

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 13)
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 September 2003.

Amendments to the Conduct of Business sourcebook

- D. The Conduct of Business Transitional Rules are amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook is amended in accordance with Annex B to this instrument.

Amendments to the Glossary

- F. The Glossary is amended in accordance with Annex C to this instrument.

Citation

- G. This instrument may be cited as the Conduct of Business Sourcebook (Amendment No 13) Instrument 2003.

By order of the Board
17 July 2003

Annex A

Amendment to the Conduct of Business Transitional Rules

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

4 Table Miscellaneous Transitional Rules

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies: All rules in the Handbook		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
... 9	<u>Rules in the Handbook</u>	<u>R</u>	<u>Classification of CISs</u> <u>If a firm at any time before 1 September 2003 classified a collective investment scheme in accordance with COB 4.1 (Client classification) as in force at that time, it will not contravene any of the rules in the Handbook by treating the scheme in accordance with that classification.</u>	<u>From 1 September 2003</u>	<u>Various</u>

Annex B
Amendments to the Conduct of Business sourcebook

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

1.2.1 R *COB* applies to every *firm*, except that:

- (1) *COB* 9 (Client assets) does not apply to an *incoming EEA firm* other than an *insurer*, with respect to its *passported activities*;

...

~~ISD investment~~ UK firms: custody services from EEA branches

1.4.9 R In addition to the situations in *COB* 1.4.2R and *COB* 1.4.4R, *COB* 9 (Client assets) applies to a all UK firms, other than *insurers*, ~~which is an ISD investment firm~~ in relation to *passported activities* carried on by it from a *branch* in another *EEA State*.

...

Restriction in connection with ~~the sale of~~ packaged products

2.2.5 E (1) A *firm* should not enter into any of the following arrangements with an *independent intermediary* in relation to ~~the sale of a packaged product~~ if any *commission* is required to be disclosed to a *customer* under *COB* 6.2 (Provision of key features):

...

- (d) an arrangement to pay *commission* other than to the *firm* responsible for ~~the~~ a sale, unless:

...

...

3.7.5 G A *firm* may arrange for records to be kept in such form as it chooses, such as hard copy, disk or tape. If the *financial promotion* is not in a written form, the record should represent the actual *financial promotion* as accurately as possible. A record would be “readily accessible” if it were available for inspection within 48 hours of the request being made. SYSC 3.2.20R (2) (Records to be capable of reproduction on paper) does not apply to records of ~~non-~~*real time financial promotions*.

...

3.9.27 G To meet the requirements of *COB* 3.9.26R, a *direct offer financial promotion relating to an Enterprise Investment Scheme* should include the following information about the company issuing the *EIS shares*:

- (1) assets and liabilities;
- (2) financial position;
- (3) profits and losses;
- (4) prospects; and
- (5) rights attaching to the *EIS shares*.

...

Classification of another firm or an overseas financial services institution

4.1.7 R ...

- (4) If C1 is a ~~regulated~~ *collective investment scheme*, C1 is a ~~private~~ an intermediate customer of F.
- (5) If C1 is an ~~unregulated~~ *collective investment scheme*, C1 is an ~~intermediate customer~~ of F. [deleted]

...

Classification of a collective investment scheme

- 4.1.7A G (1) COB 4.1.7R, paragraph (1)(b)(iii) of the definition of *client* and paragraph (1)(j) of the definition of *intermediate customer* together have the effect that a *collective investment scheme*, whether it has separate legal personality or not, will always be classified as an *intermediate customer*, unless classified as a *private customer* under COB 4.1.14R or (if an *unregulated collective investment scheme*) as a *market counterparty* under COB 4.1.12R. This means that, for a *firm* acting as the *trustee* of a unit trust, for example, the *client* for these purposes will be the scheme and therefore an *intermediate customer*.
- (2) The application of COB to an *operator, trustee* or *depository* is governed by COB 10 (Operators of collective investment schemes) and COB 11 (Trustee and depository activities).
- (3) In many cases, a *firm* such as an *investment manager* or *custodian* will carry on activities with or for an *operator, trustee* or *depository* of the scheme rather than with or for a scheme.

...

4.1.12 R A *firm* may classify a *client* (other than another *firm*, *regulated collective investment scheme*, or an *overseas financial services institution*) who would otherwise be an *intermediate customer* as a *market counterparty* if:

...

...

