

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 9)
INSTRUMENT 2002**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the Conduct of Business sourcebook.
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) of the Financial Services and Markets Act 2000 (Rule-making instruments).

Commencement

- C. This instrument comes into force as follows:
 - (1) the amendments in Annex C come into force on 1 April 2003;
 - (2) the remainder of this instrument comes into force on 1 January 2003.

Amendments to the Conduct of Business sourcebook

- D. The transitional rules in the Conduct of Business sourcebook are amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook is amended in accordance with Annexes B and C to this instrument.
- F. Schedule 1 to the Conduct of Business sourcebook (Record keeping requirements) is amended in accordance with Annex D to this instrument.

Amendments to the Glossary

- G. The Glossary is amended in accordance with Annex E to this instrument.

Citation

- H. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 9) Instrument 2002.

By order of the Board
21 November 2002

Annex A
Amendments to the Conduct of Business Transitional Rules
coming into force on 1 January 2003

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	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
3.4	<i>TSP 3</i>	R	<p>Know your customer and suitability</p> <p>...</p> <p>(2) The relief in (1) will apply so long as there is no relevant change in the <i>customer's</i> personal and financial circumstances.</p> <p>(3) <u>Paragraph (2) applies only for relevant changes of which a <i>firm</i> ought reasonably to be aware assuming compliance with COB 5.2.5R (Requirement to know your customer)</u></p>	<p>Indefinitely (as regards (1) and (2))</p> <p>Indefinitely from 1 January 2003 (as regards (3))</p>	<i>commencement</i>
...					

Annex B

Amendments to the Conduct of Business sourcebook coming into force on 1 January 2003

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

COB 3: Financial promotion

Annex 1 G

An overview of some of the main exemptions contained in the
Financial Promotion Order (G)

2 Table

Article no. and name of exemption	Type of promotion: Unsolicited real time, non- real time	Controlled activity/ Controlled investment	Other conditions
... 18 Mere conduits	All	All	Made by a <i>person</i> who acts as a mere conduit for it (<u>other than <i>electronic commerce communications</i></u>).
<u>18A</u> <u>Electronic commerce communications: mere conduits, caching and hosting</u>	<u>All</u>	<u>All</u>	<u>Where the making of the communication constitutes the provision of an information society service of a kind described as 'mere conduit', 'caching' or 'hosting' under the E-Commerce Directive and the conditions mentioned in the directive are met.</u>

...			
<p>20B <u>Incoming electronic commerce communications</u></p>	<p><u>Non-real time</u></p>	<p><u>All</u></p>	<p><u>Incoming electronic commerce communications other than:</u> (1) <u>a communication which constitutes an advertisement by the operator of a UCITS scheme of units in that scheme; or</u> (2) <u>a communication consisting of an invitation or inducement to enter into a contract of insurance, where made by an undertaking with authorisation in accordance with article 6 of the First Life Directive or the First Non-Life Directive, and the insurance falls within the scope of any of the Insurance Directives; or</u> (3) <u>an unsolicited communication made by electronic mail.</u></p>
...			

...

5.2.10 When a *firm* arranges a *pension opt-out* or *pension transfer* from an R OPS for a *private customer* as an *execution-only transaction*, the *firm* must make and retain indefinitely a clear record to evidence that no *advice on investments* was supplied to the *private customer*.

...

5.3.14 If, following a *personal recommendation* by the *firm*, a *private*
R *customer*:

- (1) buys, sells, surrenders, converts, cancels, or suspends *premiums* for or contributions to a *life policy*, *pension contract* or *stakeholder pension scheme*; or

...

...

5.3.18 The *firm* must provide the letter required by *COB* 5.3.14 R to the
R *customer*:

- (1) in the case of a *life policy*, *pension contract* or *stakeholder pension scheme*, where the *cancellation rules* require notification of the right to cancel, no later than the issue of the post-sale notice of the *customer's* right to cancel; or

...

...

