MiFID (DEFERRED MATTERS AND CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2007

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the General Provisions (Powers exercised).

B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force as follows:

   (1) Part 2 of Annex S (SUP) comes into force on 5 November 2007;
   (2) the remainder of the instrument comes into force on 1 November 2007.

Amendments to the Handbook

D. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

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E. In this instrument the “notes” (indicated by “Note:”) are included for the convenience of readers but do not form part of the legislative text.

Citation

F. This instrument may be cited as the MiFID (Deferred Matters and Consequential Amendments) Instrument 2007.

By order of the Board
25 October 2007

Amended by Addendum
25 October 2007

Errata
1 November 2007
Annex A

Amendments to the Handbook, the Handbook Guides and the Regulatory Guides

In this Annex, the word or phrase in column (1) is replaced in each place where it occurs by the word or phrase in column (2), except where indicated in column (3) or unless the context requires otherwise.

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Annex B

Amendments to the Glossary of definitions

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

G Guidance on the Glossary of definitions


3. Each sourcebook or manual has a reference code of two or more letters, usually a contraction or abbreviation of its title (for example, GEN stands for the General Provisions and COB COBS for the Conduct of Business sourcebook).

... Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

*alternative projection* (in COBS) a projection calculated on the basis described in paragraph 1.5R of the projection rules (COBS 13 Annex 2R), rather than in accordance with the remainder of those rules.

*appropriate charges information* (in COBS) information about charges which is calculated and presented in accordance with the charges rules in COBS 13.4.1R and COBS 13 Annex 3.

*contracting out comparison* a description of:

(a) the benefits that minimum contributions would secure if a retail client did not contract out of the State Second Pension; and

(b) the material differences between the anticipated position if a retail client remains contracted into the State Second Pension and the anticipated position if that client contracts out;

which is calculated to the client’s state retirement age using the lower and higher rates of return and aggregate contributions for the current and the next two tax years.

*deductions plan* (in COBS) a plan that describes the deductions from asset share that a firm expects to make for the cost of guarantees and the use of capital (COBS 20.2.8R).

*generic projection* (in COBS) a projection which reflects the terms of a contract which is representative of the type of business normally undertaken by the firm, or the type of business it is promoting, rather than the terms of a particular
contract with, or that will be offered to, a particular client.

**higher rate of return** (in COBS) the higher rate of return described in paragraph 2.3 of the projection rules (COBS 13 Annex 2).

**intermediate rate of return** (in COBS) the intermediate rate of return described in paragraph 2.3 of the projection rules (COBS 13 Annex 2).

**Lloyd's complaint procedures** the procedures maintained by the Society under DISP 1.7.1R.

**Lloyd's complaint rules** DISP 1.7.

**lower rate of return** (in COBS) the lower rate of return described in paragraph 2.3 of the projection rules (COBS 13 Annex 2).

**personal projection** a projection that reflects the terms of a particular contract with, or to be offered to, a particular client.

**PPFM guidance table** the table in COBS 20.3.8G (Guidance on with-profits principles and practices).

**PPFM issues table** The table in COBS 20.3.6R (Issues to be covered in PPFM).

**projection period** (in COBS) the period covered by a standardised deterministic projection, which begins on the date the investment is reasonably expected to be made and ends on the projection date described in paragraph 2.1 of COBS 13 Annex 2.

**respondent** (in DISP) a firm, licensee or VJ participant covered by the compulsory jurisdiction, consumer credit jurisdiction or voluntary jurisdiction of the Financial Ombudsman Service.

**security-based CTF** a CTF, other than a stakeholder CTF, which is not limited to deposit based investment.

**senior personnel** those persons who effectively direct the business of the firm, which could include a firm’s governing body and other persons who effectively direct the business of the firm.

**standardised deterministic projection** a projection which is either a generic projection or a personal projection produced in accordance with the assumptions contained in COBS 13 Annex 2.

**statutory money purchase illustration** an annual illustration of the contributions made for the benefit of, and the potential benefits due to, a member of a personal pension scheme, which is prepared in accordance with the Personal Pension Schemes (Disclosure of Information) Regulations 1987 (SI 1987/1110).
TPF rules

the rules and guidance in COBS 20.2.1R to COBS 20.2.39G and COBS 20.2.51R to COBS 20.2.57G.

Amend the following definitions as shown.

**additional voluntary contribution**

deleted

**adviser**

an individual who is: a representative, or an appointed representative or a tied agent.

**approved counterparty**

any of the following:

(a) …

(c) an ISD a MiFID investment firm whose authorisation (as referred to in article 3 of the ISD 5 of MiFID) authorises it to carry on activities of the kind referred to in (b); or

(d) in respect of a transaction involving a new issue of securities which are to be listed, the issuer or an ISD a MiFID investment firm acting on behalf of the issuer.

**associate**

…

(3) ...

(a) …

(b) an appointed representative of A, or a tied agent of A, or of any affiliated company of A;

(c) …

**AVC**

additional voluntary contribution, a voluntary contribution arrangement paid by a member of an occupational pension scheme under the terms of the scheme or of a separate contract.

**branded fund**

deleted

**capital resources**

deleted

**geared rules**

deleted

**claims handling**

deleted

**client**

(1) …

(a) every client is a customer or a market counterparty, an eligible counterparty;
(b) …

(i) …

(ii) a client of an appointed representative of a firm with or for whom the appointed representative acts or intends to act in the course of business for which the firm has accepted responsibility under section 39 of the Act (Exemption of appointed representatives) or, where applicable, a client of a tied agent of a firm;

…

(iv) if a person ("C1"), with or for whom the firm is conducting or intends to conduct designated investment business, is acting as agent for another person ("C2"), either C1 or C2 in accordance with COB 4.1.5R (Agent as client) the rule on agent as client COBS 2.4.3R;

…

compensation scheme the Financial Services Compensation Scheme established under section 213 of the Act (The compensation scheme) for compensating persons in cases where authorised persons and appointed representatives, or, where applicable, a tied agent of a firm, are unable, or are likely to be unable, to satisfy claims against them.

complaints reporting rules DISP 4.10 1.6.

connected person …

(3)

(a) …

(b) …

(c) he is the partner, manager, employee, agent, appointed representative, or, where applicable, tied agent, banker, auditor, actuary or solicitor of: …

…

consumer (1) …

(2) …

(a) who uses, has used, or is or may be contemplating using,
any of the services provided by:

(i) …

(ii) a person acting as an appointed representative, or, where applicable, a tied agent; or

(b) …

control (1) (except for a common platform firm in (2)) (in relation to the acquisition, increase or reduction of control of a firm) the relationship between a person and the firm or other undertaking of which the person is a controller.


deal on own account (for the purposes of GENPRU and BIPRU) has the meaning in BIPRU 1.1.23R (Meaning of dealing on own account) which is in summary the service referred to in paragraph 2 point 3 of Schedule Section A to the Annex I to the ISD MiFID, subject to the adjustments in BIPRU 1.1.23R(2) and BIPRU 1.1.23R(3) (Implementation of Article 5(2) of the Capital Adequacy Directive).

designated investment business any of the following activities, specified in Part II of the Regulated Activities Order (Specified Activities), which is carried on by way of business:

…

o. providing basic advice on a stakeholder product (article 52B).

DGD [deleted]

DMD [deleted]

domestic ECA provider [deleted]

EEA ECA recipient [deleted]

electronic commerce activity provider [deleted]

eligible counterparty (1) (for the purposes other than those set out in (2)) (in accordance with COBS 3.6.1R) a client that is either a per se eligible counterparty or an elective eligible counterparty.
(2) (for the purposes of PRIN, in relation to activities other than designated investment business) a client categorised as an eligible counterparty in accordance with PRIN 1 Ann 1R.

eligible counterparty business

the following services and activities carried on by a firm:

(a) dealing on own account, execution of orders on behalf of clients or reception and transmission of orders; or

(b) any ancillary service directly related to a service or activity referred to in (a); or

(c) arranging in relation to business which is not MiFID or equivalent third country firm business;

but only to the extent that the service or activity is carried on with or for an eligible counterparty.

employee

(1) (for all purposes except those in (2)) an individual:

(a) …

(b) whose services, under an arrangement between that person and a third party, are placed at the disposal and under the control of that person;

but excluding an appointed representative or a tied agent of that person.

(2) (for the purposes of:

(a) COB 7.13 COBS 11.7 (Personal account dealing);

…

(e) …

an individual:

(i) …

(ii) who is:

(A) an appointed representative or, where applicable, a tied agent of the person referred to in (1); or

(B) employed or appointed by an appointed representative or, where applicable, a tied agent of that person, whether under a contract
of service or for services or otherwise, in connection with the business of the appointed representative or tied agent for which that person has accepted responsibility.

excluded communication

the following types of communication financial promotion (a firm may rely on more than one of the paragraphs in relation to the same financial promotion):

…

(d) a personal quotation or illustration form; or

(e) a "one-off" financial promotion that is not a cold call ...

…

(iii) the financial promotion is not part of an organised marketing campaign; or


field representative

an appointed representative of the firm or, where applicable, a tied agent, or an employee of the firm (or of its appointed representative or, where applicable, its tied agent), whose normal fixed place of business is not a business address of the firm which appears on the firm's stationery.

free-standing additional voluntary contribution [deleted]

FSAVC

free-standing additional voluntary contribution an arrangement which allows a member of an occupational pension scheme to make AVCs to a private pension policy or pension contract, where the policy or contract is separate from, but associated with, an occupational pension scheme which is a registered pension scheme under Chapter 2 of Part 4 of the Finance Act 2004.

gearing [deleted]

ICD [deleted]

IMD [deleted]

IMD minimum implementation provisions [deleted]

incoming [deleted]
incoming ECA provider  a person, other than an exempt person or a person who has been given a waiver in accordance with article 8(1) of the E-Money Directive, who:

(a) provides an electronic commerce activity, from an establishment in an EEA State other than the United Kingdom, with or for a UK an ECA recipient present in the United Kingdom; and

…

initial margin [deleted]

intended retirement date [deleted]

intermediate customer (for the purposes only of COBS TP 1 (Transitional Provisions in relation to Client Categorisation)):

(1) (except in COB 3) a client who is not a market counterparty and who is:

(a) …

…

introducer an individual appointed by a firm, or by an appointed representative or, where applicable, a tied agent, to carry out in the course of designated investment business either or both of the following activities:

(a) …

…

ISD instrument [deleted]

ISD investment firm [deleted]

Lloyd's market activities [delete existing definition and replace with the following text]

(a) advising on syndicate participation at Lloyd's, including advising on a transaction in the capacity transfer market;

(b) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's;

(c) agreeing to carry on the regulated activities in (a) and (b);

(d) carrying on designated investment business which is not MiFID
business in relation to funds at Lloyd's; or

(e) communicating or approving a financial promotion in relation to:

(i) the underwriting capacity of a Lloyd's syndicate; or
(ii) membership of a Lloyd's syndicate; or
(iii) life policies written at Lloyd's; or
(iv) any of the activities specified in (a) or (d).

market counterparty (for the purposes only of COBS TP 1 (Transitional Provisions in relation to Client Categorisation));

(1) (except in COB 3) a client who is:

(a) …

material interest (in COB COBS) (in relation to a transaction) any interest of a material nature, other than:

(a) …

(b) goods or services which can reasonably be expected to assist in carrying on designated investment business with or for clients and which are provided or to be provided in compliance with COB 7.18.3R (Use of dealing commission to purchase goods or services) COBS 11.6.3R.

outgoing ECA provider a firm which:

(a) provides an electronic commerce activity, from an establishment in the United Kingdom, with or for an EEA-ECA recipient present in an EEA State other than the United Kingdom; and

(b) …

outgoing electronic commerce communication [deleted]

pension transfer a transaction, resulting from the decision of a retail client who is an individual, to transfer benefits from:

…

(f) a deferred annuity policy, where the eventual benefits depend on
investment performance in the period up to the intended retirement date when those benefits will come into payment.

periodic statement a report which a firm is required to provide to a client under COBS 16.3 (Periodic reporting).

post-sale notice [deleted]

pre-sale notice [deleted]

principal (1) in relation to a person:

(a) …

(b) (if the person is an appointed representative or, where applicable, a tied agent) the authorised person who is party to a contract with the appointed representative, or who is responsible for the acts of the tied agent, resulting in him being exempt under section 39 of the Act (Exemption of appointed representatives).

(2) …

private customer (for the purposes only of COBS TP 1 (Transitional Provisions in relation to Client Categorisation)):

(1) (except in relation to COB 3, 4.2 and 6.4) subject to (h), a client who is not a market counterparty or an intermediate customer, including:

(a) …

(e) a person to whom a firm provides basic advice on stakeholder products, gives basic advice:

… …

regulated activity in accordance with section 22 of the Act (The classes of activity and categories of investment)) any of the following activities specified in Part II of the Regulated Activities Order (Specified Activities):

…

(gf) making arrangements with a view to a home purchase plan (article 25C(2));

(gg) operating a multilateral trading facility (article 25D);

…

(oa) providing basic advice on stakeholder products
which is carried on by way of business and relates to a specified investment applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind.

regulated institution

any of the following:

...  

(e) an ISD a MiFID investment firm whose authorisation (as referred to in article 3 of the ISD 5 of MiFID) authorises it to carry on activities of the kind referred to in (d).

regulated market

[delete existing definition and replace with the following]

a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of MiFID.

[Note: article 4(1)(14) of MiFID]

relevant security

(1) (in MAR 2) when used with reference to the Buy-back and Stabilisation Regulation) (in accordance with Article 2(6) of the Buy-back and Stabilisation Regulation) shares, debentures, government and public securities, warrants and certificates representing certain securities transferable securities which are admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made, and which are the subject of a significant distribution.

(2) (otherwise in MAR 2) shares, debentures, government and public securities, warrants and certificates representing certain securities transferable securities.

(3) (in LR) has the same meaning as in section 80 of the Companies Act 1985.

representative

an individual who:

(a) is appointed by a firm, or by an appointed representative of a firm, to carry on any of the following activities:

(i) ...
(ii) providing basic advice on stakeholder products;

... 

scheme (1) (except in COBS, CASS and SUP) a collective investment scheme.

(2) (in COBS, CASS and SUP):

(a) a regulated collective investment scheme;

(b) an investment trust where the relevant shares have been or are to be acquired through an investment trust savings scheme;

(c) an investment trust where if:

(i) the relevant shares are to be held within an ISA or PEP which promotes one or more specific investment trusts in a wrapper or personal pension scheme; and

(ii) the trust and the wrapper or personal pension scheme will be promoted together;

(d) (in COB 10 COBS 19.5) in addition to (a), (b) and (c), an unregulated collective investment scheme.

securitised derivative an option or contract for differences which, in either case, is listed under LR 19 of the listing rules (including such an option or contract for differences which is also a debenture). (See also COB 5.4.3AG for the treatment of a securitised derivative.)

shortfall (1) (in relation to cancellation of an investment agreement) the amount a firm is entitled to charge a customer for the market loss in accordance with COB 6.7.54R to COB 6.7.58R (Shortfall: Exceptions to shortfall, COBS 15.4.3R).

(2) ...

statement of demands and needs [deleted]

surrender value ...

(b) where the contract is a pension contract personal pension scheme or stakeholder pension scheme, the amount payable on the transfer of the investor's accrued rights under that contract to another pension contract personal pension scheme or stakeholder pension scheme;
...  

traded on [deleted]

transaction-specific advice advice on investments:

(a) given in connection with dealing or arranging activities carried on by the firm that fall within MAR 3.1.2R(2)(a), (b) or (c); or

(i) dealing in investments as principal; or

(ii) dealing in investments as agent; or

(iii) acting as an arranger; or

...

transfer value analysis [deleted]

UK ECA recipient [deleted]

venture capital contact (when a firm carries on designated investment business regulated activities with or for a person in the course of or as a result of carrying on venture capital business) that person in connection with that designated investment business regulated activity if:

...
Annex C

Amendments to the Principles for Businesses (PRIN)

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

Approach to client classification categorisation

1.2.2 G Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers (that is, clients which are not eligible counterparties). The approach that a firm needs to take regarding classification categorisation of clients into customers and eligible counterparties will depend on whether the firm is carrying on designated investment business or other activities, as described in PRIN 1.2.3G and PRIN 1.2.4G.

Delete the text of 1.2.3G and replace it with the text shown below, which is not underlined.

Classification: designated investment business

1.2.3 G (1) In relation to the carrying on of designated investment business, a firm's categorisation of a client under the COBS client categorisation chapter (COBS 3) will be applicable for the purposes of Principles 6, 7, 8 and 9.

(2) The person to whom a firm gives basic advice will be a retail client for all purposes, including the purposes of Principles 6, 7, 8 and 9.

(3) In relation to carrying on activities other than designated investment business (for example, general insurance business or accepting deposits) the firm may choose to comply with Principles 6, 7, 8 and 9 as if all its clients were customers. Alternatively, it may choose to distinguish between eligible counterparties and customers in complying with those Principles. If it chooses to make such a distinction, it must comply with PRIN 1 Ann 1R in determining whether that client is an eligible counterparty (see PRIN 3.4.2R). In doing so, the requirements in SYSC will apply, including the requirement to make and retain adequate records.

(4) In relation to carrying on activities that fall within both (1) and (3) (for example, mixed designated investment business and accepting deposits), a firm's categorisation of a client under the COBS client categorisation chapter (COBS 3) will be applicable for the purposes of Principles 6, 7, 8 and 9.
Classification: other activities

1.2.4 G In relation to the carrying on of activities other than designated investment business, for example general insurance business or accepting deposits, only COB 4.1.12R and COB 4.1.13G (Large intermediate customer classified as a market counterparty) and COB 4.1.14R (Client classified as a private customer) in COB 4.1 (Client classification) apply (see PRIN 3.4.2R). [deleted]

1.2.5 G A firm is therefore not required to classify its clients (because COB 4.1.4R does not apply) and may choose to comply with Principles 6, 7, 8 and 9 as if all its clients were customers. Alternatively, it may choose to distinguish between eligible counterparties and customers in complying with those Principles. But, in that case, the firm would need to classify any client treated as an eligible counterparty. In doing this, the requirements in SYSC will apply, including the requirement to establish appropriate systems and controls and the requirement to make and retain adequate records. In classifying its eligible counterparties, it would be open to such a firm, although not obligatory, to permit professional clients to change to eligible counterparty status in accordance with COB 4.1.12R. It would also have to treat an eligible counterparty as a customer if the firm had chosen to treat the retail client in the circumstances set out in COB 4.1.14R. [deleted]

1.2.6 G If the person with or for whom the firm is carrying on an activity is acting through an agent, the ability of the firm to treat the agent as its client under COB 4.1.5R COBS 2.4.3R (Agent as client) will not be available. For example, if a general insurer is effecting a general insurance contract through a general insurance broker who is acting as agent for a disclosed policyholder, the policyholder will be a client of the firm and the firm must comply with the Principles accordingly.

After PRIN 1 insert the following new Annex. The text is not underlined.

PRIN 1 Ann 1 R  Non-designated investment business – clients that a firm may treat as an eligible counterparty for the purposes of PRIN

1.1 A firm may categorise the following types of client as an eligible counterparty for the purposes of PRIN:

(1) a properly constituted government (including a quasi-governmental body or a government agency) of any country or territory;

(2) a central bank or other national monetary authority of any country or territory;

(3) a supranational whose members are either countries or central banks or national monetary authorities;

(4) a State investment body, or a body charged with, or intervening in, the
management of the public debt;

(5) another firm, or an overseas financial services institution;

(6) any associate of a firm (except an OPS firm), or of an overseas financial services institution, if the firm or institution consents;

(7) a client when he is classified as an eligible counterparty in accordance with 1.2; or

(8) a recognised investment exchange, designated investment exchange, regulated market or clearing house.

1.2 A firm may classify a client (other than another firm, regulated collective investment scheme, or an overseas financial services institution) as an eligible counterparty for the purposes of PRIN under 1.1(7) if:

(1) the client at the time he is classified is one of the following:

(a) a body corporate (including a limited liability partnership) which has (or any of whose holding companies or subsidiaries has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time);

(b) a body corporate that meets (or any of whose holding companies or subsidiaries meets) two of the following tests:

(i) a balance sheet total of 12.5 million euros (or its equivalent in any other currency at the relevant time);

(ii) a net turnover of 25 million euros (or its equivalent in any other currency at the relevant time);

(iii) an average number of employees during the year of 250;

(c) a local authority or public authority;

(d) a partnership or unincorporated association which has net assets of at least £10 million (or its equivalent in any other currency at the relevant time) (and calculated, in the case of a limited partnership, without deducting loans owing to any of the partners);

(e) a trustee of a trust (other than an occupational pension scheme, SSAS, personal pension scheme or stakeholder pension scheme) with assets of at least £10 million (or its equivalent in any other currency), calculated by aggregating the value of the cash and designated investments forming part of the trust's assets, but before deducting its liabilities;

(f) a trustee of an occupational pension scheme or SSAS, or a trustee or operator of a personal pension scheme or stakeholder pension scheme
where the scheme has (or has had at any time during the previous two years):

(i) at least 50 members; and

(ii) assets under management of not less than £10 million (or its equivalent in any other currency at the relevant time); and

(2) the firm has, before commencing business with the client on an eligible counterparty basis:

(a) advised the client in writing that he is being categorised as an eligible counterparty for the purposes of PRIN;

(b) given a written warning to the client that he will lose protections under the regulatory system;

(c) for a client falling under (1)(a) or (b):

(i) taken reasonable steps to ensure that the written notices required by (a) and (b) have been delivered to a person authorised to take such a decision for the client; and

(ii) not been notified by the client that the client objects to being classified as an eligible counterparty;

(d) for a client falling under (1)(c), (d), (e) or (f):

(i) taken reasonable steps to ensure that the written notices required by (a) and (b) have been delivered to a person authorised to take such a decision for the client; and

(ii) obtained the client's written consent or is otherwise able to demonstrate that consent has been given.

...

3.1.1 R PRIN applies to every firm, except that:

...

