

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT No 6)
INSTRUMENT 2002**

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 rule-making powers identified above are specified for the purpose of section 153(2) of the Financial Services and Markets Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 July 2002.

Amendment of the Conduct of Business sourcebook

- D. The Conduct of Business sourcebook is amended as set out in the Annex to this instrument.

Citation

- E. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 6) Instrument 2002.

By order of the Board
16 May 2002

ANNEX

Amendments to the Conduct of Business Transitional Rules

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

COB TR 1 Transitional Rules for pre-N2 and ex-Section 43 firms

2 Table COB TR 1

(1)	(2) Material to which the transitional provision applies: The COB provisions in Table COB TR 2 with the labels indicated	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.0	Extra time provisions				
1.1	<i>ETPI</i>	R	Transitional Relief		

		<p>(1) A <i>pre-N2 firm</i> will not contravene any of the provisions labelled <i>ETPI</i> in Table <i>COB TR 2</i> to the extent that, on or after <i>commencement</i>, it is able to demonstrate that it has complied with the <i>corresponding rule</i> of its <i>previous regulator</i> or, where applicable, the relevant former statutory requirement, subject to any modification, wherever appropriate, to take account of the passing of the <i>Act</i>.</p> <p>(2) Paragraph (1) does not apply to the following:</p> <p>(a) (from 1 September 2002) <i>COB 6.1.1 R (5) to COB 6.1.1R (6) (Application)</i>;</p> <p>(b) (from 1 September 2002) <i>COB 6.5.50R to COB 6.5.52R (Life policies : requests for quotations for surrender values)</i>;</p> <p>(c) (from 1 September 2002) <i>COB 6.5.53R to COB 6.5.56R (Open market option)</i>.</p> <p>[Further exceptions to be added later, as described in row 1.1A.]</p>	<p>(1) <i>commencement to until 30 June 2002, except as specified in (2) and (3) below;</i></p> <p>(2) for <i>COB 9.3.105R, from commencement to 31 December 2002;</i></p> <p>(3) for <i>COB 3.9.10R, COB 4.2.15E (7), COB 5.3, COB 5.7, COB 6.1 to 6.8, from commencement until a date yet to be specified.</i></p>	<p><i>commencement</i></p>
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1.1A	<u>ETPI (for COB 6.1 - 6.8)</u>	<u>G</u>	<p>(1) <u>The FSA is extending transitional relief for COB 6.1 to 6.8 and various other rules in COB, pending the outcome of the review of product disclosure and polarisation. As each of those reviews are completed, the transitional provisions will be revoked or modified to provide an appropriate transition into the new regime. Firms will be given notice of any revocation or modification as part of consultation on the new regime.</u></p> <p>(2) <u>Firms should be aware, however, that the FSA proposes to make rules, before the disclosure review is completed, to deal with the following matters:</u></p> <p>(a) <u>Stakeholder pensions: maintaining decision trees (see CP122);</u></p> <p>(b) <u>Projections for pension schemes or stakeholder pension schemes ; and</u></p> <p>(c) <u>Single pricing for collective investment schemes (see CP 131.</u></p> <p>(3) <u>The FSA envisages that, when the relevant rules are made, they will not benefit from the transitional relief set out in the COB Transitional Rules. For further information on the FSA's approach, firms should refer to the consultation papers mentioned above. If other interim changes to these rules are proposed, a similar approach is likely to be adopted.</u></p>	<u>commencement until a date yet to be specified.</u>	
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1.2	ETPs 1 to 9 TTPs 1 to 3 TSPs 1 to 7	G	It is for a <i>pre-N2 firm</i> to satisfy itself that it has complied with the <i>corresponding rule</i> of its <i>previous regulator</i> or, where applicable, the relevant former statutory requirement. In order to benefit from the relief, a <i>firm</i> must ensure that the rule of its <i>previous regulator</i> which it proposes to comply with is substantially similar to the provision in <i>COB</i> to which it relates.	for <i>ETP 1</i> as for <u><i>COB TR1 1.1</i></u> ; for <i>ETP 2 to 9</i> and <u><i>TTP 1 to 3</i></u> <u>commencement until 30 June 2002</u> ; <u>indefinitely for</u> <i>TSPs</i> <u>commencement to 30 June 2002</u> for <i>ETPs</i> and <i>TTPs</i> ; <u>indefinitely for</u> <i>TSPs</i>	<i>commencement</i>
			For the assistance of <i>firms</i> , the <i>FSA</i> has compiled tables of derivations indicating the rules of a <i>firm's previous regulator</i> that correspond to the provision in <i>COB</i> being transitioned. <i>Firms</i> may wish to refer to these tables but in doing so should understand that they are not intended to be exhaustive and are produced merely as a guide.		
			<i>Firms</i> are advised that should they wish to take advantage of the transitional provisions set out in this section, the onus is on the <i>firm</i> to be able to demonstrate that in any given case it has in fact complied with the <i>corresponding rules</i> of its <i>previous regulator</i> or, as the case may be, the former statutory requirement.		
1.3	ETPs 1 to 9 TTPs 1 to 3 TSPs 1 to 7	G	<i>Firms</i> will have noted from the wording of <i>COB TR11.1R</i> that they should treat the <i>corresponding rules</i> of their <i>previous regulator</i> as modified to the extent necessary to ensure that the provision can operate effectively notwithstanding the enactment of the <i>Act</i> . <i>Firms</i> will need to adopt a common sense approach in interpreting the <i>corresponding rules</i> of their <i>previous regulator</i> and modify them accordingly. For example, references in such rules to a <i>firm's previous regulator</i> should be read as if they referred to the <i>FSA</i> . Other modifications may not be as straightforward, such as where the concept of an indirect <i>customer</i> is not carried forward under the new legislation. In cases of difficulty, <i>firms</i> are encouraged to approach the <i>FSA</i> for its views.	for <i>ETP 1</i> as for <u><i>COB TR1 1.1</i></u> ; for <i>ETP 2 to 9</i> and <u><i>TTP 1 to 3</i></u> <u>commencement until 30 June 2002</u> ; <u>indefinitely for</u> <i>TSPs</i> <u>commencement to 30 June 2002</u> for <i>ETPs</i> and <i>TTPs</i> <u>indefinitely for</u> <i>TSPs</i>	<i>commencement</i>