Record keeping requirements

5.3.19A A *firm* must make and retain a record of a *private customer's* suitability letter that it has provided in satisfying *COB* 5.3.14 R. The record must be retained for a minimum period after the letter is provided, as follows:
R

- (1) for a record relating to a *pension transfer*, *pension opt-out* or *free-standing additional voluntary contribution (FSAVC)*, indefinitely;
- (2) for a record relating to a *life policy*, *pension contract* or *stakeholder pension scheme*, six years;

(3) in any other case, three years.

...

5.3.28 R When a firm promotes a *personal pension scheme*, including a *group personal pension scheme*, by means of a *direct offer financial promotion* to a group of *employees*, the firm must:

- (1) be satisfied on reasonable grounds that the *pension scheme* is likely to be at least as suitable for the majority of the *employees* as a *stakeholder pension scheme*; ~~and must~~
- (2) record why it thinks the promotion is justified; and
- (3) retain the record for a minimum period of six years after the *financial promotion* is last communicated.

...

6.7.5 G Table Cancellable investment agreements-
This table belongs to COB 6.7.4 G

Cancellable Investment agreements			
	Post-sale right to cancel?	Pre-sale right to withdraw?	Maximum period of reflection
...			
B. Agreements where the right arises only if advice is given.			

<i>Units in an AUT₂ recognised scheme or ICVC (within an ISA or PEP)</i>	Yes ⁸	Yes ⁸	14 days for cancellation ² 7 days for withdrawal
<i>ISA or PEP not mentioned in any row above</i>	No	Yes ⁷	7 days
<i>Units in an AUT₂ recognised scheme or ICVC (outside an ISA or PEP)</i>	Yes	No	14 days ²
<i>EIS</i>	No	Yes ⁷	7 days
Notes:			
...			
8. For <i>units</i> in an <i>AUT₂ recognised scheme</i> or <i>ICVC</i> (within an <i>ISA</i> or <i>PEP</i>), the <i>firm</i> can choose to offer a pre-sale right to withdraw rather than a post-sale right to cancel (see <i>COB 6.7.14R(1)</i>). There is no right to cancel or withdraw for a second or subsequent <i>ISA</i> .			

...

6.7.17 R Table Cancellable investment agreements – non-life
This table belongs to *COB 6.7.7 R (1)* and *COB 6.7.14 R (1)*

Cancellable investment agreements – non-life	
Investment agreements for which an individual customer has:	
Column 1	Column 2
a right to cancel under <i>COB 6.7.7R(1)</i> (subject to column 2).	no right to cancel where any one or more of the following cases applies

Cancellable investment agreements – non-life

Investment agreements for which an individual customer has:

Column 1

Column 2

<p>...</p> <p>C. Subscriptions (see notes 1 and 2 in <i>COB 6.7.18R</i>) which can be invested only in <i>units</i> (whether or not held within an <i>ISA</i>, <i>PEP</i> or <i>pension contract</i>) in an <i>AUT</i>, <i>recognised scheme</i> or <i>ICVC</i> purchased from the:</p> <p>...</p>	<p>...</p> <p>13. The agreement relates to a <i>recognised collective investment scheme</i> and the agreement is with an <i>operator</i> who is not:</p> <p>(a) an <i>authorised person</i>; or</p> <p>(b) carrying on business in the <i>United Kingdom</i>.</p> <p>...</p>
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...

- 8.1.5 (1) A *firm* should provide the following essential details of a transaction, to the extent they are relevant:
- E

...

- (b) such information as the *customer* has ~~on his own initiative~~ agreed with the *firm* (in the case of a *private customer*, agreed in writing with his informed consent), or is in accordance with the custom of a non-UK market in which the transaction was arranged; or

...