(4) for a UCITS qualifier, only Principles Principles 1, 2, 3, 7 and 9 apply, and only with respect to the activities in PRIN 3.2.2R (Communication and approval of financial promotions);

(5) PRIN does not apply to an incoming ECA provider acting as such.

3.1.2 G SYSC App 1, COBS 1 Ann 1 and the territorial guidance in PERG 13.6 all contain guidance that is relevant to the reservation of responsibility to a Home State regulator referred to in PRIN 3.1.1R(1).
3.1.3 G  PRIN 3.1.1R(2) reflects article 27 41 of the Banking Consolidation Directive which provides ...

3.3.2 G  ECO 1.1.6R has the effect that PRIN does not apply to an incoming ECA provider acting as such. [deleted]

3.4.2 R  For the purposes of PRIN, the following provisions of COB 4.1 (Client classification) also apply to a firm intending to carry on, or carrying on, activities other than designated investment business. For the purposes of PRIN, a firm intending to carry on, or carrying on, activities that do not involve designated investment business, may treat a client as an eligible counterparty in accordance with PRIN 1 Ann 1 R.

(1) COB 4.1.12R and COB 4.1.13G (Large intermediate customer classified as a market counterparty); and

(2) COB 4.1.14R (Client classified as a private customer).

3.4.3 G  (1) The whole of COB 4.1 (Client classification) COBS 3 (Client categorisation) applies to a firm intending to conduct, or conducting, designated investment business (other than provision giving basic advice on a stakeholder product) and ancillary activities relating to designated investment business. Any client classification established in relation to such business will be applicable for the purposes of Principles 6, 7, 8 and 9.

(2) The person to whom a firm provides basic advice on a stakeholder product will be a retail client for all purposes including the purposes of Principles 6, 7, 8 and 9.

4.1.4 G  (1) ...

(2) ... Further information about these limitations is contained in Part 2 of COBS App 1 COBS 1 Ann 1.
PRIN TP 1 Transitional provisions

There are no transitional provisions in *PRIN*. However:

(1) [deleted]

(2) [deleted]

<table>
<thead>
<tr>
<th>Material to which the transitional provision applies</th>
<th>Transitional Provision</th>
<th>Transitional Provision: dates in force</th>
<th>Handbook provision: coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <em>PRIN 1 Ann 1 R 1.2(2)</em> R</td>
<td>A firm need not comply with <em>PRIN 1 Ann 1 R 1.2(2)</em> in relation to an eligible counterparty if the client was correctly categorised as a market counterparty on 31 October 2007 and the firm complied with <em>COB 4.1.12R(2)</em> (Large intermediate customer classified as market counterparty).</td>
<td>From 1 November 2007 indefinitely</td>
<td>1 November 2007</td>
</tr>
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</table>
Annex D

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1.1 Application of SYSC 2 and SYSC 3

Who?

...  

1.1.1 R SYSC 2 and SYSC 3 apply to every firm except that:

...  

(5) for an authorised professional firm when carrying on non-mainstream regulated activities, SYSC 3.2.6AR to SYSC 3.2.6JG do not apply; and

(6) for a common platform firm, SYSC 2 and SYSC 3 does not apply; and

(7) SYSC 2 and SYSC 3 do not apply to an incoming ECA provider acting as such.

1.1.2 G (1) Question 12 in SYSC 2.1.6 G and SYSC App 1 contain guidance on SYSC 1.1.1 R(1)(b) and (c).

...  

(4) Further guidance on which matters are reserved to a firm's Home state regulator can be found at SUP 13A Annex 2G.

1.1.7 R SYSC 2 and SYSC 3 apply with respect to activities carried on from an establishment maintained by the firm (or its appointed representative or, where applicable, its tied agent) in the United Kingdom unless another applicable rule which is relevant to the activity has a wider territorial scope, in which case SYSC 2 and SYSC 3 apply with that wider scope in relation to the activity described in that rule.

1.1.11A G ECO 1.1.6R has the effect that SYSC does not apply to an incoming ECA provider acting as such. [deleted]

...
2.1.6 G

<table>
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<tr>
<th>Question</th>
<th>Answer</th>
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<tr>
<td>12 How does the requirement to allocate the functions in SYSC 2.1.3R apply to an incoming EEA firm or incoming Treaty firm?</td>
<td>SYSC 1.1.1 R(2) and SYSC 1.1.7R restrict the application of SYSC 2.1.3R for such a firm. Accordingly: (1) … (2) Such a firm is required to allocate the function of oversight in SYSC 2.1.3R(2). However, the systems and controls that must be overseen are those relating to matters which the FSA, as Host State regulator, is entitled to regulate (there is guidance on this in SYSC App 1 SUP 13A Annex 2G). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the firm’s activities carried on from its UK branch. (3) … …</td>
</tr>
</tbody>
</table>

3.1.4 G A firm has specific responsibilities regarding its appointed representatives or, where applicable, its tied agents (see SUP 12).

3.2.3 G (1) A firm’s governing body is likely to delegate many functions and tasks for the purpose of carrying out its business. When functions or tasks are delegated, either to employees or to appointed representatives or, where applicable, its tied agents, appropriate safeguards should be put in place.

3.2.8 R (1) A firm which carries on designated investment business with or for customers retail clients or professional clients must allocate to a director or senior manager the function of:

…

(2) In SYSC 3.2.8R(1) "compliance" means compliance with the rules in:

(a) **COB COBS** (Conduct of Business);

…
4.3.1 A MiFID investment firm common platform firm, when allocating functions internally, must ensure that senior personnel and, where appropriate, the supervisory function, are responsible for ensuring that the firm complies with its obligations under MiFID the regulatory system. In particular, senior personnel and, where appropriate, the supervisory function must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the firm’s obligations under MiFID the regulatory system and take appropriate measures to address any deficiencies.

[Note: article 9(1) of the MiFID implementing Directive]

4.3.2 A MiFID investment firm common platform firm must …

4.3.4 SYSC 2, which sets out how certain functions in a firm should be allocated, does not affect the collective responsibility of the senior personnel of a MiFID investment firm under this section: [deleted]

10.2.2 (1) …

(2) Information may also be withheld or not used by a common platform firm when this is required by an established arrangement maintained between different parts of the business (of any kind) in the same group. This provision does not affect any requirement to transmit or use information that may arise apart from the rules in COB or COBS.

10.2.4 When any of the rules of COB, COBS or CASS …

11.1.4 SYSC 11 does not apply to:

…

(5) an incoming Treaty firm; or

(6) an incoming ECA provider acting as such.

12.1.3 This section does not apply to:

…

(4) an ICVC; or

(5) an incoming ECA provider acting as such.

13.1.4 SYSC 13 does not apply to an incoming ECA provider acting as such.

13.3.1 The following is a non-exhaustive list of rules and guidance in the Handbook that are relevant to a firm's management of operational risk:

(1) …
(2) **COB COBS** contains *rules and guidance* that can relate to the management of operational risk; for example, **COB 2** (Rules which apply to all firms conducting designated investment business), **COB 3** (Financial promotion), **COB 5** (Advising and selling), **COB 7** (Dealing and managing) and **COB 9** (Client assets) **COBS 2** (Conduct of business obligations), **COBS 4** (Communicating with clients, including financial promotions), **COBS 6** (Information about the firm, its services and remuneration), **COBS 7** (Insurance mediation), **COBS 9** (Suitability (including basic advice)), **COBS 11** (Dealing and managing), **COBS 12** (Investment research), **COBS 14** (Providing product information to clients) and **COBS 19** (Pensions: supplementary provisions).

13.5.1 **G** In this chapter, the following interpretations of risk management terms apply:

(1) *a firm’s* risk culture encompasses the general awareness, attitude and behaviour of its *employees* and *appointed representatives or, where applicable, its tied agents*, to risk and the management of risk within the organisation;

13.6.1 **R** A *firm* should consult SYSC 3.2.2G to SYSC 3.2.5G for *guidance* on reporting lines and delegation of functions within a *firm* and SYSC 3.2.13G to SYSC 3.2.14G for *guidance* on the suitability of *employees* and *appointed representatives or, where applicable, its tied agents*. This section provides additional *guidance* on management of *employees* and other human resources in the context of operational risk.

13.7.4 **G** A *firm* should ensure the adequacy of its processes and systems to review external documentation prior to issue (including review by its compliance, legal and marketing departments or by appropriately qualified external advisers). In doing so, a *firm* should have regard to:

(1) compliance with applicable regulatory and other requirements (such as **COB 3** (Financial promotion));

…

14.1.2A **R** This section does not apply to an *incoming ECA provider* acting as such.

14.1.29 **G** When determining the adequacy of its *internal controls*, a *firm* should consider both the potential risks that might hinder the achievement of the objectives listed in SYSC 14.1.28G, and the extent to which it needs to control these risks. More specifically, this should normally include consideration of:

(1) …

(2) how the delegation or contracting of functions or activities to *employees, appointed representatives or, where applicable, its tied agents* or other third parties (for example *outsourcing*) is to be
monitored and controlled (see SYSC 3.2.3G to SYSC 3.2.4G, SYSC 14.1.12G to SYSC 14.1.16G and SYSC 14.1.33G; additional guidance on the management of outsourcing arrangements is also provided in SYSC 13.9);

…

15.1.2A  G  This section does not apply to an incoming ECA provider acting as such.
16.1.2A  G  This section does not apply to an incoming ECA provider acting as such.
17.1.2A  G  This section does not apply to an incoming ECA provider acting as such.
18.2.2  G  (1)  Firms are encouraged to consider adopting (and encouraged to invite their appointed representatives or, where applicable, their tied agents to consider adopting) appropriate internal procedures which will encourage workers with concerns to blow the whistle internally about matters which are relevant to the functions of the FSA.

…

Delete SYSC Appendix 1. The text of this appendix is not shown struck through.

SYSC Appendix 1: Matters reserved to a Home State regulator (see SYSC 1.1.1 R (1)(b) and SYSC 1.1.1 R (1)(c)) (SYSC App 1
[deleted]
Annex E

Amendments to the Threshold Conditions sourcebook (COND)

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

Competent and prudent management and exercise of due skill, care and diligence

2.5.7 G In determining whether a firm will satisfy and continue to satisfy threshold condition 5 in respect of having competent and prudent management and exercising due skill, care and diligence, relevant matters, as referred to in COND 2.5.4G(2), may include, but are not limited to whether:

(1) ...

(4) those persons who perform controlled functions under certain arrangements entered into by the firm or its contractors (including appointed representatives or, where applicable, tied agents) act with due skill, care and diligence in carrying out their controlled function (see APER 4.2 (Statement of Principle 2) or managing the business for which they are responsible (see APER 4.7 (Statement of Principle 7));

...
Annex F

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

1.1.4  G The relevance of MiFID to the Statements of Principle will depend on the extent to which the corresponding requirement imposed on firms under MiFID is reserved to a Home State regulator or has been disapplied under MiFID (see APER 2.1.1AP and FIT 1.2.4AG. See also COBS App1 Part 3 Ann 1, Part 2, 1.1R (EEA territorial scope rule: compatibility with European law)).

4.3.2  G In many cases the required standard will be set out in MAR 3 (Inter-Professional Conduct) and the Code of Market Conduct (MAR 1). Market codes and exchange rules will also be relevant. [deleted]

4.3.3  E A factor to be taken into account in determining whether or not an approved person's conduct complies with this Statement of Principle (APER 2.1.2P) is whether he, or his firm, has complied with MAR 3 (Inter-Professional Conduct) or the Code of Market Conduct (MAR 1) or relevant market codes and exchange rules.
Annex G

Amendments to The Fit and Proper test for Approved Persons (FIT)

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

2.2.1 G In determining a person's competence and capability, the FSA will have regard to matters including but not limited to:

(1) whether the person satisfies the relevant requirements of the FSA's Training and Competence sourcebook (TC) requirements in relation to the controlled function the person performs or is intended to perform;

(2) …
Annex H

Amendments to the General Provisions (GEN)

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

1.1.1 R  (1) …

(2) For a UCITS qualifier, this chapter applies only with respect to the communication and approval of financial promotions to which COB 3 (Financial promotion) COBS 4 (Communicating with clients, including financial promotion) applies and to the maintenance of facilities to which COLL 9.4 (Facilities in the United Kingdom) and CIS 17.5 (Facilities in the United Kingdom) apply.

…

2 Annex 1 G

<table>
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<th>Introduction</th>
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<td>1. …</td>
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Benefits of designation

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<th>2. Under certain rules, firms may treat transactions effected on a designated investment exchange in the same way as transactions on RIEs (for example, see COB 5 Annex 1 E, CASS 2 and COB 7.11).</th>
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…

4.2.2 G There are other pre-contract information requirements outside this chapter, including:

…

(4) for electronic commerce activities by outgoing or domestic ECA providers, in ECO 2 (Outgoing ECA providers) and ECO 3 (Domestic (and non-EEA) ECA providers) carried on from an establishment in the United Kingdom, in COBS 5.2, ICOB 2.6A and MCOB 2.7A; and

…
Note 5 = Any firm listed in this table is permitted to add words to the relevant required disclosure statement but only if the firm has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, remain clear, fair and not misleading. For example, an authorised professional firm may wish to make it clear that it is also regulated by its professional body.

5.1.1 G This chapter contains:

(1) guidance for firms and appointed representatives or tied agents on the circumstances in which the FSA permits firms and their appointed representatives or tied agents to reproduce the FSA logo;

…

5.1.3 G GEN 5 Annex 1G is a general licence, which sets out the circumstances in which the FSA permits firms and their appointed representatives or tied agents to reproduce the FSA and keyfacts logos. A firm, or an appointed representative or tied agent need not apply for an individual licence if it uses or reproduces the logos in accordance with the general licence.

5.1.4 G The FSA has no policy to allow use of the logos by a firm or appointed representative or tied agent other than as set out in GEN 5 Annex 1G. If, however, a firm or appointed representative or tied agent wishes to use or reproduce either of the logos other than in accordance with the general licence, it may apply to the FSA for an individual licence, giving full reasons why it considers the FSA should grant the licence.

5 Annex 1 G Licence for use of the FSA and keyfacts logos by authorised firms and appointed representatives or tied agents

<table>
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<th>Application</th>
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Permission to use the FSA logo

| 3.1 | A firm and its appointed representatives and tied agents are permitted to use the FSA logo: |
Permission to use the keyfacts logo

| 3A.1 | A firm, its appointed representatives and tied agents are permitted to use the keyfacts logo as and when it is required or permitted to be used by the rules. |

| 3A.2 | The following are examples of places where the rules require or permit the keyfacts logo to be used: |

1. In **COB COBS**:  
   a. in an initial disclosure document initial disclosure document or combined initial disclosure document (COB 4.3.9R COBS 6.3); and  
   b. in a fees and commission statement menu (COB 4.3.11R COBS 6.3). |

Further conditions on the use of the FSA and keyfacts logos

| 5.1 | The permissions in paragraphs 3.1 and 3A.1 are also subject to the conditions that any material, whether produced on paper or electronically, on which the FSA or keyfacts logos are displayed does not: |

1. in any way imply that the FSA is endorsing the firm or its appointed representatives, tied agents or products, services or communications (see also GEN 1.2.2R(1)); or  
2. misrepresent the firm’s or its appointed representative’s or tied agent’s relationship with the FSA or present false information about the FSA; or |

Use of the FSA logo by appointed representatives

| 6.1 | Firms and appointed representatives or, where applicable, tied agents are reminded that an appointed representative or tied agent is not a firm. Therefore, the permission in paragraph 3.1 does not extend to a statement made by an appointed representative or tied agent about its own status. However, the effect of paragraph 3.1 is that an appointed representative or tied agent is permitted to reproduce the FSA logo as part of a statement about the authorisation or regulation by the FSA of the appointed representative’s or tied agent’s principal, provided the other |
conditions of paragraph 3.1 and those of paragraphs 4.1 and 5.1 are met.

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TP 1.1  Table: (1) Transitional Provisions applying across the Handbook

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(3) The more specific transitional provisions relating to record keeping and notification rules override the general transitional provisions. Both the general and the more specific transitional provisions do not apply if the context requires otherwise and are subject to any more specific transitional provision elsewhere in the Handbook relating to the matter. For example, COB contains transitional provisions relating to various matters which are limited in duration and which override these transitional provisions in relation to those matters.

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TP 1.2  …

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In the appropriate numerical position in Schedule 4 (Powers exercised) insert the text shown underlined below:

The following powers and related provisions in or under the Act have been exercised by the FSA to make the rules in GEN:

Section 158A (Guidance on outsourcing by investment firms and credit institutions)
Annex I

Amendments to the Fees manual (FEES)

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

5.1.4 R A firm which is exempt under DISP 1.1.7R 1.1.12R is also exempt from FEES 5.1 to FEES 5.6.

5.1.4A R A firm will only be exempt from FEES 5.7 for any given financial year if it met the conditions in DISP 1.1.7R 1.1.12R on 31 March of the immediately preceding financial year.
Annex J

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

1.3.9 G SUP 4 (Actuaries) sets out the role and responsibilities of the actuarial function and of the with-profits actuary.

(1) ...

(2) As part of his duties under SUP 4.3.16G, the with-profits actuary must advise the firm's governing body on the discretion exercised by the firm. In the context of the calculation of the with-profits insurance capital component, the with-profits actuary must also advise the firm's governing body as to whether the methods and assumptions (including the allowance for management actions) used for that calculation are consistent with the firm's Principles and Practices of Financial Management (PPFM - see COB 6.10 COBS 20.3) and with its regulatory duty to treat its customers fairly.

1.3.15 G In this section, any reference to the Principles and Practices of Financial Management (PPFM) is a reference to the requirements in COB 6.10 COBS 20.3 (Principles and Practices of Financial Management) for firms to establish, maintain and record the principles and practices of financial management according to which the business of its with-profits funds is conducted.

1.5.26 G Where a firm merges separate funds for different types of business, it will need to ensure that the merger will not result in policyholders being treated unfairly. When considering merging the funds, the firm should consider the impact on its PPFM (see COB 6.10 COBS 20.3) and on its obligations to notify the FSA (see SUP 15.3). In particular, a firm would need to consider how any inherited estate would be managed and how the fund would be run in future, such that policyholders are treated fairly.
Annex K

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

9.6 …

(6) There must be deposited with every revenue ‘account’ and ‘balance sheet’ of an insurer any statement or report on the affairs of the insurer made or submitted:

(a) …

(b) to the insurer’s with-profits policyholders under COB 6.11.8G, COB 6.11.9R, COBS 20.3.3G, COBS 20.4.7R or SUP 4.3.16AR(4), …

Appendix 9.6 …

1 …

2 Subject to 3, if the insurer carries on long-term insurance business, the certificate required by rule 9.34(1) must also state that -

(a) …

…

(c) the with-profits fund has been managed in accordance with the Principles and Practices of Financial Management, as established, maintained and recorded under COB 6.10 COBS 20.3; and …
Annex L

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

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

IPRU(INV) Chapter 3 Appendix 1- Glossary of Terms for IPRU(INV) 3:

arranger means a firm -

(a) whose sole investment business consists of activities within the following articles of the Regulated Activities Order -

(ii) article 25(1) (arranging deals in investments);

(iv) article 49 53 (advising on investments);

associate in relation to a person ("A"), means

(b) an appointed representative or where applicable, a tied agent of A or of any undertaking in the same group as A; and

(c) …

client means any person with or for whom a firm conducts or intends to conduct designated investment business or any other regulated activity; and:

(a) every client is a customer or a market counterparty eligible counterparty;

(b) "client" includes:

(iv) if a person ("C1"), with or for whom the firm is conducting or intends to conduct designated investment business, is acting as agent for another person ("C2"), either C1 or C2 in accordance with COB 4.1.5R COBS 2.4.3R (Agent as client);

intermediate [deleted]
Chapter 5: FINANCIAL RESOURCES

5.2.3(2) R The financial resources requirement for a firm which is not an exempt CAD firm is an own funds requirement determined in accordance with paragraph (a) of rule 5.2.3(3) if for a firm which:

(i) is an exempt CAD firm which is also an operator of a collective investment scheme and that scheme only invests in venture capital investments for non-retail clients; or

(ii) is not an exempt CAD firm if:

(a) …

IPRU(INV) Chapter 5 Appendix 1-

Glossary of Terms for Chapter 5…:

*best execution* in relation to the effecting of a transaction, means the effecting of that transaction in compliance with COB 7.5 COBS 11.2.

*controller* (as defined in section 422 of the Act (Controller)) in relation to a firm or other undertaking ("A") means a person who:

(a) …

(e) is entitled to exercise, or control the exercise of, 10% or more of the voting power in A; or

(f) …
non-private retail customer means an intermediate customer a professional client or an eligible counterparty.

Chapter 9: Financial resources requirements for an exempt CAD firm

...  
9.2.3 R An exempt CAD firm that carries on any regulated activity other than MiFID business must also have and maintain at all times financial resources calculated in accordance with the chapter of IPRU(INV) to which the firm is otherwise subject (Chapters 3 or 5) at least equal to the requirements set out in the relevant chapter (except that if the only designated investment business an exempt CAD firm is carrying on in addition to investment services and activities is making arrangements with a view to transactions in investments (article 25(2) Regulated Activities Order) and/or agreeing to carry on that regulated activity it only needs to comply with requirements set out in this chapter and not chapters 3 or 5).

9.4.2 R The policy of professional indemnity insurance must incorporate terms which make provision for:

(1) cover in respect of claims for which an exempt CAD firm may be liable as a result of the conduct of itself, its employees and its appointed representatives or where applicable, its tied agent (acting within the scope of their appointment);

...

13.1.4(7) G The cover provided by the policy should be wide enough to include the liability of the firm, its appointed representatives, or where applicable, its tied agent, employees and its agents for breaches of the firm’s duty of skill and care, fiduciary duty, duty to look after documents or assets, fraud, and breaches of obligations imposed by or under the Act (or the Financial Services Act 1986 if relevant). If the firm operates outside the UK then the policy should cover other regulatory requirements imposed under the laws of other countries in which the firm operates.

...

APPENDIX 13 (1) Defined terms for Chapter 13

adviser an individual who is:

(a) ...

...
(c) an appointed representative or where applicable, tied agent.

client

(a) ...