1.8	<i>ETP4</i>	G	<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 a period of 12 months following commencement, <u>the transitional period</u>, by which date it must classify the <i>client</i> in accordance with <i>COB 4.1</i></p>	commencement to commencement plus 12 months until <u>30 November 2002</u>	
1.9	<i>ETP4</i>	G	An <i>ex-section 43 firm</i> that wishes to take advantage of the transitional relief provided by <i>COB TR1 1.8(1)</i> and (2) should continue to maintain the standard of care set out in paragraphs 31 to 37 of the London Code of Conduct (version June 1999) in relation to each of their clients. For these <i>clients</i> , the <i>FSA</i> will maintain the arbitration procedures set out in paragraph 120 of the London Code of Conduct for disputes arising during the <i>transitional period</i> .	commencement to commencement plus 12 months until <u>30 November 2002</u>	<i>commencement</i>
1.10	<i>ETP 5</i>	R	<p><u>Client Assets</u></p> <p>For the purposes of any of the provisions labelled <i>ETP5</i> in Table <i>COB TR 2</i>, the following will apply from <i>commencement</i> until the date of expiry of the <i>transitional period</i>:</p> <p>(a) any reference in <i>COB 9</i> to an <i>approved bank</i> must be treated as if it were a reference to an institution which satisfied the definition of “approved bank” under the <i>corresponding rules</i> of a <i>firm’s previous regulator</i>; and</p>	commencement to <u>until 30 June 2002</u>	<i>commencement</i>
			(b) any reference in <i>COB 9</i> to a <i>custodian</i> must be treated as if it were a reference to an institution which satisfied the definition of “custodian” under the <i>corresponding rules</i> of a <i>firm’s previous regulator</i> .		
1.11	<i>ETP6</i>	R	<p><u>No corresponding rules</u></p> <p>A <i>pre-N2 firm</i> need not comply with any of the provisions labelled <i>ETP6</i> in Table <i>COB TR 2</i> until the date of expiry of the <i>transitional period</i>.</p>	commencement to <u>until 30 June 2002</u>	<i>commencement</i>