- (2) To despatch a confirmation promptly, a *firm* should:
 - (a) despatch it no later than the *business day* following the day the transaction was *executed* (as specified in COB 8.1.12 R) or within any period agreed with specified by the *customer* ~~on his own initiative~~ (in the case of a *private customer*, agreed in writing with his informed consent); or
 - (b) despatch a copy of a confirmation received from a third party together with additional information, if any, to the *customer* as soon as practicable, but in any event no later than the *business day* following receipt; ~~and or~~
 - (c) when the *firm* has issued or redeemed units in a regulated collective investment scheme, despatch it at the latest on the *business day* following the day the issue or redemption price was determined, ~~when the *firm* has issued or redeemed units in a regulated collective investment scheme~~, unless (b) applies; or
 - (d) when a *firm* executes a transaction in:
 - (i) an OTC derivative; or
 - (ii) stock lending or borrowing; or
 - (iii) a repo; or
 - (iv) rights to or interests in OTC derivatives;

despatch a confirmation as soon as practicable in accordance with proper standards of market practice for the investment concerned.

...

8.1.6 R A firm need not despatch a confirmation when:

...

(3) the firm has agreed with the customer (or, in the case of a private customer, agreed in writing with his informed consent) has been requested by the customer in writing not to supply confirmations that confirmations need not be supplied, either generally or in specified circumstances (but see COB 8.1.7 R and COB 8.1.8 R); or

...

8.1.7 R A firm which is not an OPS firm referred to in COB 8.1.8 R may rely upon the exceptions in COB 8.1.6 R (3) or COB 8.1.6 R (4) only if any periodic statement which the firm provides to the customer in accordance with COB 8.2 (Periodic Statement) (and subject to the exceptions in COB 8.2.6 R) it provides to the customer a periodic statement contains containing the information that would have been contained in a confirmation despatched in accordance with COB 8.1.3 R (other than information which has since become irrelevant) relating to the transactions *executed* during the relevant period.

...

8.2.10 E Table Periodic statements: timing and content
This table belongs to COB 8.2.7 E

Periodic statements: timing and content

...				
Adequate information	(3)	A <i>periodic statement</i> should contain:		
		...	information that a <i>private customer</i> habitually resident outside the <i>United Kingdom</i> , or an <i>intermediate customer</i> , has <u>agreed that the firm should provide</u> on his own initiative agreed with the firm as adequate ; or	
		...		

...

11.5.3 R Table Rules applicable to trustee firms which are not depositaries and to which COB 11.5.1 R (2) applies

This table belongs to COB 11.5.1 R (2).

Chapter	Description	Modifications
...		
2.5	Exclusion of liability	'Customer' and 'private customer' mean 'trustee' or 'trust' as appropriate.

Annex C

Amendments to the Conduct of Business sourcebook coming into force on 1 April 2003

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

COB 3: Financial promotion

Annex 4 G

5 Table C

Bond Funds

A firm constructing a financial promotion for corporate bond funds or similar contracts should take account of the following:

(1) Clear description of the risk

Yields offered by bonds often reflect in part the risk rating of the issuer. Investment in such bonds brings an increased risk of default on repayment and this in turn translates into a risk that the capital value of the fund will be affected. Financial promotions for funds which invest in riskier bonds should clearly explain this point to recipients. The prominence and wording of the explanation should reflect both the risk profile of the portfolio held by the fund, and the prominence given to information about the yield on the fund. The main body of the financial promotion should state that the yield or the capital value of the fund (or both) can fluctuate, as the case may be.

...

Bond Funds

(4) Running and redemption yields

~~Whilst the running yield indicates the expected level of current income for investors, managers should take the redemption yield into account when considering how to portray the prospects for future investors. They should also take into account, and explain, any material difference between the two.~~

If a yield figure is to be quoted, then both the gross redemption yield and the running yield should be mentioned with equal prominence. This is to ensure that a balanced impression is given of both the short-term and the long-term prospects for the fund. When quoting the gross redemption yield, the main body of the *financial promotion* should also mention the fact that it is a prediction, and is not guaranteed.

A *firm* should take into account, and explain, any material differences between the yield figures.

(5) Describing the yield and growth prospects

~~Where it is the case, the fact that both the yield and the capital value of the fund can fluctuate should be disclosed. A *firm* needs to be careful when describing the future yield or growth prospects of a fund. The prominence and tone given to descriptions of future prospects should reflect a reasonable assessment of the fund taking into account, for example, the redemption yield, whether charges are taken from capital, and the general economic climate.~~

...