(b) "client" includes:

(ii) a client of an appointed representative or where applicable, tied agent of a firm with or for whom the appointed representative or where applicable, tied agent, acts or intends to act, in the course of business for which the firm has accepted responsibility under section 39 of the Act (Exemption of appointed representatives);

(iv) if a person ("C1"), with or for whom the firm is conducting or intends to conduct designated investment business, is acting as agent for another person ("C2"), either C1 or C2 in accordance with COB 4.1.5R COBS 2.4.3R (Agent as client);

connected person

in relation to a person,

(a) ...

(d) its employee (whether under a contract of service or a contract for services) or an employee of its appointed representative or where applicable, tied agent;

contract for differences

(a) ...

(c) a derivative instrument for the transfer of credit risk to which article 85(3) of the Regulated Activities Order applies
customer  (1) (except in COB 3 COBS 4) a client who is not a market counterparty eligible counterparty.

(2) (in COB 3 COBS 4) a person in (1) or a person who would be such a person if he was a client.

financial adviser an individual appointed by an independent intermediary or by its appointed representative or where applicable, tied agent to provide any or all of the following services:

financial adviser

... [deleted]

intermediate customer [deleted]

private customer [deleted]

properly secured fully secured by a first charge in favour of the firm on land and buildings, or on a readily realisable investment where the firm has in its possession or under its control a document of title or a document evidencing title to that investment;

representative (in relation to designated investment business) an individual appointed by a provider firm or by an appointed representative or where applicable, tied agent of that firm, to carry out either or both of the following activities:
Annex M

Amendments to the Conduct of Business sourcebook (COBS)

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

1.1.2 R The general application rule is modified in Annex 1 according to the activities of a firm (Part 1), and its location (Part 2) and certain temporary provisions (Part 2A).

COBS 1 Annex 1: Application (see COBS 1.1.2R)

Part 1: what?

Modifications to the general application rule according to activities

<table>
<thead>
<tr>
<th></th>
<th>Eligible counterparty business</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>R</td>
</tr>
<tr>
<td></td>
<td>The COBS provisions shown below do not apply to eligible counterparty business that is MiFID or equivalent third country business.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
<tr>
<td>3.</td>
<td>Transactions concluded on an MTF</td>
</tr>
<tr>
<td>3.1</td>
<td>R</td>
</tr>
<tr>
<td></td>
<td>The COBS provisions in paragraph 1.1R and COBS 11.4 (client limit orders) do not apply to transactions concluded under the rules governing an MTF between members or participants of the MTF (where the transactions are MiFID or equivalent third country business). However, the member or participant must comply with those provisions in respect of its clients if, acting on its clients behalf, it is executing their orders on a MTF.</td>
</tr>
<tr>
<td></td>
<td>[Note: article 14(3) of MiFID]</td>
</tr>
<tr>
<td>4.</td>
<td>Transactions concluded on a regulated market</td>
</tr>
<tr>
<td>4.1</td>
<td>R</td>
</tr>
<tr>
<td></td>
<td>In relation to transactions concluded on a regulated market (where the transactions are MiFID or equivalent third country business), members and participants of the regulated market are not required to apply to each other the COBS provisions in paragraph 1.1R and COBS 11.4 (client limit orders). However, the member or participant must comply with those provisions in respect of its clients if, acting on its clients’ behalf, it is executing their orders on a regulated market.</td>
</tr>
<tr>
<td></td>
<td>[Note: article 42(4) of MiFID]</td>
</tr>
<tr>
<td></td>
<td>...</td>
</tr>
</tbody>
</table>
### Use of third party processors in life insurance mediation activities

| 6 | R | If a firm (or its appointed representative or, where applicable, its tied agent) outsources insurance mediation activities to a third party processor:
|---|---|---|
| 6.1 |  | (1) the firm must accept responsibility for the acts and omissions of that third party processor conducting those outsourced activities; and
|  |  | (2) any COBS rule requiring the third party processor's identity to be disclosed to clients must be applied as a requirement to disclose the firm's identity;
|  |  | unless the third party processor is advising on investments. |

### Part 2A: temporary provisions to be removed on making the Policy Statement for the conduct of business regime: non-MiFID deferred matters

[Delete the heading (above) and the contents of this Part]

### Part 3: Guidance

#### 1. The main extensions and restrictions to the general application rule

<table>
<thead>
<tr>
<th>1.1</th>
<th>G</th>
<th>The <em>general application rule</em> is modified in Parts 1 to 2A and 2 of Annex 1 and in certain chapters of the Handbook. The modification may be an extension of this <em>rule</em>. For example, COBS 4 (Communications to clients) and COBS 5 (Financial promotion) have extended the application of the rule.</th>
</tr>
</thead>
</table>
|  |  | ...

#### 2. The Single Market Directives and other directives

| 2.2 | G | When considering the impact of a directive on the territorial application of a rule, a firm will first need to consider whether the relevant situation involves a non-UK element. The *EEA territorial scope rule* is unlikely to apply if a UK firm is doing business in a UK establishment for a client located in the United Kingdom in relation to a United Kingdom product. However, if there is a non-UK element, the firm should consider whether:
|---|---|---|
| (1) |  | it is subject to the directive *(in general, directives only apply to UK firms and EEA firms, but the implementing provisions may not treat non-EEA firms more favourably than EEA firms)*;
| (2) |  | whether the business it is performing is subject to the directive and
| (3) |  | whether the particular rule is within the scope of the directive. |
|  |  | If the answer to all three questions is ‘yes’, the *EEA territorial scope rule* may change the effect of the *general application rule*. |
|  |  | ...

---

45
4 Insurance Mediation Directive: effect on territorial scope

... 

4.2 G In the FSA's view, the responsibility for these minimum requirements rests with the Home State, but a Host State is entitled to impose additional requirements within the Directive's scope in the 'general good'. Accordingly, the general rules on territorial scope are modified so that:

(1) for a UK firm providing passported activities through a branch in another EEA State under the Directive, whether through a branch or cross-border services, the rules implementing the Directive's minimum requirements apply but the territorial scope of the additional rules within the Directive's scope do not is not modified;

(2) for an EEA firm providing passported activities under the Directive in the United Kingdom, the rules implementing the Directive's minimum requirements do not apply, but the additional rules within the Directive's scope do apply have their unmodified territorial scope unless the Home State imposes measures of like effect. (See recital 19 and article 12(5) of the Insurance Mediation Directive)

...  

6. Distance Marketing Directive: effect on territorial scope

... 

6.4 G Conversely, the territorial scope of the relevant rules in this sourcebook will is modified as necessary so that they do not apply to a firm conducting business within the Directive's scope from an establishment in another EEA state if the firm is a national of the United Kingdom or of any other EEA state.

...  

7. Electronic Commerce Directive: effect on territorial scope

... 

7.2 G A key element of the Directive is the ability of a person from one EEA state to carry on an electronic commerce activity freely into another EEA state. Accordingly, the territorial application of the rules in this sourcebook is modified so that they apply at least to a firm carrying on an electronic commerce activity from an establishment in the United Kingdom with or for a person in the United Kingdom or another EEA state. Conversely, a firm that is a national of the UK or another EEA State, carrying on an electronic commerce activity from an establishment in another EEA State with or for a person in the United Kingdom, need not comply with the rules in this sourcebook. (See article 3(1) and (2) of the Electronic Commerce Directive)

7.3 G ...
In the FSA’s view, the Directive’s effect on the territorial scope of this sourcebook (including the use of the ‘insurance derogation’):

(1) is in line with the Distance Marketing Directive; and

(2) overrides that of any other Directive discussed in this section Annex to the extent that it is incompatible.

8. Investor Compensation Directive

(2) In the FSA’s view, these matters are a Home State responsibility although a Host State may continue to apply its own rules in the ‘general good’. Accordingly, these rules apply to the establishments of a UK MiFID investment firm in the United Kingdom and another EEA State but also apply in accordance with the general application rule their standard territorial scope to an EEA MiFID investment firm providing services in the UK whether through a branch or cross-border services unless its Home State applies rules of like effect.

9. UCITS Directive: effect on territorial scope

Accordingly, the territorial scope of this sourcebook is modified so that:

(1) the rules relating to the distribution of a simplified prospectus apply to the management company (operator) of a UCITS whose Home State is the United Kingdom when marketing in other EEA States;

(2) those rules do not apply to a management company of a UCITS whose Home State is another EEA State when marketing in the United Kingdom; other rules, such as the financial promotion rules and the information gathering and suitability rules (see COBS 9 Suitability (including basic advice)) continue to apply without modification of this territorial scope.

2.3.7 The fact that a fee, commission or non-monetary benefit is paid or provided to or by an appointed representative or, where applicable, by a tied agent, does not prevent the application of the rule on inducements.

3.3.1 In relation to MiFID or equivalent third country business, a firm must:

…
Per se professional clients

3.5.2 R Each of the following is a per se professional client unless and to the extent it is an eligible counterparty or is given a different categorisation under this chapter:

…

(3) in relation to business that is not MiFID or equivalent third country business, a large undertaking meeting either any of the following conditions:

(a) a body corporate (including a limited liability partnership) which has (or any of whose holding companies or subsidiaries has) (or has had at any time during the previous two years) called up share capital or net assets of at least £105 million (or its equivalent in any other currency at the relevant time);

(b) a large undertaking that meets (or any of whose holding companies or subsidiaries meets) two of the following tests:

(i) a balance sheet total of EUR 12,500,000;

(ii) a net turnover of EUR 25,000,000;

(iii) an average number of employees during the year of 250;

(c) a partnership or unincorporated association which has (or has had at any time during the previous two years) net assets of at least £5 million (or its equivalent in any other currency at the relevant time) and calculated in the case of a limited partnership without deducting loans owing to any of the partners;

(d) a trustee of a trust (other than an occupational pension scheme, SSAS, personal pension scheme or stakeholder pension scheme) which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time) calculated by aggregating the value of the cash and designated investments forming part of the trust’s assets, but before deducting its liabilities;

(e) a trustee of an occupational pension scheme or SSAS, or a trustee or operator of a personal pension scheme or stakeholder pension scheme where the scheme has (or has had at any time during the previous two years):

(i) at least 50 members; and

(ii) assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
In relation to MiFID or equivalent third country business a local authority or a public authority is not likely to be a regional government for the purposes of COBS 3.2.5R(4). In the FSA's opinion, a local authority may be a per se professional client for those purposes if it meets the test for large undertakings in COBS 3.2.5R(2).
information (see COBS 4.4) but elements of the requirements in PRIN may apply.

4.1.6 R Approving a financial promotion without communicating it is not MiFID or equivalent third country business. Communicating a financial promotion to a person other than a client or a potential client is also not MiFID or equivalent third country business. Further guidance on what amounts to MiFID business may be found in PERG 13.

4.2 Fair, clear and not misleading communications

The fair, clear and not misleading rule

4.2.2 G (1) …

(2) COBS 4.2.1R(2)(b) does not limit the application of the fair, clear and not misleading rule under COBS 4.2.1R(2)(a). So, for example, a communication in relation to designated investment business that is both a communication to a professional client and a financial promotion, will still be subject to the fair, clear and not misleading rule.

The reasonable steps defence to an action for damages

4.2.6 R If, in relation to a particular communication or financial promotion, a firm takes reasonable steps to ensure it complies with the fair, clear and not misleading rule, a contravention of that rule does not give rise to a right of action under section 150 of the Act.

4.6 Past, simulated past and future performance

Application

4.6.1 R (1) Subject to (2) and (3), this section applies to a firm in relation to:

(a) in the case of MiFID or equivalent third country business, in relation to all information addressed to, or disseminated in such a way that it is likely to be received by, a retail client the provision of information in relation to its designated investment business; and

(b) in relation to approving or communicating a financial promotion, the communication or approval of a financial promotion;

where such information or financial promotion is addressed to, or disseminated in such a way that it is likely to be received by, a retail client.

…

4.6.9 R (1) A firm that communicates to a client a projection for a packaged product must ensure that the projection complies with the projections rules in COBS 13.4, COBS 13.5 and COBS 13 Annex 2, which is not
a financial instrument.

(2) A firm must not communicate a projection for a highly volatile product to a client unless the product is a financial instrument.

4.7 Direct offer financial promotions

4.7.3 G (1) …

(2) A firm communicating or approving a direct offer financial promotion may also be subject to the rules on providing product information in COBS 14.2, including the exceptions in COBS 14.2.5R to 14.2.9R.

4.7.4 G In order to enable a client to make an informed assessment of a relevant investment or relevant business, a firm may wish to include in a direct offer financial promotion:

(1) …; and

(2) … ; and

(3) (in relation to a promotion for a packaged product that is not a financial instrument) a key features illustration, in which a generic projection may generally be used.

4.7.5 G COLL 4.6.12R requires an authorised fund manager to ensure that its financial promotions, which contain an invitation to purchase the units in a UCITS scheme, indicate that a simplified prospectus and a full prospectus exist, and the places where they may be obtained by the public or how the public may have access to them.

4.8 Cold calls and other promotions that are not in writing

Application

4.8.1 R This section applies to a firm in relation to a financial promotion that is not in writing, but it does not apply:

(1) …

…

(3) if the financial promotion is a non-retail communication;

(34) …

(45) …

4.9 Financial promotions with an overseas element

Application
4.9.1 R …

(3) This section does not apply to a communication by a firm other than in relation to its MiFID or equivalent third country business:

…

(d) if it is a non-retail communication:

(de) …

(ef) …

4.11 Record keeping: financial promotion

4.11.1 R (1) …

…

(4) This rule does not apply in relation to a communication that is made by a firm in relation to its MiFID or equivalent third country business:

(a) to the extent that the communication is a third party prospectus;

(b) if it is image advertising;

(c) if it is a non-retail communication.

(5) This rule does not apply in relation to a communication that is not made by a firm other than in relation to MiFID or equivalent third country business:

(a) …

(b) …

(c) …

(d) if it is a non-retail communication:

(de) …

(ef) …

After 4.11 insert 4.12 which is a new section and is not underlined.

4.12 Unregulated collective investment schemes

4.12.1 R (1) A firm may communicate an invitation or inducement to participate in an unregulated collective investment scheme without breaching the restriction on promotion in section 238 of the Act if the promotion falls within an exemption in the table in (4), as explained further in
the Notes.

(2) Where the left-hand column in the table in (4) refers to promotion to a category of *person*, this means that the invitation or inducement:

(a) is made only to recipients who the *firm* has taken reasonable steps to establish are *persons* in that category; or

(b) is directed at recipients in a way that may reasonably be regarded as designed to reduce, so far as possible, the risk of participation in the collective investment scheme by *persons* who are not in that category.

(3) A *firm* may rely on more than one exemption in relation to the same invitation or inducement.

<table>
<thead>
<tr>
<th>Promotion to:</th>
<th>Promotion of an unregulated collective investment scheme which is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1 person</td>
<td></td>
</tr>
<tr>
<td>(1) <em>a person</em> who is already a participant in an unregulated collective investment scheme; or</td>
<td>A. that collective investment scheme; or</td>
</tr>
<tr>
<td>(2) <em>A person</em> who has been, in the last 30 months, a participant in an unregulated collective investment scheme.</td>
<td>B. any other collective investment scheme whose underlying property and risk profile are both 'substantially similar' (see Note 1) to those of that collective investment scheme; or</td>
</tr>
<tr>
<td></td>
<td>C. a collective investment scheme which is intended to absorb or take over the assets of that collective investment scheme; or</td>
</tr>
<tr>
<td></td>
<td>D. a collective investment scheme, units in which are being offered by its operator as an alternative to cash on the liquidation of that collective investment scheme.</td>
</tr>
</tbody>
</table>

| Category 2 person                         |                                                              |
| (1) *A person*:                           |                                                              |
| (a) for whom the *firm* has taken reasonable steps to ensure that *investment* in the collective investment scheme is suitable; and | That collective investment scheme |
(b) who is an 'established' or 'newly accepted' client of the firm or of a person in the same group as the firm (see Notes 2 & 3).

<table>
<thead>
<tr>
<th>Category 3 person</th>
<th>Any such collective investment scheme</th>
</tr>
</thead>
<tbody>
<tr>
<td>A person who is eligible to participate in a scheme constituted under:</td>
<td></td>
</tr>
<tr>
<td>(1) the Church Funds Investment Measure 1958;</td>
<td></td>
</tr>
<tr>
<td>(2) section 24 of the Charities Act 1993; or</td>
<td></td>
</tr>
<tr>
<td>(3) section 25 of the Charities Act (Northern Ireland) 1964.</td>
<td></td>
</tr>
</tbody>
</table>

| Category 4 person | |
|-------------------| |
| An eligible employee, that is, a person who is: | |
| (1) an officer; | |
| (2) an employee; | |
| (3) a former officer or employee; or | |
| (4) a member of the immediate family of any of (1) - (3), | |
| of an employer which is (or is in the same group as) the firm, or which has accepted responsibility for the activities of the firm in carrying out the designated investment business in question. | |

| 1. A collective investment scheme the instrument constituting which: | |
|-------------------| |
| A. restricts the property of the scheme, apart from cash and near cash, to: | |
| (1) (where the employer is a company) shares in and debentures of company or any other connected company (see Note 4); | |
| (2) (in any case), any property, provided that the scheme takes the form of: | |
| (i) a limited partnership, under the terms of which the employer (or connected company) will be the unlimited partner and the eligible employees will be some or all of the limited partners; or | |
| (ii) a trust which the firm reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments | |
(other than charges) for investment transactions earlier entered into, which the eligible employee was not aware of at the time he entered into them; and

B. (in a case falling within A(1) above) restricts participation in the scheme to eligible employees, the employer and any connected company.

2. Any collective investment scheme provided that the participation of eligible employees is to facilitate their co-investment:

(i) with one or more companies in the same group as their employer (which may include the employer); or

(ii) with one or more clients of such a company.

<table>
<thead>
<tr>
<th>Category 5 person</th>
<th>A scheme in the form of a limited partnership which is established for the sole purpose of underwriting insurance business at Lloyd's.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A person admitted to membership of the Society of Lloyd's or any person by law entitled or bound to administer his affairs.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category 6 person</th>
<th>Any collective investment scheme.</th>
</tr>
</thead>
<tbody>
<tr>
<td>An exempt person (other than a person exempted only by section 39 of the Act (Exemption of appointed representatives)) if the financial promotion relates to a regulated activity in respect of which the person is exempt from the general prohibition.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category 7 person</th>
<th>Any collective investment scheme in relation to which the client is categorised as a professional client or eligible counterparty (see Note 5).</th>
</tr>
</thead>
<tbody>
<tr>
<td>An eligible counterparty or a professional client.</td>
<td></td>
</tr>
</tbody>
</table>
A person:

(1) in relation to whom the firm has undertaken an adequate assessment of his expertise, experience and knowledge and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the person is capable of making his own investment decisions and understanding the risks involved;

(2) to whom the firm has given a clear written warning that this will enable the firm to promote unregulated collective investment schemes to the client; and

(3) who has stated in writing, in a document separate from the contract, that he is aware of the fact the firm can promote certain unregulated collective investment schemes to him.

The following Notes explain certain words and phrases used in the table above.

Note 1  The property of a collective investment scheme is 'substantially similar' to that of another collective investment scheme if in both cases the objective is to invest in the same one of the following sectors:

(a) on-exchange derivatives or warrants;

(b) on-exchange (or quoted) securities;

(c) the property market (whether in security of property companies or in property itself);

(d) collectable items of a particular description (such as works of art, antique vehicles, etc);

(e) artistic productions (such as films, television, opera, theatre or music);

(f) unlisted investments (including unlisted debt securities).

The risk profile of a scheme will be substantially similar to that of
another scheme only if there is such similarity in relation to both liquidity and volatility.

Note 2 A person is an 'established client' of another person if he has been and remains an actual client of that person in relation to designated investment business done with or through that other person.

Note 3 A person is a 'newly accepted' client of a firm if:

(a) a written agreement relating to designated investment business exists between the client and the firm (or, if the client is normally resident outside the United Kingdom, an oral or written agreement); and

(b) that agreement has been obtained without any contravention of section 238 or 240 of the Act, or of any rule in COBS applying to the firm or (as far as the firm is reasonably aware) any other authorised person.

Note 4 A company is 'connected' with another company if:

(a) they are in the same group; or

(b) one company is entitled either alone or with another company in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital, which are exercisable in all circumstances at any general meeting of the other company or of its holding company.

Note 5 Firms may use the client categorisation regime that applies to business other than MiFID or equivalent third country business. [This is the case even if the firm will be within the scope of MiFID when it makes the promotion.]

4.12.2 G Guidance on the regulatory system as it applies to unregulated collective investment schemes appears at PERG 8.20.

5 Distance communications

5.1 The distance marketing disclosure rules

Application

5.1.-1 R This section applies to a firm that carries on any distance marketing activity from an establishment in the UK, with or for a consumer in the United Kingdom or another EEA State.

5.2 E-commerce

Application
5.2.1 R This section applies to a firm that is carrying on an electronic commerce activity provider from an establishment in the United Kingdom, with or for a person in the United Kingdom or another EEA State.

Information about the electronic commerce activity provider firm and its products or services

5.2.2 ...

6.1.4 R A firm must provide a retail client with the following general information, if relevant:

...

(8) (a) in the case of a common platform firm or a third country investment firm, a description, which may be provided in summary form, of the conflicts of interest policy;

(b) ...

---

6.1.7 R (1) ...

...

(4) A firm within (1) that holds client designated investments or client money for a professional client must provide that client with the information in paragraphs (1)(e d) and (2)(a) and(b).

6.3.6 G (1) A firm will satisfy the requirements as to timing in the rules referred to in COBS 6.3.3G(4) and (5) if its representative provides information to the client on first making contact with the client.

(2) The menu is unlikely to be fair, clear and not misleading if a firm uses it for a service other than personal recommendations.

6.3.18 R (1) ...

(2) (a) Paragraph (1) does not apply if, in relation to a life policy or a pension contract:

(i) the maximum amounts or rates already disclosed to the client only apply to products of the example term or age of client given in the menu or payment information or to products with shorter terms; and

(ii) ...