1.12	<i>ETP7</i>	R	<p><u>Client money</u></p> <p>An <i>ex-section 43 firm</i> need not comply with the provisions labelled <i>ETP7</i> in Table <i>COB TR 2</i> in relation to its section 43 business until the expiry of a period of 12 months following <i>commencement</i>, provided it continues to comply with the requirements of the Grey Paper (version June 1999), as published by the <i>FSA</i>, relating to the segregation of money and other assets belonging to counterparties.</p>	<p>commencement to commencement plus 12 months until a date yet to be specified-</p>	<p><i>commencement</i></p>
1.13	<i>ETP8</i>	R	<p><u>Information about the firm</u></p> <p>(1) Subject to (2), a <i>pre-N2 firm</i> or an <i>ex-section 43 firm</i> will not contravene any of the provisions labelled <i>ETP8</i> in Table <i>COB TR 2</i> in relation to any written material it has produced before <i>commencement</i> to the extent that, on or after <i>commencement</i>, it is able to demonstrate that it has provided information about itself, in any such material, in accordance with the <i>corresponding rule</i> of its <i>previous regulator</i>.</p> <p>(2) A <i>pre-N2 firm</i> which, before <i>commencement</i>, was an appointed representative under the Financial Services Act 1986, but has now become and <i>authorised person</i>, 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 <i>authorised person</i> in any of the written material in (1).</p>	<p>(<i>pre-N2 firms</i>):</p> <p>commencement to until 30 June 2002;</p> <p>(<i>ex-section 43 firms</i>):</p> <p>commencement to commencement plus 12 months until 30 November 2002-</p>	<p><i>commencement</i></p>
1.14	<i>ETP8</i>	G	<p>(1) The purpose of <i>COB TR2 1.13R</i> is to ensure that the <i>firm</i> does not incur unnecessary costs by having to withdraw or destroy written material produced before <i>commencement</i>. For the avoidance of doubt, where a <i>firm</i> prints a document on or after <i>commencement</i>, from a precedent held in electronic form, <i>ETP8</i> will apply.</p> <p>(2) A statement that the <i>firm</i> is a 'representative' of another <i>firm</i> is unlikely, on its own to mislead. But if written materials refer to the <i>firm</i> as an appointed representative, reasonable steps under <i>COB TR1 1.13 R (2)</i> could include notifying the <i>firm's private customers</i> of the change in its status to an <i>authorised person</i>; or modifying the <i>firm's</i> existing stationery.</p>	<p>(<i>pre-N2 firms</i>):</p> <p>commencement to until 30 June 2002;</p> <p>(<i>ex-section 43 firms</i>):</p> <p>commencement to commencement plus 12 months until 30 November 2002</p>	<p><i>commencement</i></p>
			<p>(2) A statement that the <i>firm</i> is a 'representative' of another <i>firm</i> is unlikely, on its own to mislead. But if written materials refer to the <i>firm</i> as an appointed representative, reasonable steps under <i>COB TR1 1.13 R (2)</i> could include notifying the <i>firm's private customers</i> of the change in its status to an <i>authorised person</i>; or modifying the <i>firm's</i> existing stationery.</p>		

1.15	ETP9	R	<p><u>Group business disapplication for ex-IMRO firms and ex-SFA firms</u></p> <p>This paragraph applies to a <i>pre-N2 firm</i> which immediately before <i>commencement</i> was a member of <i>IMRO</i> or <i>SFA</i>.</p>	<p><i>commencement</i> to <i>commencement</i> <u>30 June 2002</u> <u>until</u> <u>a date yet to be</u> <u>specified</u></p>	
3.3	TSP 2	G	<p>(5) <u>A <i>pre-N2 firm</i> will comply with COB TR1 3.2R(3) if the <i>firm</i> gives written notification to the <i>private customer</i> as part of the <i>firm's</i> next routine communication to the <i>customer</i>. In most circumstances, the <i>FSA</i> expects that a period of between three and six months from <i>commencement</i> should give sufficient time for a <i>pre-N2 firm</i> to notify a <i>private customer</i> under this rule. For example, a <i>pre-N2 firm</i> might notify under COB TR1 3.2R(3) much sooner than six months after <i>commencement</i> when it provides <i>private customers</i> with risk warnings in respect of <i>warrants</i> and <i>derivatives</i> or non-readily realisable investments (COB 5.4 Customers' understanding of risk).</u></p>		
			<p>(6) <u>A <i>pre-N2 firm's</i> only routine communication with a <i>private customer</i> might occur more than six months after <i>commencement</i>. For example, a <i>long-term insurer</i> providing <i>customers</i> with the annual statement might only communicate with some <i>customers</i> (particularly 'dormant' <i>customers</i>) annually or less frequently. In such limited circumstances, a period of up to six months might be too restrictive an interpretation of the requirement to take reasonable steps to notify <i>private customers</i> as soon as practicable after <i>commencement</i>. This is exceptional and a period of up to six months from <i>commencement</i> will be sufficient in most cases.</u></p>		

			<p>(7) <u>The FSA wishes to minimise any unnecessary repetition or duplication of notifications flowing from COB TR1 3.2R(3). A pre-N2 firm acting under COB TR1 3.2R(3) may reasonably fulfil its notification obligation to a private customer through the pre-N2 firm's agent or intermediary who services the private customer and is authorised by the FSA, or through the pre-N2 firm's appointed representative who services the private customer and for whom the pre-N2 firm is responsible as principal under section 39 of the Act (Exemption). But a pre-N2 firm will retain responsibility for fulfilling the notification requirement in COB TR1 3.2R(3).</u></p>		
			<p>(8) <u>COB TR1 3.2R(3) requires notification in writing. This may be done by using electronic media, subject to COB 1.8 (Application to electronic media). The requirement will not be discharged, however, simply by publishing a notice in a national or local newspaper.</u></p>		
3.8	TSP6	R	<p><u>Notice and consents</u></p> <p>(1) <u>A pre-N2 firm will not contravene any of the provisions labelled TSP6 in Table COB TR 2 to the extent that it is able to demonstrate that, on or after commencement, it has continued to use or rely upon a valid notice, given to, or valid notice or consent which, before the expiry of the transitional period, was given to, given by or obtained from, a client or counterparty in accordance with the corresponding rule of its previous regulator, or, where applicable, the relevant former statutory instrument, in relation to an investment agreement concluded before the expiry of the transitional period.</u></p>	indefinitely	commencement