make a *personal recommendation* of a transaction; or
- (2) act as a *discretionary investment manager*; or
- (3) *arrange (bring about) or execute* a deal in a *warrant* or *derivative*; or
- (4) engage in *stock lending activity*;

with, to or for a *private customer* unless it has taken reasonable steps to ensure that the *private customer* understands the nature of the risks involved.

COB 7.5 Best execution

COB 7.5.4R (2) Amend as shown below:

the *firm* has agreed ~~in writing~~ with an *intermediate customer* that it need not owe a duty of best execution to him, unless that *customer* is:....

COB 7.12 Customer order and execution records

COB 7.12.6E (1)(f) Amend as shown below:

any other instruction received by the *firm* from the *customer* with regard to the *execution* of the *customer order*. ~~(including the nature of the communication, for example, telephone, fax, letter, email).~~

COB 9.3 Client Money

COB 9.3.2R Amend as shown below:

The *client money rules* do not apply with respect to:

- (1) the *permitted activities* of a ~~life office~~ long-term insurer or a *friendly society*; or

ANNEX 2

Amendments to the Conduct of Business Transitional Rules

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

COB Table TR1: COB Transitional Provisions:

1. 1.8 ETP4 R Amend as shown below

1.8	<i>ETP4</i>	R	<p>(1) An <i>ex-section 43 firm</i> will not contravene any of the provisions labelled <i>ETP4</i> in Table <i>COB TR 2</i> in relation to its section 43 business to the extent that, on or after <i>commencement</i>, it complies with (2).</p> <p>(2) For the purposes of <i>COB 4.1</i>, an <i>ex-section 43 firm</i> may treat its <i>client</i> (other than another firm) who was a <i>client</i> of the <i>firm</i> before <i>commencement</i> as a <i>market counterparty</i> in relation to its section 43 business until the date of expiry of the <i>transitional period</i> <u>a period of 12 months following <i>commencement</i></u>, by which date it must classify the <i>client</i> in accordance with <i>COB 4.1</i>.</p>	<i>commencement</i> to <i>commencement</i> plus 12 months	<i>commencement</i>
------------	--------------------	----------	--	--	---------------------