...
1. The Financial Services Authority (FSA)

The FSA is the independent watchdog that regulates financial services. This document is designed by the FSA to be given to consumers considering taking advice on buying certain financial products. Use this information to decide if our services are right for you.

2. Whose products do we offer? [Note 4] [Note 7]

... We can [Note 8] only offer products from a limited number of companies. [Note 11] [These include our own product(s) but our recommendation will be made following an analysis of our entire range of products.] [Note 9] Ask us for a list of the companies and whose products we offer. [Note 11]...
COBS 6 Annex 2:

…

1. The Financial Services Authority (FSA)

The FSA is the independent watchdog that regulates financial services. This document is designed by the FSA to be given to consumers considering taking advice on buying certain financial products. Use this information to decide if our services are right for you.

…

4. What will you have to pay us for our services?

…

You will receive a key features facts illustration when considering a particular [lifetime] [mortgage] [home reversion plan] [equity release product], which will tell you about any fees relating to it. [Note 13]

…

8. Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 27] [Note 43] [Note 44]

[question: why are these sections blank?]

…

COBS 6 Annex 3G (Menu described in COBS 6.3)

<table>
<thead>
<tr>
<th>Products</th>
<th>Exemplar term or age</th>
<th>Comparison of costs</th>
<th>Example based on £10,000 lump sum</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Our maximum</td>
<td>This shows the maximum costs of our sales and advice for a lump sum investment of £10,000 ignoring any changes in fund value</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Market average</td>
<td></td>
</tr>
</tbody>
</table>
### Savings and investments

<table>
<thead>
<tr>
<th>Collective investments (eg unit trusts)</th>
<th>Any</th>
<th>[Note 18]</th>
<th>[Note 20]</th>
<th>[Note 21]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment bond</td>
<td>Any</td>
<td>[Note 18]</td>
<td>[Note 20]</td>
<td>[Note 21]</td>
</tr>
</tbody>
</table>

### Saving for retirement

<table>
<thead>
<tr>
<th>Personal and Stakeholder pensions</th>
<th>Any</th>
<th>[Note 18]</th>
<th>[Note 20]</th>
<th>[Note 21]</th>
</tr>
</thead>
</table>

#### At retirement

<table>
<thead>
<tr>
<th>Annuities Income drawdown</th>
<th>Any</th>
<th>[Note 18]</th>
<th>[Note 20]</th>
<th>[Note 21]</th>
</tr>
</thead>
</table>

### Personal Pension Schemes

Not all types of personal pension scheme are included in the information above about commissions. Instead only the more common types are included, and schemes such as SIPPs are not. Before we start advising you, we will inform you of how much we could be paid if we do recommend one of these products to you.

You can also ask us about commission we might receive on underlying investments we recommend you hold within a SIPP if not contained in the information above.

[Note 19]

### At retirement

<table>
<thead>
<tr>
<th>Annuities Income drawdown</th>
<th>Any</th>
<th>[Note 18]</th>
<th>[Note 20]</th>
<th>[Note 21]</th>
</tr>
</thead>
</table>

... Reliance on information

9.2.5 R A *firm* is entitled …

Insufficient information

9.2.6 R If a *firm* …

9.5.2 R A *firm* must retain its records relating to suitability for a minimum of the following periods:

... (2) if relating to a *life policy*, *pension contract* personal pension scheme or stakeholder pension scheme, five years;

... 9 Annex 2G Sales processes for stakeholder products
A firm may provide a copy of the table setting out initial monthly pension amounts, found within the FSA's "Stakeholder pension decision tree" factsheet, in accordance with COBS 13 Annex 2 1.8R, but in doing so should also provide and explain the caveats and assumptions behind the table. A firm should make it clear that the decision on how much to invest is the retail client's responsibility and that he should get further advice if he has any concerns.

Reliance on information
10.2.4 R …

Use of existing information
10.2.5 G …

Knowledge and experience
10.2.6 G …

Increasing the client's understanding
10.2.7 G …

No duty to communicate firm's assessment of knowledge and experience
10.2.8 G …

10.5.1 G A service should be considered to be provided at the initiative of a client (see COBS 10.4.1R(1)(ba)) …

11 Dealing and managing
11.1 Application

General application
11.1.1 R This chapter other than the section on personal account dealing (COBS 11.7) applies in relation to a firm:

(1) MiFID business carried on by a MiFID investment firm; or
(2) equivalent business of a third country investment firm.
11.1.2 R In this chapter, provisions marked “EU” apply to a third country investment firm which is not a MiFID investment firm as if they were rules.

Disapplication of best execution for non-financial spreads

11.1.6 R The section on best execution (COBS 11.2) does not apply to a firm when:

1. executing orders; or
2. placing orders with other entities for execution; or
3. transmitting orders to other entities for execution;

in relation to a spread-bet which is not a financial instrument, where the firm has not made a personal recommendation in relation to that spread-bet.

Purpose

12.1.1 G The purpose of this chapter is to implement the provisions of:

1. MiFID relating to set out specific requirements relating to the production and dissemination of investment research and non-independent research; and
2. implementing the provisions of the Market Abuse Directive relating to the disclosures to be made in, and about, research recommendations.

Application: Who?

12.1.2 R This chapter applies in relation to a firm.

1. MiFID business carried on by a MiFID investment firm; and [deleted]
2. COBS 12.4 applies to all firms. [deleted]

12.2.5 R A firm must have in place arrangements designed to ensure that the following conditions are satisfied:

…

3. the firm itself, financial analysts, and other relevant persons involved in the production of investment research must not accept inducements from those with a material interest in the subject matter of the investment research;

[Note: article 25(2)(c) of the MiFID implementing Directive]

…
12.3.2 R A firm which produces or disseminates non-independent research must ensure that it:

…

13 Preparing product information

13.1 The obligation to prepare product information

13.1.1 R A firm must prepare:

(1) a key features document for each packaged product, cash-deposit ISA and cash-deposit CTF it produces; and

(2) a key features illustration for each packaged product it produces;

in good time before that document has to be provided.

Exceptions

13.1.3 R A firm is not required to prepare:

…

(3) [intentionally blank] a key features illustration, if it includes the information from the key features illustration in a key features document; or

…

13.2.2 R A key features document and a key features illustration must also:

(1) (if it is a key features document) be produced and presented to at least the same quality and standard as the sales or marketing material used to promote the relevant product;

(2) (if it is a key features document) display the firm’s brand at least as prominently as any other;

(3) (if it is a key features document or a key features illustration which does not form an integral part of the key features document) include the ‘keyfacts’ logo in a prominent position at the top of the document; and

(4) (if it is a key features document or a key features illustration which does not form an integral part of the key features document) include the following statement in a prominent position:

“The Financial Services Authority is the independent financial services regulator. It requires us, [provider name], to give you this important information to help you to decide whether our [product name] is right for you. You should read this document carefully so that you understand what you are buying, and then keep it safe for future
The Consolidated Life Directive information can be included in a key features document, a key features illustration or any other document.

A key features document must:

(2) explain:

(d) (for a CTF) that stakeholder CTFs, cash-deposit CTFs and share CTFs, security-based CTFs are available and which type the firm is offering; and

[The text in this section is all new and not underlined]

13.4 Contents of a key features illustration

A key features illustration must include appropriate charges information and, if it is a packaged product which is not a financial instrument:

(1) must include a standardised deterministic projection;

(2) the projection and charges information must be consistent with each other;

(3) it may also include alternative projections except that the most prominent projection must be a standardised deterministic projection.

Exceptions

A key features illustration must not include a generic projection unless:

(1) there are reasonable grounds for believing that that projection will be sufficient to enable a retail client to make an informed decision about whether to invest; or

(2) it is a direct offer financial promotion.

A generic projection is unlikely to be sufficient to enable a retail client to make an informed decision about whether to invest if the premium or investment returns on the product will be materially affected by the personal characteristics of the investor.

There is no requirement to include a projection in a key features illustration:
(1) for a single *premium life policy* bought as a pure investment product, a product with benefits that do not depend on future investment returns or any other product if it is reasonable to believe that a *retail client* will not need one to be able to make an informed decision about whether to invest; or

(2) if the product is:

(a) a *SIPP* from which no *income withdrawals* are being taken; or

(b) a *life policy* that will be held in a *CTF* or sold with *basic advice* (unless the *policy* is a *stakeholder pension scheme*).

13.4.5 G Although there may be no obligation to include a *projection* in a *key features illustration*, where a *firm* chooses to include one, the *projection* must follow the appropriate requirements, as outlined in this section, or for financial *instruments* under *COBS* 4.6.7.

[The text in this section is all new and not underlined]

13.5 Preparing product information: other projections

Projections for in-force products

13.5.1 R A *firm* that communicates a *projection* for an in-force *packaged product* which is not a *financial instrument*:

(1) must include a *standardised deterministic projection*;

(2) may also include an *alternative projection* except that the most prominent *projection* must be a *standardised deterministic projection*; and

must follow the *projection rules* in *COBS* 13 Annex 2.

Projections: other situations

13.5.2 R A *firm* that communicates a *projection* for a *packaged product* which is not a *financial instrument*,

(1) for which a *key feature illustration* is not required to be provided; and

(2) which is not an in-force *packaged product*;

must ensure that such a *projection* is either a *standardised deterministic projection* or an *alternative projection* in accordance with *COBS* 13 Annex 2.

Exceptions to the projection rules: projections for more than one product
13.5.3 R A firm that communicates a projection of benefits for a packaged product which is not a financial instrument, as part of a combined projection where other benefits being projected include those for a financial instrument or structured deposit, is not required to comply with the projection rules in COBS 13.4, 13.5 and COBS 13 Annex 2 to the extent that it complies with the future performance rule (COBS 4.6.7R).

13.5.4 G The general requirement that communications be fair, clear and not misleading will nevertheless mean that a firm that elects to comply with the future performance rule in COBS 4.6.7R will need to explain how the combined projection differs from other information that has been or could be provided to the client, including a projection provided under the projection rules in COBS 13.4, 13.5 and COBS 13 Annex 2.

[The text in this section is all new and not underlined]

COBS 13 Annex 2: Projections

This annex belongs to COBS 13.4.1R(1) (Contents of a key features illustration), 13.5.1R (Projections for in-force products) and 13.5.2 (Projections: other situations).

Projections

1 Calculating standardised deterministic projections

1.1 R A standardised deterministic projection must:

(1) include a projection of benefits at the lower, intermediate and higher rates of return;

(2) be rounded down; and

(3) show no more than three significant figures.

Calculating projections: additional requirements for a pension scheme

1.2 R (1) A standardised deterministic projection within a key features illustration for a personal pension scheme or stakeholder pension scheme must include or be accompanied by information explaining the impact of inflation on those benefits.

(2) Where a firm chooses to provide that information required in (1) in the form of one or more projections of benefits, it must include a projection in real terms, so long as it is either:

(a) calculated using:

(i) the appropriate intermediate rate of return;

(ii) the intermediate rate of price inflation, in accordance with COBS 13 Annex 2 2.5R; and
(iii) an annuity calculated in accordance with COBS 13 Annex 2 3.1R; or

(b) consistent with the statutory money purchase illustration assumptions, with any material differences between the assumptions used and those otherwise required for accompanying standardised deterministic projections explained.

1.3 R  (1) If a generic projection is prepared for a stakeholder pension scheme or personal pension scheme, sufficient separate projections, covering a range of different contractual periods and contributions, must be included for a retail client to be able to make an informed decision about whether to invest.

(2) A projection prepared on that basis may omit benefits in nominal terms and only show a range of figures at the intermediate rate of return, of benefits in real terms.

1.4 G A firm will provide sufficient separate projections if it prepares a table that shows projections in real terms for a variety of periods to maturity and a variety of contribution levels, taking into account the charges and other material terms that apply to the stakeholder pension scheme or personal pension scheme. Such a table could be laid out like a specimen benefits table (see COBS 13 Annex 2 1.8).

Calculating an alternative projection

1.5 R An alternative projection must:

(1) (if the alternative projection is not a stochastic projection) not exceed the higher rate of return;

(2) (if the alternative projection is not a stochastic projection), use assumptions consistent with the assumptions which apply to standardised deterministic projections in this Annex, unless the reasons for any inconsistency are:

(a) reasonable;

(b) explained to a retail client, with enough information for the retail client to be able to understand the difference between the alternative projection and any standardised deterministic projection being provided; and

(3) (if the alternative projection is a stochastic projection) only be used if:

(a) there are reasonable grounds for believing that a retail client will be able to understand it;
(b) it is based on a reasonable number of simulations and assumptions which are reasonable and supported by objective data; and

(c) the alternative projection is accompanied by enough information for the retail client to be able to understand the difference between the alternative projection and any standardised deterministic projection being provided.

1.6 G An alternative projection may be used either as part of a key features illustration or separately. However, it must not detract from any standardised deterministic projection required by COBS 13.4.1R or 13.5.1R.

Exceptions

1.7 R A projection:

(1) for a product that will mature in six months or less; or

(2) prepared in order to determine the maximum level of contributions permitted to be made to a personal pension scheme,

may be prepared and presented on any reasonable basis but only if, in the case of (2), the assumptions used to calculate the projection and contributions are disclosed with the relevant projection.

1.8 R In the case of a stakeholder pension scheme, the specimen benefits table, contained within the FSA's "Stakeholder pension decision tree" factsheet and headed "Pension Table…How much should I save towards a pension?" which sets out initial monthly pension amounts, may be used instead of a standardised deterministic projection but only if it is accompanied by an explanation of the caveats and assumptions behind the table.

1.9 R The rules in this Annex do not apply to a projection which is consistent with the statutory money purchase illustration requirements.

1.10 R A standardised deterministic projection for existing business may omit the projection at the intermediate rate of return.

2 Assumptions to follow when calculating projections.

Assumptions: projection date

2.1 R A standardised deterministic projection must be calculated to the projection date described below:

<table>
<thead>
<tr>
<th>Product</th>
<th>Projection date</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A contract which is a whole life assurance the premiums under which are regular premiums</td>
<td>The anniversary of the commencement date: (a) which first falls after the seventy-fifth birthday of the life assured; or (b) (if there is more than one life</td>
</tr>
</tbody>
</table>
assured) the anniversary of the commencement date which falls after the seventy fifth birthday of:

(i) (if benefits are payable on the first death) the oldest life assured; or
(ii) (in all other cases) the youngest life assured;

subject to a minimum projection date of ten years.

| (2) | A contract that is not in (1):
(a) where the relevant marketing refers to a surrender value or an option to take benefits before they would otherwise be paid; or
(b) that is open-ended, or linked to one or more lives, which is not a personal pension scheme or stakeholder pension scheme | An appropriate date which highlights the features of the product |

| (3) | A contract that is not in (1) or (2) and has a specified maturity date | The maturity date specified in the contract |

| (4) | A contract that is not in (1) or (2) or (3) | The tenth anniversary of the commencement date |

Assumptions: contributions

2.2 R A standardised deterministic projection must:

(1) take account of all contributions due during the projection period;

(2) be calculated on the basis that contributions are accumulated, net of charges, at the appropriate rate of return compounded on an annual basis;

(3) (if it includes assumptions about contribution increases in line with an index) be based on an assumption that contribution increases are consistent with any assumptions regarding that index in this annex; and

(4) deduct from contributions any rider benefits or extra premium which may be charged for an increased underwriting risk.

Assumptions: rates of return

2.3 R A standardised deterministic projection must be calculated using the following rates of return:
## Nominal rates

<table>
<thead>
<tr>
<th></th>
<th>Lower rate</th>
<th>Intermediate rate</th>
<th>Higher rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>tax-exempt business held in a wrapper or by a friendly society personal pension schemes, stakeholder pension schemes and investment-linked annuities</td>
<td>5%</td>
<td>7%</td>
<td>9%</td>
</tr>
<tr>
<td>all other products</td>
<td>4%</td>
<td>6%</td>
<td>8%</td>
</tr>
</tbody>
</table>

### Exception

2.4 R **A standardised deterministic projection:**

1. must be calculated using lower rates of return, if the rates described in this section overstate the investment potential of the product;
2. may be calculated using a lower rate of return if a retail client requests it.

### Assumptions: inflation

2.5 R If inflation is taken into account, the *standardised deterministic projection* must be calculated using the following rates:

<table>
<thead>
<tr>
<th></th>
<th>Lower rate</th>
<th>Intermediate rate</th>
<th>Higher rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price inflation</td>
<td>0.50%</td>
<td>2.50%</td>
<td>4.50%</td>
</tr>
<tr>
<td>Earnings inflation</td>
<td>(\geq 2%)</td>
<td>(\geq 4%)</td>
<td>(\geq 6%)</td>
</tr>
</tbody>
</table>

### Assumptions: charges

2.6 R **The charges** allowed for in a *standardised deterministic projection*:

1. must properly reflect:
   - all of the charges, expenses and deductions a client will, or may be expected to, pay;
   - the tax relief available to the firm in respect of so much of the firm’s gross expenses as can properly be attributed to the contract; and
   - the fact that certain charges will be fully or partially off-set, but only to the extent that the firm can show that the off-set funds will be available when the relevant charges arise; and
2. must not include the firm’s dealing costs incurred on the underlying
Development and capital costs should normally be written off in the year in which they are incurred. However, some costs (for example, exceptional new business expenses) may be amortised and previous years’ costs may then be brought into account.

If it is reasonable to assume that higher expenses will be incurred in the future, appropriate allowances should be made, and any inflation assumptions should be consistent with those prescribed in these rules.

Expenses should be apportioned appropriately between products so that scales of expenses can be calculated and applied.

Where appropriate, mortality and morbidity should be allowed for on a best estimate basis. The basis for annuities should allow for future improvements in mortality.

A projection should not assume that charges will fall over time to a rate that is lower than the rate currently being charged on the relevant product (or, if there is no such charge, on a similar product).

A projection of surrender value, cash-in value or transfer value should take into account any specific current surrender value basis and penalties which may be applied.

Additional requirements: with-profits policies

A standardised deterministic projection for a with-profits policy must properly reflect the deductions from asset share which a firm expects to make in accordance with its deductions plan.

A standardised deterministic projection for a with-profits policy where bonus rates apply must assume that the bonus rates supported by the relevant premium and rate of return apply throughout the term of the contract.

Additional requirements: unsecured and alternatively secured pensions

A standardised deterministic projection for an unsecured or alternatively secured pension must be based on the requirements contained in (2) to the extent that they impose additional or conflicting requirements to the balance of the rules in this section.

A standardised deterministic projection for an unsecured or alternatively secured pension must be based on an assumption that the current gilt-index yield will continue to apply throughout the relevant term and include:

(a) the maximum initial income specified in the tables published by the Government Actuaries Department for an unsecured or alternatively secured pension (as the case may be);
(b) the assumed level of income;

(c) for a short-term annuity, where subsequent short-term annuities are assumed, a statement reflecting that fact;

(d) (under the heading ‘What the benefits might be’), the amount of income and the projected value of the fund at each fifth anniversary for the lower, intermediate and higher rates of return;

(e) the projected open market values and the amounts of annuity at age 75 or the date at which it is reasonably assumed that an annuity will be purchased (which, for an alternatively secured pension, must be after ten years); and

(f) the amount of annuity that could be secured using an immediate annuity rate available in the market.

3 How to calculate a projection for a future annuity

3.1 A projection for a future annuity must:

(1) be calculated by rounding all factors to three decimal places before applying them to the relevant retirement fund;

(2) be based on the mortality tables PMA92 and PFA92, using the medium cohort projection based on year of birth mortality rates;

(3) (for a protected rights annuity) be calculated on a unisex basis so the policyholder has female mortality and the spouse has male mortality;

(4) (for an annuity where two lives are concerned):

(a) reflect the age difference between the two lives; or

(b) be based on the assumption that the male life is three years older than the female (if the genders differ) or the two lives have the same age (if the genders are the same);

(5) include an expenses allowance of 4%;

(6) be based on the following rates of return as appropriate:

<table>
<thead>
<tr>
<th></th>
<th>Lower rate</th>
<th>Intermediate rate</th>
<th>Higher rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level or fixed rate of increase annuities</td>
<td>Y+1.5%</td>
<td>Y+3.5%</td>
<td>Y+5.5%</td>
</tr>
<tr>
<td>RPI or LPI linked annuities</td>
<td>Y-1%</td>
<td>Y</td>
<td>Y+1%</td>
</tr>
</tbody>
</table>

where:
‘Y’ is 0.5*(ILG0 + ILG5)–0.5 rounded to the nearest 0.2%, with an exact 0.1% rounded down; and

‘ILG0’ and ‘ILG5’ are the real yield on the FTSE Actuaries Government Securities Index-linked Real Yields over 5 years, assuming 0% and 5% inflation respectively, updated every 6 April to use the ILG0 and ILG5 which applied on or, if necessary, the business day immediately before, the preceding 15 February; and

(7) (in the case of a future annuity with less than one years to maturity) be calculated using annuity rates that are no more favourable than the firm’s relevant current immediate annuity rate or (if there is no such rate) the relevant immediate annuity rate available in the market; and

(8) be assumed to be payable monthly in advance with a guaranteed period of 5 years, unless it is unreasonable to do so.

3.2 R A projection for a future annuity:

(1) must be calculated using lower rates of return, if the rates described in this section overstate the investment potential of the product;

(2) may be calculated using a lower rate of return if a retail client requests it.

4 How to calculate a projection for an appropriate personal pension

4.1 R (If a client is considering whether to contract out), a projection for an appropriate personal pension must include or be accompanied by

(1) a contracting out comparison providing a description of:

(a) the benefits that minimum contributions would secure if a retail client did not contract out of the State Second Pension; and

(b) the material differences between the anticipated position if a retail client remains contracted into the State Second Pension and the anticipated position if that client contracts out;

which is calculated to the client’s state retirement age using the lower and higher rates of return in 4.2R and aggregate contributions for the current and the next two tax years.

(2) an explanation that the figures in the comparison are intended to illustrate:

(a) the amount of pension the client might get compared with the benefit to be given up under the State Second Pension; and

(b) what might happen if the lower and higher rates of return
were achieved each year.

4.2 R This table belongs to 4.1 R

Pre- and post-vesting real rates of return for contracting out comparisons.

