

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 10)
INSTRUMENT 2003**

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 on 1 March 2003.

Amendments to the Conduct of Business sourcebook

- D. The Conduct of Business sourcebook is amended in accordance with Annex A to this instrument.

Amendments to the Glossary

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

Citation

- F. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 10) Instrument 2003.

By order of the Board
16 January 2003

Annex A

Amendments to the Conduct of Business sourcebook

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

- 3.10.1 R (1) An *unsolicited real time financial promotion* is a *real time financial promotion* which is not a solicited as described in (2) real time financial promotion.

...

...

- 3.11.1 G (1) Under section 238~~(1)~~ of the *Act* (Restrictions on promotion), an *authorised person* must not *communicate* an invitation or inducement to participate in an *unregulated collective investment scheme* ("the scheme promotion restriction"). This applies in the case of a *communication* originating outside the *United Kingdom* only if the *communication* is capable of having an effect in the *United Kingdom*.

...

...

- 3.11.3 G (1) A *firm* may *communicate* an invitation or inducement to participate in an *unregulated collective investment scheme*, which originates in the *United Kingdom* or is capable of having an effect in the *United Kingdom*, only if either:

...

- 3.11.4 R ~~This chapter applies only in relation to invitations or inducements that may be *communicated* by a *firm* without contravening section 238(1) of the *Act*. In relation to the *communication* by a *firm* of an invitation or inducement to participate in an *unregulated collective investment scheme*, this chapter applies only if:~~

- (1) the *communication* is permitted by COB 3.11.2R;
- (2) in the case of a *communication* originating outside the *United Kingdom*, the *communication* is capable of having an effect in the *United Kingdom*; and
- (3) the *communication* is not exempted by the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

- 3.11.5 G The purpose of COB 3.11.4R is to give effect to the limitation of

the *FSA's* rule-making power in section 145(3)(b) of the *Act* (Financial promotion rules). It also ensures that this chapter does not apply to an invitation or inducement communicated by a firm under an exemption from the scheme promotion restriction in the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

...

COB 3: Financial promotion

Annex 5 (R)

...

2 Table Permitted promotion of unregulated collective investment schemes

Promotion to:	Promotion of an unregulated collective investment scheme which is:
<p>...</p> <p>Category 4 <i>person</i>:</p> <p>...</p>	<p>...</p>
	<p>2. Any <i>collective investment scheme</i> provided that the participation of eligible employees is to facilitate their co-investment:</p> <p>(i) with one or more <i>companies</i> in the same <i>group</i> as their employer (which may include the employer) and/or</p> <p>(ii) with one or more <i>clients</i> of such a <i>company</i>.</p>

Promotion to:	Promotion of an unregulated collective investment scheme which is:
...	irrespective of whether the eligible employees co-invest through a company or a collective investment scheme falling within A(2)(ii) above or a trust under which they or a member of their immediate family is a potential beneficiary.

...

7.1.10 R In addition to *COB 7.1.3 R*, a *broker fund adviser*, acting for a *private customer*, must obtain an acknowledgement from the *private customer* stating that he understands the nature of the *firm's* dual role as adviser to the *private customer* and adviser to the *long-term insurer*, *overseas long-term insurer* or operator of the *broker fund fund* in question.

...

- 7.1.12 R (1) A broker fund adviser must ensure that it does not effect, personally recommend or arrange (bring about) the issue to a customer of a life policy by a relevant insurance undertaking, under which contributions will be made to the adviser's broker fund, unless the relevant insurance undertaking is contractually responsible to that customer in writing for the acts and omissions of the broker fund adviser or its associate in its role as an adviser to that fund as if they were the acts or omissions of the relevant insurance undertaking and will remain responsible until the earlier of:
- (a) the broker fund adviser or its associate ceasing to be the adviser to the fund; and
- (b) the termination of the policy.
- (2) In (1), a relevant insurance undertaking is an insurance undertaking which does not have permission to effect or carry on long-term insurance business but which is authorised to carry on long-term insurance business in the Bailiwick of Guernsey, the Isle of Man, the Commonwealth of Pennsylvania, the State of Iowa or the Bailiwick of Jersey.
- (3) In (1), associate has the extended meaning given to it in the definition of broker fund adviser.
- (4) A firm must comply with the requirements in (1) where it effects, personally recommends or arranges (brings about) switching in relation to a broker fund for the customer.