After COB 6.5.56R, insert the following new paragraphs:

Pension income withdrawals and phased retirement

6.5.57R When a scheme member or *policyholder* described in COB 6.5.53R (2) indicates to the provider of that scheme or policy that he is considering or has decided:

- (1) to discontinue an *income withdrawal* arrangement; or
- (2) to take out a further sum of money from his pension fund to buy an annuity as part of a phased retirement arrangement;

the provider of that scheme or policy must send the scheme member or *policyholder* the information required by *COB* 6.5.53R, unless the scheme member or *policyholder* has already been sent the information by the provider in the previous 12 *months*.

6.5.58G

COB 6.5.57R is intended to ensure that, when a scheme member or *policyholder* is considering or has decided to discontinue an *income withdrawal* arrangement and buy an annuity, he receives a further reminder from his current provider of the information required by *COB* 6.5.53R (3). Similarly, where a scheme member or *policyholder* has opted for phased retirement, *COB* 6.5.57R requires his pension plan provider to send him this information when he is about to buy a further annuity. This may be several years after the information on the *open market option* was previously sent to the scheme member or *policyholder* and will ensure that he is made aware, at the time he decides to buy an annuity, of the advantages and disadvantages of using the *open market option*. However, it is not necessary to send the information to scheme members or *policyholders* described in *COB* 6.5.57R (1) or (2) if the provider has already done so in the previous 12 *months*.

Annex D

**Amendment to COB Schedule 1
coming into force on 1 January 2003**

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

...				
COB 5.2.10R	Private customer: Pension opt-out or transfer from an <i>OPS</i> on an execution-only basis	Execution-only transaction, no investment advice given	Upon execution	<u>Indefinitely</u>

<u>COB 5.3.19AR</u>	<u>Private customer:</u> <u>Suitability</u> <u>relating to a</u> <u>pension opt-out</u> <u>or transfer, or</u> <u>FSAVC</u>	<u>Suitability letter</u>	<u>After letter sent</u>	<u>Indefinitely</u>
<u>COB 5.3.19AR</u>	<u>Private customer:</u> <u>Suitability</u> <u>relating to a life</u> <u>policy, pension</u> <u>contract, or</u> <u>stakeholder</u> <u>pension scheme</u>	<u>Suitability letter</u>	<u>After letter sent</u>	<u>6 years</u>

<u>COB 5.3.19AR</u>	<u>Private customer:</u> <u>Suitability</u> <u>relating to any</u> <u>other case</u>	<u>Suitability letter</u>	<u>After letter sent</u>	<u>3 years</u>
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...				
COB 5.3.27R
<u>COB 5.3.28R</u>	<u>Direct offer</u> <u>personal pension</u> <u>scheme</u>	<u>Record of</u> <u>justification for</u> <u>promotion</u>	<u>On making the</u> <u>promotion</u>	<u>6 years</u>
<u>COB 6.6.19R</u>
...				

Annex E

Amendments to the Glossary coming into force on 1 January 2003

Amend the following definition as shown (underlining indicates new text and striking through indicates deleted text).

special purpose vehicle a *body corporate*, explicitly established for the purpose of securitising assets, whose sole purpose (either generally or when acting in a particular capacity) is to carry out one or more of the following functions:

- (a) issuing *designated investments* other than *life policies*;
- (b) redeeming or terminating or repurchasing (whether with a view to re-issue or to cancellation) an issue, (in whole or part) of *designated investments* in connection with the *issue*, redemption, termination or repurchase of *designated investments* other than *life policies*;
- (c) entering into transactions or terminating transactions involving *designated investments* in connection with the *issue*, redemption, termination or re-purchase of *designated investments* other than *life policies*;

~~Subject to the special purpose vehicle having been-~~

- (i) ~~explicitly established for the purpose of securitising assets; and~~
- (ii) ~~assessed by a rating agency.~~