<table>
<thead>
<tr>
<th>Lower rate</th>
<th>Higher rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1%</td>
<td>3%</td>
</tr>
</tbody>
</table>

5 How to present a projection

5.1 R A standardised deterministic projection must be accompanied by:

(1) appropriate risk warnings, including warnings about volatility, the relationship between figures in real terms and those in nominal terms, and the degree to which any figures can be relied upon; and

(2) a statement:

(a) that projection rates are standardised or an explanation that projection rates that are lower than the standard rates have been used and why;

(b) that charges may vary;

(c) of the contributions that have been assumed;

(d) that increases in contributions have been assumed (if that is the case), together with sufficient information for a retail client to be able to understand the nature and magnitude of the assumed increases; and

(e) of the sum of any actual premiums charged for any rider benefits or increased underwriting risks (where these have been charged).

Additional requirements: pension schemes and products linked to other products

5.2 R A standardised deterministic projection for a product where the benefits illustrated depend on a link to a separate product must include an appropriate description of the material factors that might influence the returns available overall and any restrictions assumed in providing an illustration of benefits in relation to that separate product.
COBS 13 Annex 3: Charges

This annex belongs to COBS 13.4.1R (Contents of a key features illustration)

Charges

1. Appropriate charges information

1.1 R Appropriate charges information comprises:

(1) a description of the nature and amount of the charges a client will or may be expected to bear;

(2) an ‘effect of charges’ table; and

(3) ‘reduction in yield’ information.

1.2 R Where a firm does not include a projection within its key features illustration the charges information can be on a generic basis.

Exceptions

1.3 R An effect of charges table and reduction in yield information are not required for:

(1) a life policy without a surrender value, but an appropriate warning must be included to make it clear that the policy has no cash-in value at any time;

(2) a SIPP;

(3) a stakeholder pension scheme, if the following is included instead:

“There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £500 throughout the year, this means we deduct [£500 x y/100] that year. If your fund is valued at £7500 throughout the year, we will deduct [£7500 x y/100] that year.”

(4) a stakeholder product that is not a stakeholder pension scheme, or a product that will be held in a CTF where the relevant product and the CTF levy their charges annually, if the following is included instead:

“There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £250 throughout the year, this means we deduct [£250 x y/100] that year. If your fund is valued at £500 throughout the year, this means we deduct [£500 x y/100] that year. [After ten years these deductions reduce to [£250 x r/100] and [£500 x r/100] respectively.]”
where (in the case of (3) and (4)) ‘y’ is the annual charge and ‘r’ is the reduced annual charge (if any).

1.4 R Reduction in yield information is not required for a without profits life policy with guaranteed benefits (except on surrender or variation), a life policy with a term not exceeding five years or a life policy that will be held in a CTF.

2 Effect of charges table

2.1 R Each ‘effect of charges’ table must be accompanied by, or refer to:

(1) a statement that all relevant guarantees have been taken into account (if there are any);

(2) a warning that one effect of the charges referred to is that a retail client could get back less than they invest (if that is the case); and

(3) the rate of return used to calculate the figures in the table.

2.2 R The effect of charges table:

(1) for a life policy, personal pension scheme or stakeholder pension scheme must be in the following form:

<table>
<thead>
<tr>
<th>Note 1A</th>
<th>Note 2</th>
<th>Note 3</th>
<th>Note 4</th>
<th>Note 5</th>
<th>Note 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>At end of year</td>
<td>Total paid in to date</td>
<td>Withdrawals</td>
<td>Total actual deductions to date</td>
<td>Effect of deductions to date</td>
<td>What you might get back</td>
</tr>
<tr>
<td>£</td>
<td>£</td>
<td>£</td>
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<td>...</td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(2) for any other packaged product must be in the following form:

<table>
<thead>
<tr>
<th>Note 1B</th>
<th>Note 2</th>
<th>Note 3</th>
<th>Note 5</th>
<th>Note 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>At end of year</td>
<td>Investment to date</td>
<td>Income</td>
<td>Effect of deductions to date</td>
<td>What you might get back</td>
</tr>
<tr>
<td>£</td>
<td>£</td>
<td>£</td>
<td>£</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
must be completed in accordance with the following notes:

1A  (a) This column must include the first five years, every subsequent fifth year and the final year of the projection period.

(b) Figures may be shown for every subsequent tenth year rather than subsequent fifth year where the projection period exceeds 25 years, or for whole of life policies.

(c) For whole of life policies, should the projected fund reach zero before the end of the projection period this must be highlighted.

(d) For an alternatively secured pension figures must be included for each year for a term of ten years.

(e) If there is discontinuity in the trend of surrender values, the appropriate intervening years must also be included.

(f) Figures for a longer term may be shown.

1B  (a) This column must include the first year, the fifth year and every subsequent fifth year of the projection period.

(b) For an alternatively secured pension figures must be included for each year for a term of ten years.

(c) Figures for a longer term may be shown.

2  This column must show the cumulative contributions paid to the end of each relevant year.

3  This column must show the cumulative withdrawals taken or income paid to the end of each relevant year (if any). The column may be omitted if withdrawals or income are not anticipated or allowed.

4  This column is optional. If it is retained, it must show the total actual deductions to the end of each relevant year calculated using the following method:

(a) apply the intermediate rate of return for the relevant product to the figure in the ‘effect of deductions to date’ column for the previous year;

(b) subtract from this figure the figure in the ‘effect of deductions to date’ column for the year being shown; and

(c) add the resulting figure to the figure in the ‘total actual deductions to date’ column for the previous year (if any).
5 This column may be deleted if the product is a without profits life policy with benefits that are guaranteed except on surrender or variation, a life policy with a term not exceeding five years, or a life policy that will be held in a CTF.

If this column is not deleted, the ‘effect of deductions to date’ figure must be calculated by taking the accumulated value of the fund without reference to charges and then subtracting from this figure the figure in the ‘what you might get back column’ for the same year.

6 This column must show standardised deterministic projection of the surrender value, cash-in value or transfer value, calculated in accordance with the rules in COBS 13 Annex 2 (Projections) at the appropriate intermediate rate of return to the end of each relevant year.

Exception

2.3 R An effect of charges table may be amended, but only if and to the extent that that is necessary to properly reflect the nature and effect of the charges inherent in a particular product.

2.4 G The effect of 2.3R is that, for example, the column labels and explanatory text may be adjusted to reflect the nature of the contract. For instance:

The column titled ‘What you might get back’ might be replaced with ‘What the transfer value might be’ for personal pensions, or ‘Open market value’ for income withdrawals or short-term annuities.

The withdrawals column may be called ‘Total income taken’ for income withdrawals or short-term annuities.

The table may be titled ‘What effect will the deductions have?’ for income withdrawals or short-term annuities.

3 Reduction in yield

3.1 R Reduction in yield (‘A’) is ‘B’ less ‘C’ where:

(1) 'B' is the intermediate rate of return for the relevant product; and

(2) 'C' is determined by:

(a) carrying out a standardised deterministic projection to the projection date, using ‘B’; and then

(b) calculating the annual rate of return (‘C’) (rounded to the nearest tenth of 1 %) required to achieve the same projection value if charges are left out of account.

3.2 R A firm must present reduction in yield as ‘A%’, as part of a statement which explains that ‘charges and expenses have the effect of reducing your anticipated returns from ‘B%’ to ‘C%’, or in some other appropriate way.
3.3 R If contributions will be invested in more than one fund in a single designated investment or made by an initial lump sum payment that is followed by regular contributions, the reduction in yield must be:

(1) calculated separately for each fund or for the single contribution and the regular contributions (as the case may be); and

(2) presented:

(a) on a fund by fund, or single contribution and regular contribution, basis, together with a statement which explains the nature and effect of a reduction in yield, the reason for the inclusion of more than one reduction in yield figure and the reason for the differences between them; or

(b) (if the reduction in yield results are so similar that one figure could reasonably be regarded as representative of the others), as a single figure together with a statement which explains the nature and effect of a reduction in yield, and that the reduction in yield figure given is representative of the reduction in yield figures for each of the funds or for the single and regular contributions (as the case may be); or

(c) through a single figure combining the separate figures for each fund or contribution in a proportionate manner, with an appropriate description.

3.4 R Where a firm is calculating reduction in yield information, it must:

(1) disregard charges related to mortality and morbidity risks; or

(2) (where the requirement in (1) produces figures that are misleading) include a statement with the reduction in yield information that it has been calculated taking into account charges related to mortality and morbidity risk.

…

14.2.1 R A firm that sells:

(1) a packaged product to a retail client, must provide a key features document and a key features illustration to that client (unless the packaged product is a unit in a simplified prospectus scheme or an EEA simplified prospectus scheme);

…

(5) a unit in a simplified prospectus scheme to a client, must offer the scheme’s current simplified prospectus to that client. In addition, if the client is a retail client present in the EEA, the firm must provide the simplified prospectus to the client together with:
(b) information about the three types of CTF that are generally available (stakeholder CTFs, cash-deposit CTFs and security-based CTFs), and the type of CTF the firm is offering (if the units will, or may, be held in a CTF);

Exception to the provision rules: key features documents and simplified prospectuses

14.2.5 R A firm is not required to provide:

\[\ldots\]

(2) a key features document or key features illustration, if another person is required to provide the distance marketing information by the rules of another EEA State;

\[\ldots\]

Exception: key features illustrations

14.2.6 R [intentionally blank] A firm is not required to provide a key features illustration for a product if the information that would have been included in that illustration is included in the key features document provided to the client.

Exception to the provision rules: key features documents and key features illustrations

14.2.7 R A firm is not required to provide a key features document or a key features illustration for:

\[\] (1) a key features scheme if it provides a simplified prospectus instead;

\[\] (2) a life policy that is not a reinsurance contract if:

\[(a)\] the firm is operating from an establishment in another EEA State and the sale is by distance contract; or

\[\] (b) the client is habitually resident outside the United Kingdom and the sale is not by distance contract.

\[\] (3) a traded life policy.

[Note: in respect of (2), articles 4(1) and 16 of the Distance Marketing Directive and article 36 of the Consolidated Life Directive]

Exception to the provision rules: key features documents and key features illustrations
14.2.8

R A firm is not required to provide a key features document or a key features illustration, if:

(1) the client is buying or investing in response to a direct offer financial promotion without receiving a personal recommendation to buy or invest; and

(2) the firm provides materially the same information in some other way.

Exception to the provision rules: key features documents, key features illustrations and simplified prospectuses

14.2.9

R A firm is not required to provide a key features document, a key features illustration or a simplified prospectus for a key features scheme or simplified prospectus scheme if:

(1) the client is habitually resident outside the EEA and not present in the EEA when the relevant application is signed; or

(2) the purchase is by a discretionary investment manager on behalf of a retail client; or

(3) the sale is arranged or personally recommended by an investment manager and the client has agreed that a key features document or simplified prospectus is not required; or

(4) a retail client is purchasing a holding in a scheme in which the client already has a holding, or the client is switching from one class of shares or units to another in the same scheme, and the relevant document has already been provided to that client.

[Note: articles 1, 33(1), and 44 of the UCITS directive]

15.5.5

G This chapter does not act to cancel distance contracts entered into by an appointed representative, or where applicable, by a tied agent, as principal such as a distance contract to provide advisory services, but the Distance Marketing Regulations (regulations 9 to 13, see regulation 4(3)) may have this effect.

Long term care insurance

16.6.7

R At each anniversary of the date on which a long-term care insurance contract which is based on single premium investment bonds was entered into, the insurer must:

(1) provide the retail client with a table based on the format of COBS 13 Annex 3 2.2R containing at least the current fund value and projected future policy values (as in column "What you might get back");

(2) where it is the case, inform the retail client of the possibility that future policy values may be insufficient to fulfil the original purpose of the contract; and
(3) inform the retail client how to obtain advice on investments in respect of long-term care insurance contracts, and that it is in his best interest to do so.

Income withdrawals

16.6.8 R At intervals no longer than 12 months from the date of an election by a retail client to make income withdrawals, the relevant product provider must:

(1) provide the retail client with such information required by COBS 13 Annex 2 2.9R as will enable the retail client to review the election; and

(2) inform the retail client how to obtain advice on investments in respect of his income withdrawals, and that it would be in his best interests to do so.

... Insert the following text into COBS 18. All text, apart from some headings, is new and not underlined.

18 Specialist Regimes

... Energy market activity and oil market activity – non-MiFID business

18.2.3 R Only the COBS provisions in the table apply to energy market activity or oil market activity carried on by a firm which is not:

(1) MiFID or equivalent third country business; or

(2) energy market activity or oil market activity set out in COBS 18.2.4R.

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Application</td>
</tr>
<tr>
<td>2.1.1</td>
<td>Acting honestly, fairly and professionally</td>
</tr>
<tr>
<td>2.4</td>
<td>Agent as client and reliance on others</td>
</tr>
<tr>
<td>3</td>
<td>Client categorisation</td>
</tr>
<tr>
<td>4</td>
<td>Communication to clients including financial promotions, but only in relation to communicating or approving a financial promotion</td>
</tr>
<tr>
<td>5.2</td>
<td>E-commerce</td>
</tr>
</tbody>
</table>
Energy market activity and oil market activity – dealings with or through authorised persons

18.2.4  R Only the COBS provisions in the table apply to energy market activity or oil market activity carried on by a firm which is not MiFID or equivalent third country business but which, if the firm were not authorised, would not be a regulated activity because of article 16 of the Regulated Activities Order (Dealing in contractually based investments) or article 22 of the Regulated Activities Order (Deals with or through authorised persons etc.).

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Application</td>
</tr>
<tr>
<td>2.4</td>
<td>Agent as client and reliance on others</td>
</tr>
<tr>
<td>4.12</td>
<td>Unregulated collective investment schemes</td>
</tr>
<tr>
<td>5.2</td>
<td>E-commerce</td>
</tr>
</tbody>
</table>

Other non-MiFID business related to commodity or exotic derivative instruments

18.2.5  R COBS applies as set out in the table to firms in respect of activities referred to in the general application rule related to:

1. commodity futures; or
2. commodity options; or
3. contracts for differences related to an underlying commodity; or
4. other futures or contracts for differences which are not related to commodities, financial instruments or cash;

which is not MiFID or equivalent third country business and energy market activity or oil market activity.

Application of COBS to other non-MiFID business related to commodity derivative instruments

All of COBS applies, except COBS 18.2.6R to COBS 18.2.9E applies instead of COBS 11.2 (Best execution)

Best execution for other non-MIFID business related to commodity and exotic derivative instruments

18.2.6  R A firm that executes a customer order in the course of carrying out activities referred to in COBS 18.2.5R must provide best execution.
Exceptions to best execution

18.2.7 R The duty to provide best execution does not apply where:

(1) the firm has agreed with a professional client that it does not owe a duty of best execution to him; or

(2) the firm relies on another person to whom it passes a customer order for execution to provide best execution, but only if it has taken reasonable care to ensure that he will do so.

Providing best execution

18.2.8 R To provide best execution, a firm must:

(1) take reasonable care to ascertain the price which is the best available for the customer order in the relevant market at the time for transactions of the kind and size concerned; and

(2) execute the customer order at a price which is no less advantageous to the customer, unless the firm has taken reasonable steps to ensure that it would be in the customer’s best interests not to do so.

18.2.9 E (1) In order to take reasonable care to ascertain the price which is the best available, a firm:

(a) should disregard any charges and commission made by it or its agents that are disclosed to the customer under COBS 6.1.9R (Information about costs and associated charges);

(b) need not have access to competing exchanges, or to all, or a minimum number of, available price sources; but if a firm can access prices displayed by different exchanges and trading platforms and make a direct and immediate comparison, it should execute the customer order at the best price available to the firm on such exchanges or trading platforms, if this is in the best interests of the customer;

(c) should pass on to the customer the price at which it executes the transaction to meet the customer order; and

(d) should not take a mark-up or mark-down from the price at which it executes the customer order.

(2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to take reasonable care to ascertain the price which is the best available for the customer order (see COBS 18.2.8(1)R)

(3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to take reasonable care to ascertain
the price which is the best available for the customer order (see COBS 18.2.8(1)R)

18.3 Corporate finance business

... Corporate finance business – non-MiFID business

18.3.3 Only the provisions of COBS in the table apply to corporate finance business carried on by a firm which is not MiFID or equivalent third country business.

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Application</td>
</tr>
<tr>
<td>2.1.1</td>
<td>Acting honestly, fairly and professionally</td>
</tr>
<tr>
<td>2.3</td>
<td>Inducements</td>
</tr>
<tr>
<td>2.4</td>
<td>Agent as client and reliance on others</td>
</tr>
<tr>
<td>3</td>
<td>Client categorisation</td>
</tr>
<tr>
<td>4</td>
<td>Communication to clients including financial promotions, except COBS 4.5 – COBS 4.11</td>
</tr>
<tr>
<td>5.1</td>
<td>The information and other requirements of the Distance Marketing Directive, but only in relation to distance contracts concluded with consumers</td>
</tr>
<tr>
<td>5.2</td>
<td>E-commerce</td>
</tr>
<tr>
<td>11.7</td>
<td>Personal account dealing</td>
</tr>
<tr>
<td>12</td>
<td>Investment research</td>
</tr>
<tr>
<td>15</td>
<td>Cancellation, but only in relation to distance contracts concluded with consumers</td>
</tr>
</tbody>
</table>

18.4 COBS 15 (Cancellation) is likely to be of limited application to corporate finance business. Distance contracts concluded with consumers in the course of corporate finance business will be exempt from COBS 15 if the price of the financial service is dependent on fluctuations in the financial market outside the firm's control.

... Operators of collective investment schemes

Application
18.5.1 R This section applies to a *firm* which is an *operator* of a *collective investment scheme*.

Application or modification of general *COBS* rules for *operators*

18.5.2 R An *operator* when it is carrying on *scheme management activity*:

1. must comply with the *COBS rules* specified in the table, as modified by this section; and

2. need not comply with any other *rule* in *COBS*.

Table: Application of conduct of business rules

<table>
<thead>
<tr>
<th>Chapter, section or rule</th>
<th>Description</th>
<th>Modifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Application</td>
<td></td>
</tr>
<tr>
<td>2.1.1</td>
<td>Acting honestly, fairly and professionally</td>
<td></td>
</tr>
<tr>
<td>2.3</td>
<td>Inducements</td>
<td></td>
</tr>
<tr>
<td>2.4</td>
<td>Agent as client and reliance on others</td>
<td></td>
</tr>
<tr>
<td>4.2.1 – 4.2.3</td>
<td>Fair, clear and not misleading communications</td>
<td></td>
</tr>
<tr>
<td>5.2</td>
<td>E-Commerce</td>
<td></td>
</tr>
<tr>
<td>11.2</td>
<td>Best execution</td>
<td>In the case of an <em>unregulated collective investment scheme</em>, <em>COBS 18.5.4R</em> (Modification of best execution) applies instead of <em>COBS 11.2</em> in the circumstances set out in <em>COBS 18.5.4R</em>.</td>
</tr>
<tr>
<td>11.3</td>
<td>Client order handling</td>
<td></td>
</tr>
<tr>
<td>11.5</td>
<td>Record keeping: client orders and decisions to deal</td>
<td></td>
</tr>
<tr>
<td>11.6</td>
<td>Use of dealing commission</td>
<td></td>
</tr>
</tbody>
</table>
### 18.5 Operators of collective investment schemes

#### General modifications

**18.5.3 R** The *COBS rules* specified in the table in COBS 18.5.2R apply to an *operator* when it is carrying on *scheme management activity* with the following modifications:

1. Subject to (2), references to *customer* or *client* are to be construed as references to any *scheme* in respect of which the *operator* is acting or intends to act, and with or for the benefit of which the relevant activity is to be carried on;

2. In the case of an *unregulated collective investment scheme*, when an operator is required by the rules in *COBS* to provide information to, or obtain consent from, a *customer* or *client*, the operator must ensure that the information is provided to, or consent obtained from, a *participant* or a potential *participant* in the *scheme* as the case may be; and

3. References to the service of *portfolio management* in COBS 11.2 and 11.3 are to be construed as references to the management by an *operator* of financial instruments held for or within the *scheme* of which it is the *operator*.

#### Modification of best execution for operators of unregulated collective investment schemes

**18.5.4 R** The best execution provisions applying to an *operator* of a *collective investment scheme* do not apply in relation to an *unregulated collective investment scheme* whose scheme documents include a statement that best execution does not apply in relation to the *scheme* and in which:

1. No *participant* is a *retail client*; or

2. No current *participant* in the *scheme* was a *retail client* on joining the *scheme* as a *participant*.

#### Scheme documents for an unregulated collective investment scheme

**18.5.5 R** An *operator* of an *unregulated collective investment scheme* must not accept a *retail client* as a *participant* in the *scheme* unless it has taken reasonable steps to offer and, if requested, provide to the potential *participant* scheme documents which adequately describe how the operation of the *scheme* is governed.

#### Format and content of scheme documents

**18.5.6 G** An *operator's* scheme documents may consist of any number of *documents* provided that it is clear that collectively they constitute the scheme documents and provided the use of several *documents* in no way diminishes the significance of any of the statements which are required to be given to the
18.5.7 G The scheme documents of an unregulated collective investment scheme (if they exist) should make it clear that if a participant is reclassified as a retail client, this reclassification will not affect certain scheme management activities of the operator of the scheme. In particular, despite such a reclassification, the operator will not be required to comply with the best execution provisions applying to an operator of a collective investment scheme. It should be noted that there is no requirement that scheme documents must be produced for an unregulated collective investment scheme.

18.5.8 R Where the scheme is an unregulated collective investment scheme and no current participant in the scheme was a retail client on joining the scheme as a participant, the scheme documents must include a statement that:

1. explains that if a participant is reclassified as a retail client subsequent to joining the scheme as a participant, then the operator may continue to treat all participants in the scheme as though they were not retail clients;

2. explains that if a participant is reclassified as a retail client subsequent to joining the scheme as a participant, then the modification of best execution (see COBS 18.5.5R) will continue to apply to that scheme; and

3. explains that, in the event of such a reclassification, the operator will not be required to provide best execution in relation to the scheme.