Product providers with broker funds

7.1.13 R A product provider with a broker fund must not enter into a transaction with a customer in respect of a broker fund, unless there is a written agreement in force between it, the broker fund adviser and any other person having responsibility for the management of the broker fund to which the agreement relates, clearly establishing the responsibilities of each party to the agreement, the investment objectives of the broker fund and the policies and strategies that are to be followed to achieve those objectives.

...

7.13.4 R A firm must take reasonable steps to ensure that:

...

- (2) ~~when it gives permission to~~ permits an any of its employees to

undertake a *personal account transaction in a designated investment in relation to which the firm conducts designated investment business, or in any related investment*, it receives prompt notification of, or is otherwise able to identify, the transaction.

...

7.13.7 E (1) For the purposes of COB 7.13.4R, a *firm's* "reasonable steps" should ensure that:

...

(c) procedures are established and maintained by the *firm* that are appropriate to its business, and that are designed with a view to ensuring that:

(i) each of its *employees* does not undertake a *personal account transaction in a designated investment in relation to which the firm conducts designated investment business, or in any related investment*, unless the *firm* has given its permission in writing to that transaction, or to transactions generally in *designated investments* of that kind;

...

...

9.1.5 G In accordance with article 42 of the *Regulated Activities Order*, a *firm* ("I") will not be *arranging safeguarding and administration of assets* if it introduces a *client* to another firm whose *permitted activities* include the *safeguarding and administration of investments*, or to an *exempt person* acting as such, with a view to that other firm or exempt person:

- (1) providing a safe custody service in the *United Kingdom*; or
- (2) arranging for the provision of a safe custody service in the *United Kingdom* by another *person*;

and the other *firm, exempt person* or other *person* who is to provide the safe custody service is not in the same *group* as, ~~or remunerated by, the introducing firm I,~~ and does not remunerate I.

Annex B

Amendments to the Glossary

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

broker fund (in relation to a fund for which the *firm* is of will be a *broker fund adviser*):

(a) an actual or notional fund of a *long-term insurer* ~~;~~ or overseas long-term insurer, which contains or will contain contributions made or to be made by a *client* or *clients* of a *firm* in connection with a *life policy* or *policies*;

broker fund adviser ~~a person~~ an independent intermediary who has, or whose *associate* being an *authorised person* has, an arrangement with a *long-term insurer*, overseas long-term insurer or ~~with the operator of a regulated collective investment scheme or an unregulated collective scheme~~, under which it is to be expected that the *long-term insurer*, overseas long-term insurer or *operator* will take into account the advice of that ~~person~~ independent intermediary or his *associate*:

- (a) in the case of a *long-term insurer* or overseas long-term insurer, on any matter likely to influence the performance of any of the *long-term insurer's* or overseas long-term insurer's funds or any *investment* issued by the *long-term insurer* or overseas long-term insurer into which cash contributions of that ~~person's~~ independent intermediary's *customers* have been made;
- (b) in the case of an *operator*, on the composition of the property of the *collective investment scheme* into which cash contributions of that ~~person's~~ independent intermediary's *customers* have been made;

in this definition, *associate* includes any *authorised person* in respect of whose services the first ~~person~~ independent intermediary receives any benefit or reward, either directly or indirectly, in connection with advice of the kind described in (a) and (b) given to a *long-term insurer* or overseas long-term insurer or to a *collective investment scheme operator*.