- 4.1.14 R (1) *A firm may classify as a private customer any client (other than a firm, unless it is an ICVC, or an overseas financial services institution) who would otherwise be a market counterparty or an intermediate customer, and must notify any such client accordingly.*
 ...
- 9.1.6 G *Firms are reminded that, under COB 1.2.1R(1), the custody rules do not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities. The application of the custody rules to the activity of a firm is also dependent on the location from which the activity is undertaken (see COB 1.4.3R).*
 ...
- 9.2.3 G *Firms are reminded that, under COB 1.2.1R(1), the mandate rules do not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities. The application of the mandate rules is also dependent on the location from which the activity is undertaken (see COB 1.4.3R).*
 ...
- 9.3.3 G *Firms are reminded that, under COB 1.2.1R(1), the client money rules do not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities. The application of the client money rules to the activity of a firm is also dependent on the location from which the activity is undertaken (see COB 1.4.3R).*
 ...
- 9.4.2 G *Firms are reminded that, under COB 1.2.1R(1), this section does not apply to an incoming EEA firm, other than an insurer, with respect to its passported activities. The application of this section is also dependent on the location from which the activity is undertaken (see COB 1.4.3R).*
 ...
- 10.2.2 G ~~[Deleted] Firms which are operators are reminded that under the Glossary:~~
 (1) ~~every regulated collective investment scheme is a private customer; and~~
 (2) ~~every unregulated collective investment scheme is an intermediate customer.~~
 ...

10.2.5 R Table Application of conduct of business rules
This table belongs to COB 10.2.1R

Application of conduct of business rules		
Chapter, Section or Rule	Description	Modifications
...		
7.5	Best execution	<u>In the case of a regulated collective investment scheme, COB 7.5 applies as if the scheme was a private customer.</u> In the case of an unregulated collective investment scheme, COB 10.5.3R applies instead of COB 7.5.4R in the circumstances set out in COB 10.5.3R.
...		

...

- 11.2.1 G ~~[Deleted] Firms which are depositaries are reminded that, under the Glossary:~~
- ~~(1) every regulated collective investment scheme is a private customer;~~
 - ~~and~~
 - ~~(2) every unregulated collective investment scheme is an intermediate customer.~~

Annex C

Amendments to the Glossary

- controlled activity* an activity specified in Part I of Schedule 1 to the *Financial Promotion Order* (Controlled activities)- (in accordance with section 21(9) of the Act (The classes of activity and investment)) any of the following activities specified in Part I of Schedule 1 to the *Financial Promotions Order* (Controlled Activities):
- (a) accepting deposits (paragraph 1)
 - (b) effecting contracts of insurance (paragraph 2(1));
 - (c) carrying out contracts of insurance (paragraph 2(2));
 - (d) dealing in securities and contractually based investments as principal or agent (paragraph 3(1));
 - (e) arranging (bringing about) deals in investments (paragraph 4(1));
 - (f) making arrangements with a view to transactions in investments (paragraph 4(2));
 - (g) managing investments (paragraph 5);
 - (h) safeguarding and administering investments (paragraph 6);
 - (i) advising on investments (paragraph 7);
 - (j) advising on syndicate participation at Lloyd's (paragraph 8);
 - (k) providing funeral plan contracts (paragraph 9);
 - (l) providing qualifying credit (paragraph 10);
 - (m) arranging qualifying credit etc. (paragraph 10A –coming into force 31 October 2004);
 - (n) advising on qualifying credit etc. (paragraph 10B –coming into force 31 October 2004);
 - (o) agreeing to carry on specified kinds of activity (paragraph 11) which are specified in paragraphs 3 to 10 (10B from 31 October 2004) of Part I of Schedule 1 to the *Financial Promotion Order*.

direct offer financial promotion a ~~non-real time~~ *financial promotion* which:

- (a) contains:
 - (i) an offer by the *firm* or another *person* to enter into a *controlled agreement* with anyone who responds to the *financial promotion*; or
 - (ii) an invitation to anyone who responds to the *financial promotion* to make an offer to the *firm* or another *person* to enter into a *controlled agreement*; ~~and~~
- (b) specifies the manner of response or includes a form in which any response is to be made (for example by providing a tear-off slip); and
- (c) is not a real time financial promotion.

intermediate customer (a) ...
 ...
 (j) ~~an unregulated collective investment scheme~~;
 (k) ...
 (l) ...

but excluding:

- (i) ~~a regulated collective investment scheme~~; and [deleted]
- (ii) ...

private customer (1) (except in COB 3) a client who is not a *market* counterparty or an *intermediate* customer, including:

- (a) an individual who is not a *firm*;
- (b) an overseas individual who is not an *overseas financial services institution*;
- (c) ~~a regulated collective investment scheme~~; [deleted]

...