18.5.9 G The operator will still have to comply with other COBS provisions as a result of the reclassification of a participant as a retail client, for example, the requirement to provide periodic statements to participants who are retail clients in an unregulated collective investment scheme (see the rule on periodic statements for an unregulated collective investment scheme (COBS 18.5.11R).

Adequate information

18.5.10 E (1) In order to provide adequate information to describe how the operation of the scheme is governed, an operator of an unregulated collective investment scheme should include in the scheme documents a provision about each of the items of relevant information set out in the following table (Content of scheme documents).

(2) Compliance with (1) may be relied on as tending to establish compliance with COBS 18.5.5R.

(3) Contravention of (1) may be relied on as tending to establish contravention of COBS 18.5.5R.

Table: Content of scheme documents

**Content of scheme documents**
The scheme documents should include provision about:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>
| 1 | Regulator  
The firm statutory status in accordance with GEN 4 Annex 1 (Statutory status disclosure); |
| 2 | Services  
the nature of the services that the operator will provide in relation to the scheme; |
| 3 | Payments for services  
details of any payment for services payable by the scheme or from the property of the scheme or participants in the scheme to the operator, including where appropriate:  
(a) the basis of calculation;  
(b) how it is to be paid and collected;  
(c) how frequently it is to be paid; and  
(d) whether or not any other payment is receivable by the operator (or to its knowledge by any of its associates) in connection with any transactions effected by the operator with or for the scheme, in addition to or in lieu of any fees; |
| 4 | Commencement  
when and how the operator is appointed; |
| 5 | Accounting  
the arrangements for accounting to the scheme or participants in the scheme for any transaction effected; |
| 6 | Termination method  
how the appointment of the operator may be terminated; |
| 7 | Complaints procedure  
how to complain to the operator and a statement that the participants in the scheme may subsequently complain direct to the Financial Ombudsman Service; |
| 8 | Compensation  
whether or not compensation may be available from the compensation scheme should the operator be unable to meet its liabilities, and information about any other applicable compensation scheme; and, for each applicable scheme, the extent and level of cover and how further information can be obtained; |
| 9 | Investment objectives |
the investment objectives for the portfolio of the *scheme*;

<table>
<thead>
<tr>
<th>(10)</th>
<th>Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>any restrictions on:</td>
</tr>
<tr>
<td>(i)</td>
<td>the types of <em>investments</em> or property which may be included in the portfolio of the <em>scheme</em>;</td>
</tr>
<tr>
<td>(ii)</td>
<td>the markets on which <em>investments</em> or property may be acquired for the portfolio of the <em>scheme</em>;</td>
</tr>
<tr>
<td>(iii)</td>
<td>the amount or value of any one <em>investment</em> or asset, or on the proportion of the portfolio of the <em>scheme</em> which any one <em>investment</em> or asset or any particular kind of <em>investment</em> or asset may constitute; or</td>
</tr>
<tr>
<td>(b)</td>
<td>that there are no such restrictions;</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(11)</th>
<th>Holding scheme assets</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>if it is the case, that the <em>operator</em> will:</td>
</tr>
<tr>
<td>(i)</td>
<td>hold <em>money</em> on behalf of the <em>scheme</em> or be the <em>custodian</em> of <em>investments</em> or other property of the <em>scheme</em>; or</td>
</tr>
<tr>
<td>(ii)</td>
<td>arrange for some other <em>person</em> to act in either capacity and, if so, whether that <em>person</em> is an <em>associate</em> of the <em>operator</em> identifying that <em>person</em> and describing the nature of any association; and</td>
</tr>
<tr>
<td>(b)</td>
<td>in either case:</td>
</tr>
<tr>
<td>(i)</td>
<td>how any <em>money</em> is to be deposited;</td>
</tr>
<tr>
<td>(ii)</td>
<td>the arrangements for recording and separately identifying registrable <em>investments</em> of the <em>scheme</em> and, where the registered holder is the <em>operator's</em> own nominee, that the <em>operator</em> will be responsible for the acts and omissions of that <em>person</em>;</td>
</tr>
<tr>
<td>(iii)</td>
<td>the extent to which the <em>operator</em> accepts liability for any loss of the <em>investment</em> of the <em>scheme</em>;</td>
</tr>
<tr>
<td>(iv)</td>
<td>the extent to which the <em>operator</em> or any other <em>person</em> mentioned in (11)(a)(ii), may hold a lien or security interest over <em>investments</em> of the <em>scheme</em>;</td>
</tr>
<tr>
<td>(v)</td>
<td>where <em>investments</em> of the <em>scheme</em> will be registered collectively in the same name, a statement that the entitlements of the <em>scheme</em> may not be identifiable by separate certificates or other physical documents of title, and that, should the <em>operator</em> default, any shortfall in</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>(vi)</strong></td>
<td>whether or not investments or other property of the scheme can be lent to, or deposited by way of collateral with, a third party and whether or not money can be borrowed on behalf of the scheme against the security of those investments or property and, if so, the terms upon which they may be lent or deposited;</td>
</tr>
<tr>
<td><strong>(vii)</strong></td>
<td>the arrangements for accounting to the scheme for investments of the scheme, for income received (including any interest on money and any income earned by lending investments or other property) of the scheme, and for rights conferred in respect of investments or other property of the scheme;</td>
</tr>
<tr>
<td><strong>(viii)</strong></td>
<td>the arrangements for determining the exercise of any voting rights conferred by investments of the scheme; and</td>
</tr>
<tr>
<td><strong>(ix)</strong></td>
<td>where investments of the scheme may be held by an eligible custodian outside the United Kingdom, a general statement that different settlement, legal and regulatory requirements, and different practices relating to the segregation of those investments, may apply;</td>
</tr>
<tr>
<td>(12)</td>
<td>Clients' money outside the United Kingdom if it is the case, that the operator may hold the money of the scheme in a client bank account outside the United Kingdom;</td>
</tr>
<tr>
<td>(13)</td>
<td>Exchange rates if a liability of the scheme in one currency is to be matched by an asset in a different currency, or if the services to be provided to the operator for the scheme may relate to an investment denominated in a currency other than the currency in which the investments of the scheme are valued, a warning that a movement of exchange rates may have a separate effect, unfavourable or favourable, on the gain or loss otherwise made on the investments of the scheme;</td>
</tr>
<tr>
<td>(14)</td>
<td>Stabilised investments if it is the case, that the operator is to have the right under the scheme documents to effect transactions in investments the prices of which may be the subject of stabilisation;</td>
</tr>
</tbody>
</table>
| (15) | Conflict of interest and material interest if it is the case, that the operator is to have the right under the agreement or instrument constituting the scheme to effect transactions on behalf of the scheme in which the operator has directly or
indirectly a material interest (except for an interest arising solely from the participation of the operator as agent for the scheme), or a relationship of any description with another party which may involve a conflict with the operator's duty to the scheme, together with a disclosure of the nature of the interest or relationship;

(16) Use of dealing commission
if the operator receives goods or services in addition to the execution of its customer orders in accordance with the section on the use of dealing commission, the prior disclosure required by the rule on prior disclosure (see COBS 11.6.2R);

(17) Acting as principal
if it is the case, that the operator may act as principal in a transaction with the scheme;

(18) Stock lending
if it is the case, that the operator may undertake stock lending activity with or for the scheme specifying the type of assets of the scheme to be lent, the type and value of relevant collateral from the borrower and the method and amount of payment due to the scheme in respect of the lending;

(19) Transactions involving contingent liability investments

(a) if it is the case, that the agreement or instrument constituting the scheme allows the operator to effect transactions involving contingent liability investments for the account of the portfolio of the scheme;

(b) if applicable, whether there are any limits on the amount to be committed by way of margin and, if so, what those limits are; and

(c) if applicable, that the operator has the authority to effect transactions involving contingent liability investments otherwise than under the rules of a recognised investment exchange or designated investment exchange and in a contract traded thereon;

(20) Periodic statements

(a) the frequency of any periodic statement (this should not be less than once every 12 months) except where a periodic statement is not required (see COBS 18.5.13R); and

(b) whether those statements will include some measure of performance, and, if so, what the basis of that measurement will be;

(21) Valuation
the bases on which assets comprised in the portfolio of the scheme are to be valued;

(22) Borrowings
if it is the case, that the operator may supplement the funds in the portfolio of the scheme and, if it may do so:

(a) the circumstances in which the operator may do so;

(b) whether there are any limits on the extent to which the operator may do so and, if so, what those limits are; and

(c) any circumstances in which such limits may be exceeded;

(23) Underwriting commitments
if it is the case, that the operator may for the account of the portfolio of the scheme underwrite or sub-underwrite any issue or offer for sale of securities, and:

(a) whether there are any restrictions on the categories of securities which may be underwritten and, if so, what these restrictions are; and

(b) whether there are any financial limits on the extent of the underwriting and, if so, what these limits are;

(24) Investments in other collective investment schemes
whether or not the portfolio may contain units in a collective investment scheme either operated or advised by the operator or by an associate of the operator or in a collective investment scheme which is not a regulated collective investment scheme;

(25) Investments in securities underwritten by the operator
whether or not the portfolio may contain securities of which any issue or offer for sale was underwritten, managed or arranged by the operator or by an associate of the operator during the preceding 12 months.

Periodic statements for an unregulated collective investments scheme

18.5.11 R An operator of an unregulated collective investment scheme must, subject to the exceptions from the requirement to provide a periodic statement, provide to participants in the scheme, promptly and at suitable intervals, a statement in a durable medium which contains adequate information on the value and composition of the portfolio of the scheme at the beginning and end of the period of the statement.

Promptness, suitable intervals and adequate information

18.5.12 E (1) An operator should act in accordance with the provisions in the right hand column of the periodic statements table (see COBS 18.5.15E) to
fulfil the requirement to prepare and issue periodic statements indicated in the left hand column against these provisions.

(2) Compliance with (1) may be relied on as tending to establish compliance with the requirement to prepare and issue periodic statements.

(3) Contravention of (1) may be relied on as tending to establish contravention of the requirement to prepare and issue periodic statements.

Exceptions from the requirement to provide a periodic statement

18.5.13 R (1) An operator of an unregulated collective investment scheme need not provide a periodic statement:

(a) (i) to a participant in the scheme who is a retail client ordinarily resident outside the United Kingdom; or

(ii) to a participant in the scheme who is a professional client;

if the participant has so requested or the operator has taken reasonable steps to establish that the participant does not wish to receive it; or

(b) if it would duplicate a statement to be provided by someone else.

(2) For a firm acting as an outgoing ECA provider, the exemption for retail client participants ordinarily resident outside the United Kingdom applies only to a participant in the scheme who is a retail client ordinarily resident outside the EEA.

Record keeping requirements

18.5.14 R An operator of an unregulated collective investment scheme must make a copy of any periodic statement it has provided in accordance with the requirement to prepare and issue periodic statements to participants in the scheme. The record must be retained for a minimum period of three years.

18.5.15 E Table: Periodic statements

This table belongs to COBS 18.5.12E.

<table>
<thead>
<tr>
<th>Periodic statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suitable intervals</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
Adequate information

(2)  
(a)  
A periodic statement should contain:

(i)  
(A) The information set out in the table of general contents of a periodic statement;

(B) where the portfolio of the scheme includes uncovered open positions in contingent liability investments, the additional information in the table listing the contents of a periodic statement (see COBS 18.5.18E) in respect of contingent liability investments; or

(ii) such information as a participant who is a retail client ordinarily resident outside the United Kingdom, or a professional client, has on his own initiative agreed with the operator as adequate.

(b) For a firm acting as an outgoing ECA provider, the words 'United Kingdom' is replaced by 'EEA'.

18.5.16  
G  Examples of uncovered open positions include:

(1) selling a call option on an investment not held in the portfolio;

(2) unsettled sales of call options on currency in amounts greater than the portfolio's holding of that currency in cash or in readily realisable investments denominated in that currency; and

(3) transactions having the effect of selling an index to an amount greater than the portfolio's holdings of investments included in that index.

18.5.17  
E  Table: General contents of a periodic statement

This table belongs to COBS 18.5.15E.

<table>
<thead>
<tr>
<th>General contents of periodic statements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>(a)</td>
</tr>
<tr>
<td>(i)</td>
</tr>
</tbody>
</table>
preceding period of account is made up; or

(ii) in the case of the first periodic statement, the value of the assets comprised in the portfolio on the date on which the operator assumed responsibility for the management of the portfolio.

(b) As at the end of the account period:

(i) the number, description and value of each investment held on behalf of the scheme;

(ii) the amount of cash held on behalf of the scheme; and

(iii) the total value of the portfolio of the scheme.

2 Basis of valuation

A statement of the basis on which the value of each investment has been calculated and, if applicable, a statement that the basis for valuing a particular investment has changed since the previous periodic statement. Where any investments are shown in a currency other than the usual one used for valuation of the portfolio of the scheme, the relevant currency exchange rates must be shown.

3 Details of any assets loaned or charged

(a) A summary of those investments (if any) which were, at the closing date, loaned to any third party and those investments (if any) that were at that date charged to secure borrowings made on behalf of the portfolio of the scheme; and

(b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during the period.

4 Transactions and changes in composition

Except in the case of a portfolio which aims to track the performance of an external index:

(a) a statement that summarises the transactions entered into for the portfolio of the scheme during the period; and

(b) the aggregate of money and a summary of all investments transferred into and out of the portfolio of the scheme during the period; and

(c) the aggregate of any interest payments, dividends and other benefits received by the operator for the portfolio of the scheme during that period.

5 Charges and remuneration
If not previously advised in writing, a statement for the account period:

(a) of the aggregate charges of the operator and its associates; and

(b) of any remuneration received by the operator or its associates or both from a third party in respect of the transactions entered into, or any other services provided, for the portfolio of the scheme.

6 Movement in value of portfolio
A statement of the difference between the value of the portfolio at the closing date and its value at the starting date of the account period, having regard at least, during the account period, to the following:

(a) the aggregate of assets received from participants of the scheme and added to the portfolio of the scheme;

(b) the aggregate of the value of assets transferred, or of amounts paid, to the scheme;

(c) the aggregate income received on behalf of the scheme in respect of the portfolio; and

(d) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio of the scheme.

Notes:
For the purposes of Item 1, where the scheme is a property enterprise trust, it will be sufficient for the periodic statement to disclose the number of properties held in successive valuation bands where this is appropriate to the size and composition of the scheme, rather than the value of each asset in the portfolio. The valuation bands of over £10m, £5-£10m, £2.5-£5m, £1-£2.5m and under £1m would be appropriate, unless an operator could show that different bands were justifiable in the circumstances.

The statement to be provided under Item 6 is not intended to be an indicator of the performance of the portfolio of the scheme.

An operator may wish to distinguish capital and income, and thereby provide more information than referred to in this table. If the statement includes some measure of performance, the basis of measurement should be stated.

18.5.18 E Table: Contents of a periodic statement in respect of contingent liability investments

This table belongs to COBS 18.5.15E.

**Contents of a periodic statement in respect of contingent liability investments**

<table>
<thead>
<tr>
<th>(1) Changes in value</th>
</tr>
</thead>
<tbody>
<tr>
<td>The aggregate of money transferred into and out of the portfolio of the scheme during the account period.</td>
</tr>
</tbody>
</table>
(2) Open positions
In relation to each open position in the portfolio of the *scheme* at the end of the account period, the unrealised profit or loss to the portfolio of the *scheme* (before deducting or adding any *commission* which would be payable on closing out).

(3) Closed positions
In relation to each transaction effected during the account period to close out a position of the *scheme*, the resulting profit or loss to the portfolio of the *scheme* after deducting or adding any *commission*.

(Instead of the specific detail required by Items 2 or 3, the statement may show the net profit or loss in respect of the overall position of the *scheme* in each contract)

(4) Aggregate of contents
The aggregate of each of the following in, or relating to, the portfolio of the *scheme* at the close of business on the valuation date:

- (a) cash;
- (b) *collateral* value;
- (c) management fees; and
- (d) *commissions* attributable to transactions during the period or a statement that this information has been separately disclosed in writing on earlier statements or confirmations to the *participant*.

(5) Option account valuations
In respect of each open *option* comprising the portfolio of the *scheme* on the valuation date:

- (a) the *share, future, index or other investment* or asset involved;
- (b) (unless the valuation statement follows the statement for the period in which the *option* was opened) the trade price and date for the opening transaction;
- (c) the market price of the contract; and
- (d) the exercise price of the contract.

*Options* account valuations may show an average trade price and market price in respect of an *option* series where a number of contracts within the same series have been purchased on behalf of the *scheme*. 
18.6  Lloyd's

Application

18.6.1  R  This section applies to a firm when it carries on Lloyd's market activities.

COBS rules that apply to Lloyd's market activities

18.6.2  R  Only COBS 3 (Client categorisation) and the financial promotion rules apply when a firm is carrying out Lloyd's market activities.

18.6.3  G  Firms are reminded that syndicate business plans may be used in ways that bring them within the definition of a financial promotion.

Definitions and modifications

18.6.4  R  When a firm is carrying on Lloyd's market activities, any reference in COBS to the term:

(1) designated investment is to be taken to include the following specified investments:

(a) the underwriting capacity of a Lloyd's syndicate;

(b) membership of a Lloyd's syndicate; and

(c) rights to or interests in the specified investments in (a) or (b);

(2) designated investment business is to be taken to include the following regulated activities:

(a) advising on syndicate participation at Lloyd's;

(b) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's; and

(c) agreeing to carry on the regulated activities in (a) or (b).

The Principles and Lloyd's market activities

18.6.5  G  Whilst COBS has limited application to Lloyd's market activities, firms conducting Lloyd's market activities are reminded that they are required to comply with the Principles.

18.7  Depositaries

18.7.1  R  Only the COBS provisions in the table apply to a depositary when acting as such, when carrying on business which is not MiFID or equivalent third country business:
## COBS Description

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Acting honestly, fairly and professionally</td>
</tr>
<tr>
<td>2.3</td>
<td>Inducements, except COBS 2.3.1R(2)(b) and COBS 2.3.2R</td>
</tr>
<tr>
<td>4</td>
<td>Communication to clients including financial promotions, but only in relation to communicating or approving a financial promotion</td>
</tr>
<tr>
<td>11.7</td>
<td>Personal account dealing</td>
</tr>
</tbody>
</table>

### 18.8 OPS firms – non scope business

**18.8.1 R** COBS applies to an **OPS firm** when it carries on business which is not **MiFID or equivalent third country business**, with the following modifications:

1. References to client are to be taken to be references to the OPS or welfare trust, as the case may be, in respect of which the OPS firm is acting or intends to act, and with or for the benefit of whom the relevant business is to be carried on;

2. If an OPS firm is required by any COBS rule to provide information to, or obtain consent from, a client, that firm must ensure that the information is provided to, or consent obtained from, each of the trustees of the OPS or welfare trust for whom that firm is acting; and

3. COBS is modified by the addition of the rules in the table below:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.2.6R (4)</td>
<td>If an OPS firm carries on OPS activity for an OPS trustee who is a professional client and who is habitually resident in the United Kingdom, it may rely upon the exceptions in COBS 16.2.1.R(2) or COBS 16.2.6R(1) only if it provides a periodic statement to the professional client containing the information required by COBS 18.8.2.R</td>
</tr>
</tbody>
</table>

### 18.8.2 R

Where an OPS firm conducts OPS activity and is obliged to provide a periodic statement, the periodic statement must contain the information in the table below:

<table>
<thead>
<tr>
<th>Information to be included in a periodic statement provided by an OPS firm conducting OPS activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Investment objectives</td>
</tr>
</tbody>
</table>

A statement of any investment objectives governing the mandate of the portfolio of the occupational pension scheme as at the
<table>
<thead>
<tr>
<th>(2) Details of any asset loaned or charged</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) a summary of any investments that were, at the closing date, lent to a third party and any investments that were at that date charged to secure borrowings made on behalf of the portfolio; and</td>
</tr>
<tr>
<td>(b) the aggregate of any interest payments made and income received during the account period in respect of loans or borrowings made during that period and a comparison with the previous period.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(3) Transactions and changes in composition</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) a summary of the transactions entered into for the portfolio during the period and a comparison with the previous period;</td>
</tr>
<tr>
<td>(b) the aggregate of money and a summary of all investments transferred into and out of the portfolio during the period; and</td>
</tr>
<tr>
<td>(c) the aggregate of any interest payments, dividends and other benefits received by the firm for the portfolio during that period and a comparison with the previous period.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(4) Charges and remuneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>If not previously advised in writing, a statement for the period of account:</td>
</tr>
<tr>
<td>(a) of the aggregate charges of the firm and its associates; and</td>
</tr>
<tr>
<td>(b) of any remuneration received by the firm or its associates or both from a third party in respect of the transactions entered into, or any other services provided, for the portfolio.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(5) Movement in value of portfolio</th>
</tr>
</thead>
<tbody>
<tr>
<td>A statement of the difference between the value of the portfolio at the closing date of the period of account and its value at the starting date, having regard, during the period of account, to:</td>
</tr>
<tr>
<td>(a) the aggregate of assets received from the occupational pension scheme and added to the portfolio;</td>
</tr>
<tr>
<td>(b) the aggregate of the value of assets transferred, or of amounts paid, to the client;</td>
</tr>
<tr>
<td>(c) the aggregate income received on behalf of the client in respect of the portfolio; and</td>
</tr>
<tr>
<td>(d) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio.</td>
</tr>
</tbody>
</table>

18.8.3 R COBS 8 (Client agreements) does not apply to an OPS firm, where the OPS firm is carrying on designated investment business as part of its OPS activity
in relation to an occupational pension scheme of which it is a trustee.

18.9 ICVCs

18.9.1 R Only the financial promotion rules in COBS apply to an ICVC.

18.9.2 G Firms should note that the operator of an ICVC when it is undertaking scheme management activity will be subject to COBS 18.5.2R.

18.10 UCITS qualifiers and service companies

18.10.1 R The COBS provisions in the table apply to a UCITS qualifier and a service company:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Communications to clients, but only in relation to communicating or approving a financial promotion</td>
</tr>
<tr>
<td>5.2</td>
<td>E-Commerce</td>
</tr>
<tr>
<td>12.4</td>
<td>Investment Research recommendations: required disclosures</td>
</tr>
</tbody>
</table>

18.11 Authorised professional firms

18.11.1 R COBS applies to an authorised professional firm, except that its application in relation to non-mainstream regulated activities and financial promotion is modified as set out below.

18.11.2 R COBS does not apply to an authorised professional firm with respect to its non-mainstream regulated activities, except that:

1. the fair, clear and not misleading rule applies;

2. the financial promotion rules apply as modified below;

3. COBS 7 (Insurance mediation) applies but only if the designated professional body of the firm does not have rules approved by the FSA under section 332(5) of the Act that implement articles 12 and 13 of the Insurance Mediation Directive and that apply to the firm; and

4. COBS 8.1.3R (Client agreements) applies, except for the requirement to provide information on conflicts of interest.

18.11.3 R The financial promotion rules do not apply to an authorised professional firm in relation to the communication of a financial promotion if:
(1) the firm's main business is the practice of its profession (see IPRU(INV) 2.1.2R(3));

(2) the financial promotion is made for the purposes of and incidental to the promotion or provision by the firm of its professional services or its non-mainstream regulated activities; and

(3) the financial promotion is not communicated on behalf of another person who would not be able lawfully to communicate the financial promotion if he were acting in the course of business;

however, a firm may use the exemptions for promoting unregulated collective investment schemes in COBS 4 (Communicating with clients, including financial promotions) if it wishes.

18.11.4 G The rules on approving financial promotions continue to apply.

19 Pensions supplementary provisions

19.1.4 R When a firm compares the benefits likely to be paid under a defined benefits pension scheme with the benefits afforded by a personal pension scheme or stakeholder pension scheme (COBS 19.1.2R(1)), it must:

(1) assume that:

| (a) the annuity interest rate is the intermediate rate of return appropriate for a level or fixed rate of increase annuity ([cross-reference to follow later] in COBS 13 Annex 2 3.1R(6)) or the rate for annuities in payment (if less) |  
| (b) the retail prices index is | 2.5% |
| (c) the average earnings index and the rate for section 21 orders is | 4.0% |
| (d) the pre-retirement limited price indexation revaluation is | 2.5% |
| (e) the post-retirement limited price increases at | 2.5% |
| (f) the index linked pensions rate is the intermediate rate of return in [cross-reference to follow later] COBS 13 Annex 2 3.1R(6) for annuities linked to the retail prices index; |  

or use more cautious assumptions;

(2) …

…
19.2 Personal pensions, FSAVCs, and AVCs

Financial promotions

19.2.1 R A financial promotion for an AVC or a FSAVC should contain a prominent warning that, as an alternative:

(1) (for AVC promotions) FSAVCs are available;

(2) (for FSAVC promotions) an AVC arrangement exists, and that details can be obtained from the scheme administrator (if that is the case).

…

19.3 Product disclosure to members of occupational pension schemes

19.3.1 R (1) When a firm sells, personally recommends or arranges the sale of a new group or master life policy, the first in a series of individual life policies or the first units in a particular key features scheme or simplified prospectus scheme to or for the trustees of an occupational pension scheme for an AVC, it must give the trustees sufficient information to pass to the relevant member for that member to be able to make informed comparisons between the AVC and any alternative personal pension schemes and stakeholder pension schemes available.

(2) …

…

COBS TP 1: Transitional Provisions relating to Client Categorisation

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provisions: coming into force</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>COBS 3</td>
<td>G</td>
<td>…</td>
<td>From 1 November 2007 indefinitely</td>
<td>1 November 2007</td>
</tr>
</tbody>
</table>

(6) COBS TP 3.9 contains transitional categorisation provisions in relation to
clients of a firm that are taken on between 1 November 2007 and 30 June 2008 in relation to business that is not MiFID or equivalent third country business.

1.9 COBS 3 R

(1) A new client that could have been correctly categorised as an intermediate customer under the rules in force on 31 October 2007:
   (a) may be treated as an elective professional client if it could have been categorised as an expert private customer that had been categorised as an intermediate customer in accordance with COB 4.1.9R on the basis of its experience and understanding; or
   (b) otherwise may be treated as a per se professional client, subject to (3) below.

(2) A firm may categorise as an eligible counterparty or a per se professional client any new client that could have been correctly categorised as a market counterparty under the rules in force on 31 October 2007, provided that the firm may only treat the client as an eligible counterparty for the purposes of eligible counterparty business.

(3) Clients categorised under COBS TP 3.9 must be dealt with in

From 1 November 2007 to 30 June 2008
1 November 2007
COBS TP 2: Other Transitional Provisions

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td>(6)</td>
</tr>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provisions: coming into force</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1</td>
<td>COBS 4</td>
<td>R</td>
<td>A firm communicating other than in relation to MiFID business is not required to comply with the financial promotion rules in relation to any financial promotion that:</td>
<td>1 November 2007 to 31 October 2008</td>
<td>1 November 2007</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1) is in writing and was designed to be communicated for longer than three months in similar form;</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>(2) was subject to, and complied with, the relevant rules in COB 3 that were in force on or before 31 October 2007 (or was exempt from them); and</td>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(3) continues to be fair, clear and not misleading.</td>
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<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.4</td>
<td>COBS 11.2</td>
<td>R</td>
<td>COBS 11.2 (Best execution) does not apply to an order from an ISA manager when acting as such which is not a MiFID investment firm or a third country investment firm for the purchase of or sale of units in a regulated collective investment</td>
<td>From 1 November 2007 to 31 October 2008</td>
<td>1 November 2007</td>
</tr>
</tbody>
</table>

accordance with the relevant procedures and notifications in COBS 3.
<table>
<thead>
<tr>
<th>Section</th>
<th>COBS Section(s)</th>
<th>Requirement Type</th>
<th>Description</th>
<th>Effective Date</th>
<th>Expiry Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.4B</td>
<td>COBS 11.2</td>
<td>R</td>
<td><strong>COBS 11.2 (Best execution)</strong> does not apply to a client order for the purchase of or sale of units in a regulated collective investment scheme directly from or to the operator of that scheme.</td>
<td>From 1 November 2007 to 31 October 2008</td>
<td>1 November 2007</td>
</tr>
<tr>
<td>2.4C</td>
<td>COBS 12.2 and COBS 12.3</td>
<td>R</td>
<td><strong>COB 7.16</strong>, as it was in force on 31 October 2007, continues to apply to a firm which is not a MiFID investment firm or a third country investment firm which prepares investment research for publication or distribution to its clients, or that publishes or distributes investment research to its clients unless the firm decides to comply with COBS 12.2 and 12.3 sooner than 1 May 2008.</td>
<td>From 1 November 2007 to 30 April 2008</td>
<td>1 November 2007</td>
</tr>
<tr>
<td>2.4D</td>
<td>COBS 12.2 and COBS 12.3</td>
<td>G</td>
<td>The effect of TP 2.4CR is that for a firm which is not a MiFID investment firm or third country investment firm carrying on the activities set out in the transitional rule TP 2.4CR COB 7.16 will continue to apply until 1 May 2008, unless the firm decides to comply with COBS 12.2 and 12.3 sooner than 1 May 2008. From 1 May 2008 a firm to which TP 2.4CR applies must comply with the investment research provisions in COBS 12.2 and 12.3.</td>
<td>From 1 November 2007 to 30 April 2008</td>
<td>1 November 2007</td>
</tr>
<tr>
<td>2.4E</td>
<td>COBS 12.2 and COBS 12.3</td>
<td>R</td>
<td>If a firm carrying out the activities set out in TP 2.4CR decides to comply</td>
<td>From 1 November 2007 to 30 April 2008</td>
<td>1 November 2007</td>
</tr>
</tbody>
</table>
with COBS 12.2 and 12.3 sooner than 1 May 2008:
(1) it must make a record of the date of the decision and the date from which it is to be effective; and
(2) from the effective date it must comply with COBS 12.2 and 12.3

| 2.5 | COBS 13 | R | (1) A firm is not required to prepare a key features document, a key features illustration or the Consolidated Life Directive information document for a product if:

(4a) the rules would have required the firm to prepare key features for the product if they were still in force; and

(2b) the firm prepares key features in accordance with the rules as if they were still in force.

(2) A firm is not required to prepare a standardised deterministic projection or an alternative projection for a product in accordance with COBS 13.5.1R or 13.5.2R if the firm prepares its projections for life policies, key features schemes, simplified prospectus schemes and stakeholder pension schemes in accordance with the rules as if they were still in force.

(3) For these purposes of this rule, ‘the rules’ are the rules on product disclosure and the customer’s right to cancel or withdraw (COB 6) that were in force on 31

| From 1 November 2007 until 31 October 2008 | 1 November 2007 |
| 2.6 | **COBS 14.1 and COB 14.2** | R | A **firm** is not required to provide a **key features document**, a **key features illustration** or the **Consolidated Life Directive information document** for a product if:

(1) …

… |

| From 1 November 2007 until 31 October 2008 | 1 November 2007 |

| 2.8 A | **COBS 18** | R | **COB**, as it was in force on 31 October 2007, continues to apply to the following activities and **firms** in relation to business which is not **MiFID or equivalent third country business** and **COBS** does not apply during the transitional period unless the **firm** decides to comply with **COBS** sooner than 1 May 2008:

(1) **Energy market activity** and **oil market activity**;

(2) activities referred to in the **general application rule** related to:

(a) **commodity futures**;

(b) **commodity options**;

(c) **contracts for differences** related to an underlying **commodity**; or

(d) **other futures or contracts for differences** which are not related to **commodities**, **financial instruments** or **cash**. |

| From 1 November 2007 to 30 April 2008 | 1 November 2007 |
which is not energy market activity or oil market activity;

(3) corporate finance business;
(4) a firm which is an operator of a collective investment scheme;
(5) Lloyd's market activities;
(6) depositaries;
(7) OPS firms

| 2.8B | COBS 18 | G | The effect of TP 2.8AR is that for firms carrying on the activities set out in the transitional rule TP 2.8AR COB will continue to apply until 1 May 2008, unless the firm decides to comply with COBS sooner than 1 May 2008. From 1 May 2008 a firm to which TP 2.8AR applies must comply with COBS as set out in COBS 18. | From 1 November 2007 to 30 April 2008 | 1 November 2007 |
| 2.8C | COBS 18 | R | If a firm carrying out the activities set out in TP 2.8AR decides to comply with COBS sooner than 1 May 2008:

(1) it must make a record of the date of the decision and the date from which it is to be effective; and

(2) subject to TP 2.8AR, from the effective date it must comply with COBS as set out in the relevant parts of COBS 18. | From 1 November 2007 to 30 April 2008 | 1 November 2007 |

| 2.8D | COBS 18 | G | In accordance with transitional rules TP 2.8AR and TP 2.8CR, the following provisions of COB will continue to apply to a firm carrying out the activities set out in | From 1 November 2007 to 30 April 2008 | 1 November 2007 |
TP 2.8AR that decides to comply with COBS before 1 May 2008:
(1) COB 2.4 (Chinese walls);
(2) COB 5.10 (Corporate finance business issues); and
(3) COB 7.1 (Conflicts of interest and material interest)

<table>
<thead>
<tr>
<th>2.8E</th>
<th>COBS 18</th>
<th>R</th>
<th>A decision by a firm carrying out activities set out in TP 2.8AR to comply with COBS before 1 May 2008 must be made in relation to all the COBS provisions applicable to it. The firm may not 'cherry pick'.</th>
<th>From 1 November 2007 to 30 April 2008</th>
<th>1 November 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>2.12</td>
<td>COBS</td>
<td>R</td>
<td>COB 2.4 (Chinese walls) and COB 7.1 (Conflicts of interest) as they were in force on 31 October 2007 continue to apply to designated investment business carried on by a firm which is not MiFID or equivalent third country business.</td>
<td>From 1 November 2007 indefinitely</td>
<td>1 November 2007</td>
</tr>
<tr>
<td>2.13</td>
<td>COBS</td>
<td>R</td>
<td>COB 5.10 (Corporate finance business issues) as it was in force on 31 October 2007 continues to apply to corporate finance business carried on by a firm which is not MiFID or equivalent third country business.</td>
<td>From 1 November 2007 indefinitely</td>
<td>1 November 2007</td>
</tr>
</tbody>
</table>
Annex N

Amendments to the Insurance: Conduct of Business sourcebook (ICOB)

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

1.1.1 G ICOB applies to every firm as specified in accordance with the rules in the remainder of this chapter.

1.1.2 G ...

(2) ICOB implements, in part, provisions in a number of EC directives, including:

...

1.2.12 R ICOB does not apply to a service company, except for:

(1) ICOB 1.4 (Application in respect of electronic commerce activities and communications); [deleted]

...

Pure protection contracts: election to apply COB COBS rules

1.2.17 R ...

Incoming e-commerce activities

1.3.8 R The territorial scope of this sourcebook is modified by ECO in relation to electronic commerce activities and electronic commerce communications.

This sourcebook does not apply to an incoming ECA provider acting as such, except that the rules on financial promotion continue to apply for incoming electronic commerce activities carried on by an insurer unless its country of origin applies rules of like effect.

1.3.9 G ICOB 1.4 contains guidance on how this sourcebook is modified by ECO. [deleted]

1.3.10 R ...

(3) Notwithstanding the other rules in this section, the only provisions in ICOB that apply to an incoming EEA firm carrying on passported activities under the IMD in the United Kingdom are:

(a) ICOB 1.3.8 R (Electronic commerce activities and communications) and ICOB 3 (Financial promotion)

...
Delete 1.4 in its entirety. The deleted text is not shown struck through.

1.4  
[deleted]

...

1 Annex 2G  Summary of Handbook provisions for insurance intermediaries

<table>
<thead>
<tr>
<th>Module</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>Business Standards</td>
<td>…</td>
</tr>
<tr>
<td>Market conduct, MAR</td>
<td>Does not apply to a firm when doing either (1) or (2). However, certain chapters of MAR will apply if:</td>
</tr>
<tr>
<td></td>
<td>(a) the insurance intermediary also engages in behaviour in relation to qualifying investments traded on prescribed markets - then MAR 1 applies;</td>
</tr>
<tr>
<td></td>
<td>(b) the insurance intermediary undertakes or is concerned with offers of securities that may involve price stabilising activity - then MAR 2 applies;</td>
</tr>
<tr>
<td></td>
<td>(c) the insurance intermediary carries on inter-professional business - then MAR 3 applies;</td>
</tr>
<tr>
<td></td>
<td>(d) the insurance intermediary carries on designated investment business - then MAR 4 applies.</td>
</tr>
<tr>
<td>Conduct of Business sourcebook, COB COBS</td>
<td>Does not apply to an insurance intermediary when doing (1) or (2) unless it opts to provide a key features document instead of a policy summary (see ICOB 5.5.4R). However, COB COBS may apply to an insurance intermediary if it also carries on any other regulated activity or communicates or approves a financial promotion not relating to non-investment insurance contracts or qualifying credit.</td>
</tr>
</tbody>
</table>
After ICOB 2.6 insert the following new section. The inserted text is not underlined.

...  

2.6A  **E-Commerce**  

**Application**  

2.6A.1  **R**  This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* or another *EEA State*.

**Information about the firm and its products or services**

2.6A.2  **R**  A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (*GEN* 4 Annex 1R), together with a statement which explains that it is on the *FSA register* and includes its *FSA register number*;
- (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
(a) the name of the professional body (including any designated professional body) or similar institution with which it is registered;

(b) the professional title and the EEA State where it was granted;

(c) a reference to the applicable professional rules in the EEA State of establishment and the means to access them; and

(6) where the firm undertakes an activity that is subject to VAT, its VAT number.

[Note: article 5(1) of the E-Commerce Directive]

2.6A.3 R If a firm refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the E-Commerce Directive]

2.6A.4 R A firm must ensure that commercial communications which are part of, or constitute, an information society service, comply with the following conditions:

(1) the commercial communication must be clearly identifiable as such;

(2) the person on whose behalf the commercial communication is made must be clearly identifiable;

(3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and

(4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the E-Commerce Directive]

2.6A.5 R An unsolicited commercial communication sent by e-mail by a firm established in the United Kingdom must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the E-Commerce Directive]

Requirements relating to the placing and receipt of orders

2.6A.6 R A firm must (except when otherwise agreed by parties who are not consumers):

(1) give an ECA recipient at least the following information, clearly, comprehensibly and unambiguously, and before the order is placed by
the recipient of the service:

(a) the different technical steps to follow to conclude the contract;
(b) whether or not the concluded contract will be filed by the firm and whether it will be accessible;
(c) the technical means for identifying and correcting input errors before the placing of the order; and
(d) the languages offered for the conclusion of the contract;

(2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;

(3) (when an ECA recipient places an order through technological means), acknowledge the receipt of the recipient’s order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and

(4) make available to an ECA recipient, appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors before the placing of an order.

[Note: articles 10(1) and (2) and 11(1) and (2) of the E-Commerce Directive]

2.6A.7 R Contractual terms and conditions provided by a firm to an ECA recipient must be made available in a way that allows the recipient to store and reproduce them.

[Note: article 10(3) of the E-Commerce Directive]

Exception: contract concluded by e-mail

2.6A.8 R The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[Note: article 10(4) and 11(3) of the E-Commerce Directive]

...
communication to a person inside the United Kingdom; (if the financial promotion is an electronic commerce communication made from an establishment in the United Kingdom) a person in an EEA State other than the United Kingdom.

subject to ICOB 3.4.3R (Exceptions to territorial scope).

3.4.2 G …

(2) The exemptions in ICOB 3.3.6R (Application: what?; Exemptions) also incorporate some territorial elements. In particular, the exemption for financial promotions originating outside the United Kingdom (section 21(3) of the Act (Restrictions on financial promotion)) (see ICOB 3.3.6R(2)) and PERG 8.12.2G (Financial promotions to overseas recipients (article 12)), the exemptions for overseas communicators (see ICOB 3.3.6R(3)) and the exemption for incoming electronic commerce communications made from an establishment in an EEA State other than the United Kingdom to an ECA recipient in the United Kingdom (see PERG 8.12.38G (Incoming electronic commerce communication (article 20B))).

(3) In the context of the provision of an electronic commerce activity to an EEA ECA recipient, the scope of ICOB 3 is extended by ECO 2.2.3R (Financial promotion.). This means that ICOB 3 will apply for communications to EEA ECA recipients. [deleted]

Extensions to territorial scope

3.4.3 R The Notwithstanding ICOB 3.4.1R, the following parts of this chapter apply without any territorial limitation if a firm approves a non-investment financial promotion:

(1) ICOB 3.1 to ICOB 3.6 (Application, Purpose and General); and

(2) ICOB 3.8.1R(1) (Non-investment financial promotions: clear, fair and not misleading: comparisons).

ICOB 4 Initial disclosure document ("IDD")
Annex 1

ICOB 4 Combined initial disclosure document ("CIDD") [deleted - see COB 4 Annex 5 COBS 6 Annex 2G]
Annex 2

…

5.5.4 R A firm may provide key features that meet the requirements of COB 6 COBS 13 and 14 on the content of the key features, instead of a policy summary, except that a firm is not required to include the title "key features of the [name of product]". The key features must include the information
required in *ICOB 5.5.5R*(6), (10) and (13) (cross-references from significant or unusual exclusions or limitations to related sections of the policy document, a telephone number or address for notification of claims and the key facts logo), in addition to that required by *COB 6 COBS 13 and 14*, but this rule does not require a firm to meet the requirements of *COB 6.5.12R* or *COB 6.5.38R*. 
Annex O

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text, except where otherwise indicated.

Electronic commerce activities and communications

1.3.3 R The territorial scope of this sourcebook is modified by ECO in relation to electronic commerce activities and electronic commerce communications. This sourcebook does not apply to an incoming ECA provider acting as such.

Related investment advice

2.2.5 G Firms are reminded that they should follow the relevant rules in COB-5 COBS 6 and COB-6 COBS 13 relating to advice and disclosure on investments if they are advising the customer on an investment such as an annuity associated with an equity release transaction or an ISA used as a repayment vehicle.

After MCOB 2.7 insert the following new section. The text is not underlined.

2.7A E-Commerce

Application

2.7A.1 R This section applies to a firm carrying on an electronic commerce activity from an establishment in the United Kingdom, with or for a person in the United Kingdom or another EEA state, in relation to a home finance transaction.

Information about the firm and its products or services

2.7A.2 R A firm must make at least the following information easily, directly and permanently accessible to the recipients of the information society services it provides:

(1) its name;

(2) the geographic address at which it is established;

(3) the details of the firm, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
(4) an appropriate statutory status disclosure statement (GEN 4 Annex 1R), together with a statement which explains that it is on the FSA register and includes its FSA register number;

(5) if it is a professional firm, or a person regulated by the equivalent of a designated professional body in another EEA State:

(a) the name of the professional body (including any designated professional body) or similar institution with which it is registered;

(b) the professional title and the EEA State where the professional title was granted;

(c) a reference to the applicable professional rules in the EEA State of establishment and the means to access them; and

(6) where the firm undertakes an activity that is subject to VAT, its VAT number.

[Note: article 5(1) of the E-Commerce Directive]

2.7A.3 R If a firm refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the E-Commerce Directive]

2.7A.4 R A firm must ensure that commercial communications which are part of, or constitute, an information society service, comply with the following conditions:

(1) the commercial communication must be clearly identifiable as such;

(2) the person on whose behalf the commercial communication is made must be clearly identifiable;

(3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and

(4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the E-Commerce Directive]

2.7A.5 R An unsolicited commercial communication sent by e-mail by a firm established in the United Kingdom must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the E-Commerce Directive]
Requirements relating to the placing and receipt of orders

2.7A.6 R  A firm must (except when otherwise agreed by parties who are not consumers):

(1) give an ECA recipient at least the following information, clearly, comprehensibly and unambiguously, and before the order is placed by the recipient of the service:

(a) the different technical steps to follow to conclude the contract;

(b) whether or not the concluded contract will be filed by the firm and whether it will be accessible;

(c) the technical means for identifying and correcting input errors before the placing of the order; and

(d) the languages offered for the conclusion of the contract;

(2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;

(3) (when an ECA recipient places an order through technological means), acknowledge the receipt of the recipient’s order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and

(4) make available to an ECA recipient, appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors before the placing of an order.

[Note: articles 10(1) and (2) and 11(1) and (2) of the E-Commerce Directive]

2.7A.7 R  Contractual terms and conditions provided by a firm to an ECA recipient must be made available in a way that allows the recipient to store and reproduce them.

[Note: article 10(3) of the E-Commerce Directive]

Exception: contract concluded by e-mail

2.7A.8 R  The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[Note: article 10(4) and 11(3) of the E-Commerce Directive]
3.3.1 R This chapter applies to a firm only in relation to:

(1) the communication of a financial promotion to a person inside in the United Kingdom;

(2) the communication of an unsolicited real time financial promotion of qualifying credit or of a home reversion plan, unless it is made from a place, and for the purposes of a business which is only carried on, outside the United Kingdom;

(a) it is made from a place outside the United Kingdom;

(b) it is made for the purposes of a business which is carried on outside the United Kingdom and which is not carried on in the United Kingdom; and

(3) the approval of a non-real time financial promotion of qualifying credit or a home reversion plan for communication to a person inside the United Kingdom; and

subject to MCOB 3.3.3R (Exceptions to territorial scope: rules without territorial limitation) and MCOB 3.3.5R (Exceptions to territorial scope: distance contracts).

(4) the communication or approval for communication of a financial promotion that is an electronic commerce communication to a person in an EEA state other than in the United Kingdom.

3.3.2 G (1) …

(2) The exemptions in MCOB 3.2.5R (Application: what?; Exemptions) also incorporate some territorial elements. In particular, the exemption for financial promotions originating outside the United Kingdom (section 21(3) of the Act (Restrictions on financial promotion)) (see MCOB 3.2.5R(4)), and the exemptions for overseas communicators (see MCOB 3.2.5R(4)) and the exemption for incoming electronic commerce communications made from an establishment in an EEA State other than the United Kingdom to an ECA recipient in the United Kingdom (see PERG 8.12.38G (Incoming electronic commerce communication (article 20B)).

(3) In the context of the provision of an electronic commerce activity to an EEA ECA recipient, the scope of MCOB is extended by ECO 2.2.3R (Financial promotion). This means that MCOB 3 will apply for communications to EEA ECA recipients. [deleted]

4 Annex 1 Initial disclosure document (“IDD”)…
5.6.52 R Where all or part of the regulated mortgage contract to which the illustration relates is an interest-only mortgage:

\[
\quad \text{(3) if the \textit{illustration} includes a quotation for the payments that would need to be made into the \textit{repayment vehicle} by the \textit{customer}:}
\]

\[
\quad \quad \text{\ldots}
\]

\[
\quad \quad \quad \text{(d) the \textit{illustration} must refer the \textit{customer} to the individual product disclosure documentation required by the \textit{Conduct of Business sourcebook (COBS)}.}
\]

8 Annex 1 Initial disclosure document ("IDD")

\[
\quad \ldots
\]

8 Annex 2 Combined initial disclosure document ("CIDD") [deleted]
Annex P

Amendments to the Client Assets sourcebook (CASS)

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

1.3.4 R CASS does not apply to an incoming ECA provider acting as such.

Appointed representatives and tied agents

1.4.5 G (1) Although CASS does not apply directly to a firm's appointed representatives, a firm will always be responsible for the acts and omissions of its appointed representatives in carrying on business for which the firm has accepted responsibility (section 39(3) of the Act). In determining whether a firm has complied with any provision of CASS, anything done or omitted by a firm's appointed representative (when acting as such) will be treated as having been done or omitted by the firm (section 39(4) of the Act). Equally, CASS does not apply directly to tied agents. A MiFID investment firm will be fully and unconditionally responsible for the acts and omission of the tied agents that it appoints.

(2) Firms should also refer to SUP 12 (Appointed representatives), which sets out requirements which apply to firms using appointed representatives and tied agents.

1.4.8 R In relation to a trustee firm which is not a depositary, when acting as such, and which falls within COB 11.5.1 R(1):

(1) CASS does not apply to a trustee firm which is not a depositary or the trustee of a personal pension scheme or stakeholder pension scheme, except for the MiFID custody chapter, the MiFID client money chapter and the mandate rules; and

(2) In the MiFID custody chapter, the MiFID client money chapter and the mandate rules, 'client' means 'trustee', 'trust', 'trust instrument' or 'beneficiary', as appropriate.

Application to electronic media and E-Commerce

1.5.1 G …

Modification of CASS resulting from the E-Commerce Directive

1.5.4 G The application of CASS may be modified by ECO (as a result of the E-Commerce Directive implementation). These modifications will only apply to a firm which carries on electronic commerce activity. Firms should consult ECO for details. [deleted]
2.1.9  

The custody rules do not apply to:

…

(4)  a MiFID investment firm or a third country investment firm that has opted to act in accordance with the MiFID custody chapter in respect of designated investments that it safeguards and administers which are subject to the opt-in to the MiFID custody chapter.

2.1.10A  

Firms that safeguard and administer designated investments including financial instruments and that are subject to both sets of custody rules, should refer to CASS 6.1.17R (Opt-in to the MiFID custody rules) which contains provisions enabling these firms to opt to comply solely with the MiFID custody chapter. This is also relevant to the equivalent business of a third country investment firm.

2.3.2  

Before a firm provides safe custody services to a client, unless CASS 2.3.5R applies, the firm must notify the client as to the appropriate terms and conditions which apply to this service, including, where applicable, those covering:

…

(3) the circumstances in which the firm may realise a safe custody investment held as collateral to meet the client's liabilities (see COB 7.8) (Realisation of a private customer's assets CASS 2.3.2AR);

2.3.2A  

A firm must not realise a retail client's assets unless it is legally entitled to do so and it has either:

(1) set out in a client agreement provided to the retail client:

(a) the action it may take to realise any assets of the retail client;

(b) the circumstances in which it may do so; and

(c) each asset (if relevant) or type or class of asset over which it may exercise the right; or

(2) give the retail client notice (oral or written) of its intention to exercise its rights at least three business days before it does so.

2.3.18  

A firm may include the information required by CASS 2.3.17R in any statement provided by the firm to the client in accordance with COB 8.2 (Periodic statements), the rules on periodic reporting in COBS 16.3, or by other separate documents, as long as they are prepared in relation to the same date and delivered to the client within a reasonable period of one another.

Stock lending
2.5.4 R A firm must not undertake or otherwise engage in stock lending activity with or for a customer unless:

(1) the firm has obtained the consent of the customer; and

(2) the stock lending activity is subject to appropriate terms and conditions, which includes a provision that, in the case of a retail client, the firm may undertake stock lending with or for the retail client (if that is the case), specifying the assets to be lent, the type and value of the relevant collateral from the borrower and the method and amount of payment due to the retail client in respect of the lending.

2.5.5 E [deleted]

4.1.2 R This chapter does not apply with respect to:

... 

(4) money held by depositaries which are regulated by COB 11 to which chapter 11 (Trustee and depositary activities) of COB applied, or would have applied, on 31 October 2007; or

(6) client money held by a firm which:

(a) receives or holds client money in relation to designated investment business other than MiFID business; but which

(b) in relation to such client money elects to act in accordance with the MiFID client money chapter under the opt-in to that chapter (CASS 7.1.3R(4)).

4.1.2C G Firms that hold client money in the course of, or in connection with, designated investment business that is not MiFID business and also in the course of, or in connection with, MiFID business (and are therefore subject to the non-directive client money chapter and the MiFID client money chapter), should refer to CASS 7.1.3R(4) (Opt-in to the MiFID client money rules) which contains provisions enabling these firms to opt to comply solely with the MiFID client money chapter. This is also relevant to the equivalent business of a third country investment firm.

4.1.24 G When a firm realises client collateral to meet liabilities of that client, it should do so in accordance with the relevant terms and conditions and other requirements (see CASS 2.3.2R to CASS 2.3.6R), and for a retail client, in accordance with COB 7.8 (Realisation of a private customer’s assets).

5.1.8 G Firms which carry on designated investment business which may, for example, involve them handling client money in respect of life assurance business should refer to the non-directive client money chapter which includes provisions enabling firms to elect to comply solely with that chapter or with the insurance client money chapter in respect of that
business. Firms that also carry on MiFID business may elect to comply solely with the MiFID client money chapter with respect of client money in respect of which the non-directive client money chapter or the insurance client money chapter apply.

Application

6.1.1 R This chapter (the custody rules) applies to:

(1) a MiFID investment firm:

(a) when it holds financial instruments belonging to a client in the course of its MiFID business; or

(b) that opts to comply with the custody rules under this chapter in accordance with CASS 6.1.17R(1) (Opt-in to the MiFID custody rules); and

(2) a third country investment firm that opts to comply with the custody rules under this chapter in accordance with CASS 6.1.17R(2) (Opt-in to the MiFID client money rules).

Opt-in to the MiFID custody rules

6.1.17 R (1) A firm that holds financial instruments to which this chapter applies and assets in respect of which the non-directive custody chapter applies, may elect to comply with the provisions of this chapter in respect of all assets so held and if it does so, this chapter applies as if all such assets were financial instruments that the firm receives and holds in the course of, or in connection with, its MiFID business.

(1A) A third country investment firm that holds designated investments belonging to a client in the course of its equivalent business may elect to comply with the provisions of this chapter in respect of the assets it holds to which the non-directive custody chapter applies. If it does so, this chapter applies as if all such assets were assets that the firm receives and holds in the course of, or in connection with, MiFID business.

…

6.1.20 G A firm (other than a third country investment firm) that is only subject to the non-directive custody chapter may not choose to comply with this chapter.

6.1.20A G The information requirements concerning the safeguarding of financial instruments belonging to a client (see COBS 6.1.7R) apply to a firm that has elected to comply with this chapter with respect of all assets to which the election applies.

Application
7.1.1 R This chapter (the client money rules) applies to:

(1) a MiFID investment firm:

(1) (a) that holds client money; or

(2) (b) that opts to comply with this chapter in accordance with CASS 7.1.3R(1) (Opt-in to the MiFID client money rules); and

(2) a third country investment firm that opts to comply with this chapter in accordance with CASS 7.1.3R(2) (Opt-in to the MiFID client money rules);

unless otherwise specified in this section.

Opt-in to the MiFID client money rules

7.1.3 R …

(1A) A third country investment firm that receives or holds money from, for or on behalf of a client in the course of, or in connection with, its equivalent business of a third country investment firm may elect to comply with the provisions of this chapter in respect of the money it holds to which the non-directive client money chapter or the insurance client money chapter applies. If it does so, this chapter applies as if all such money were money that the firm receives and holds in the course of, or in connection with, MiFID business.

…

7.1.4 G The opt-in to the client money rules in this chapter does not apply in respect of money that a firm holds outside of the scope of the non-directive client money chapter or the insurance client money chapter, such as money falling within the scope of the opt-out for non-IMD designated investment business (see CASS 4.1.11R).

7.1.6 R A firm (other than a third country investment firm) that is only subject to the non-directive client money chapter or the insurance client money chapter may not opt to comply with this chapter.

7.1.7A G The information requirements concerning the safeguarding of client money (see COBS 6.1.7R) apply to a firm that has elected to comply with this chapter with respect of all client money to which the election applies.

Appointed representatives, tied agents, field representatives and other agents

7.4.24 G (1) Pursuant to the MiFID client money segregation requirements, a firm operating the normal approach should establish and maintain procedures to ensure that client money received by its appointed representatives, tied agents, field representatives or other agents is:
7.4.25 G The firm should ensure that its appointed representatives, tied agents, field representatives or other agents keeps client money separately identifiable from any other money (including that of the firm) until the client money is paid into a client bank account or sent to the firm.

7.4.26 G A firm that operates a number of small branches, but holds or accounts for all client money centrally, may treat those small branches in the same way as appointed representatives and tied agents.

Commodity Futures Trading Commission Part 30 exemption order

7.4.32 G United States (US) legislation restricts the ability of non-US firms to trade on behalf of US customers on non-US futures and options exchanges. The relevant US regulator (the CFTC) operates an exemption system for firms authorised by the FSA. The FSA sponsors the application from a firm for exemption from Part 30 of the General Regulations under the US Commodity Exchange Act in line with this system. The application forms and associated information can be found on the FSA website in the “Forms” section.

7.4.33 G A firm with a Part 30 exemption order undertakes to the CFTC that it will refuse to allow any US customer to opt not to have his money treated as client money if it is held or received in respect of transactions on non-US exchanges, unless that US customer is an "eligible contract participant" as defined in section 1a(12) of the Commodity Exchange Act, 7 U.S.C. The MiFID client money chapter does not have the option of allowing the firm or the client to choose whether money belonging to the client is subject to the client money rules.

7.4.34 R A firm must not reduce the amount of, or cancel a letter of credit issued under, an LME bond arrangement where this will cause the firm to be in breach of its Part 30 exemption order.

7.4.35 R A firm must notify the FSA immediately it arranges the issue of an individual letter of credit under an LME bond arrangement.

7 Annex 1

12 In determining the client money requirement under paragraph 6, a firm:

...
firm by its appointed representatives, tied agents, field representatives and other agents, but not received (see CASS 7.4.24G);

…

…

17A. A firm with a Part 30 exemption order which also operates an LME bond arrangement for the benefit of US-resident investors, should exclude the client equity balances for transactions undertaken on the London Metal Exchange on behalf of those US-resident investors from the calculation of the margined transaction requirement.

…

TP1.1

<table>
<thead>
<tr>
<th>(1) Material to which the transitional provision applies</th>
<th>(2) Transitional provision</th>
<th>(3) Transitional provision: dates in force</th>
<th>(4) Handbook provision: coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASS 2 to CASS 4</td>
<td>R</td>
<td>Indefinite</td>
<td>1 January 2004</td>
</tr>
</tbody>
</table>

…

2A If a waiver granted before 1 January 2004 refers to a provision in COB 9 it will continue to be effective in relation to the equivalent provision in CASS. [deleted]

CASS Sch 1.3

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
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<tbody>
<tr>
<td>…</td>
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CASS Record of Date of the 5 years (from
<table>
<thead>
<tr>
<th>7.1.3R(23)</th>
<th>election to comply with the MiFID client money chapter</th>
<th>election to comply with the MiFID client money chapter, including the date from which the election is to be effective</th>
<th>election</th>
<th>the date the firm ceases to use the election</th>
</tr>
</thead>
<tbody>
<tr>
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</table>
Annex Q

Amendments to the Market Conduct sourcebook (MAR)

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

1.3.15 E In the opinion of the FSA, the following factors are to be taken into account in determining whether or not a person's behaviour is dutiful execution of an order on behalf of another, and are indications that it is:

(1) whether the person has complied with the applicable provisions of COB COBS or MAR, or their equivalents in the relevant jurisdiction; or

…

1.10.2 G There are no rules which permit or require a person to behave in a way which amounts to market abuse. Some rules contain a provision to the effect that behaviour conforming with that rule does not amount to market abuse:

(1) COB 2.4.4R (1) (Chinese walls) (see COB 2.4.4R(4)) the control of information rule (SYSC 10.2.2R (1) (see SYSC 10.2.2R(4))); and

…

Trade data monitors

7.2.14 G The FSA considers that a firm will satisfy its obligations under MAR 7.2.12EU if:

(1) in assessing the arrangements, the firm follows the guidelines published on the FSA's website at www.fsa.gov.uk http://www.fsa.gov.uk/Pages/About/What/International/EU/fsap/mifid/documents/index.shtml; and

…

A “trade data monitor” is a provider of such arrangements which has been assessed by the FSA or an external auditor as having the capability to provide services and facilities to firms in accordance with the guidelines published on the FSA’s website at www.fsa.gov.uk http://www.fsa.gov.uk/Pages/About/What/International/EU/fsap/mifid/documents/index.shtml.

[The amendment to MAR 7.2.14G is based on amendments made in FSA 2007/54 which have not yet come into force.]
Annex R

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text.

2.1.1 R (1) A firm must not assess…

(2) A firm may assess an employee who is subject to, but has not satisfied, an appropriate examination requirement as competent to the extent that:

(a) that employee works in a branch in an EEA State other than the United Kingdom;

(b) the employee is engaging in MiFID business; and

(c) there is no appropriate examination or equivalent in that EEA State.
Annex S

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 1 November 2007

1.1.2  G  The Act requires the FSA to "maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under this Act, or by any directly applicable Community regulation made under MiFID, are complying with them" (paragraph 6(1) of Schedule 1 to the Act).

3.1.2  R  ...

Note 2A = For this purpose, designated investment business does not include either or both:

(a) …

(b) …

(i) …

(ii) …

having regard to article 4(4) of the Regulated Activities Order (Specified activities: general: core investment services by investment firms).

3.6.6  G  In complying with SUP 3.6.1R, a firm should take reasonable steps to ensure that each of its appointed representatives or, where applicable, tied agents gives the firm's auditor the same rights of access to the books, accounts and vouchers of the appointed representative or tied agent and entitlement to information and explanations from the appointed representative's or tied agent's officers as are given in respect of the firm by section 341 of the Act (see also SUP 12.5.5R(3)).

4.3.16A  R  An actuary appointed to perform the with-profits actuary function must:

…

(4) in respect of each financial year, make a written report addressed to the relevant classes of the firm's with-profits policyholders, to accompany the firm's annual report under COB 6.11.9 R COBS 20.4.7R, as to whether, in his opinion and based on the information and explanations provided to him by the firm, and taking into account where relevant the rules and guidance in COB 6.12 COBS 20, the annual report and the discretion exercised by the firm in respect of the period covered by the
report may be regarded as taking, or having taken, the interests of the relevant classes of the firm's with-profits policyholders into account in a reasonable and proportionate manner;

5.3.9A G [deleted]

5.5.10 G In providing reasonable assistance under SUP 5.5.9R, a firm should take reasonable steps to ensure that, when reasonably required by the skilled person, each of its appointed representatives or, where applicable, tied agents waives any duty of confidentiality and provides reasonable assistance as though SUP 5.5.1R (3) and SUP 5.5.9R applied directly to the appointed representative or tied agent.

6.3.8 G (1) …

(a) make an application to the FSA for an internal transfer of an approved person, Form E (Internal transfer), or make an application to the FSA for an individual to perform additional controlled functions, the relevant Form A (Application); see SUP 10.13.3D to SUP 10.13.5G;

…

6.4.22 G In deciding whether to cancel a firm's Part IV permission, the FSA will take into account all relevant factors in relation to business carried on under that permission, including whether:

…

(3) the firm has ceased to hold or control custody assets in accordance with instructions received from clients (including instructions set out in an agreement entered into in accordance with CASS 2.3.2R (Custody: client agreement) and COBS 26.1.7R (Information concerning safeguarding of designated investments belonging to clients and client money);

6 Annex 4.2 G 2 … A firm must also cease to hold or control custody assets in accordance with instructions received from clients (including instructions set out in an agreement entered into in accordance with CASS 2.3.2R (Custody: client agreement) and COBS 26.1.7R (Information concerning safeguarding of designated investments belonging to clients and client money)…

8.1.4 G This chapter explains how the regime for the waiver or modification of rules works.

10.1.13B G If an incoming EEA firm carries on designated investment business which consists of both MiFID business only, the EEA investment business oversight function and the compliance oversight function will not apply to that firm, and other regulated activities, SUP 10.1.13R(1) and (2) will apply to that firm, but
only in relation to that part of the business that is not MiFID business.

10.1.13C G If an incoming EEA firm carries on designated investment business which consists of both MiFID business and other regulated activities, the EEA investment business oversight function and the compliance oversight function (SUP 10.1.13R(1) and (2)) will apply to that firm, but only in relation to that part of the business which is not MiFID business.

10.1.16 R The descriptions of the following controlled functions apply to an appointed representative of a firm, except an introducer appointed representative, as they apply to a firm:

(1) the governing functions subject to SUP 10.1.16AR and except for a tied agent of an EEA MiFID investment firm; and

…

10.6.8 R (1) …

(2) If a firm is a long-term insurer, the non-executive director function is also the function of acting in the capacity of an individual (other than an individual performing the director function or the non-executive director function under (1)) who, as a member of a committee having the purpose of a With-profits Committee with-profits committee (see COB 6.11.6 G(1)), has responsibility in relation to governance arrangements for with-profits business under COB 6.11 (Reporting to with-profits policyholders on compliance with PPFM) COBS 20.3 (Principles and Practices of Financial Management).

10.7.2A G In requiring someone to apportion responsibility, a common platform firm should not apply for that person or persons to be approved to perform the apportionment and oversight function (see SUP 10.7.1R, SYSC 2.1.3R and SYSC 1.1.3R(5)).

10.10.7A R The customer function is the function of:

…

(5) dealing, as principal or as agent, and arranging (bringing about) deals in investments other than a non-investment insurance contract with or for, or in connection with customers where the dealing or arranging deals is governed by COB 7 COBS 11 (Dealing and managing);

…

10.11.2 G Approved persons forms

<table>
<thead>
<tr>
<th>the relevant Form A</th>
<th>SUP 10 Ann 4D</th>
<th>Application to perform controlled functions under the approved persons regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
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</table>

10.11.5 G Forms B, C, D and E can only be submitted in respect of an approved person by the firm that submitted an approved person's original application (that is,
the relevant Form A).

10.11.6 G Copies of Forms A, B, C, D and E may be obtained from the FSA website or from the Individuals, CIS and Mutuals and Policy Department. To contact the Individuals, CIS and Mutuals and Policy Department for general enquiries:

(1) telephone 020 7066 0019; or

(2) fax 020 7066 0017; or

(3) write to:

Individuals, CIS and Mutuals and Policy Department
The Financial Services Authority
25 The North Colonnade
Canary Wharf
LONDON E14 5HS; or

(4) e-mail iva@fsa.gov.uk

10.12.2 D An application by a firm for the FSA’s approval under section 59 of the Act (Approval for particular arrangements) must be made by completing the Form A which relates to the particular type of firm, that is, a UK firm, overseas firm or incoming EEA firm.

10.13.2 G The relevant Form A must be used to apply for an individual to perform further controlled functions for a firm for which he already performs a controlled function as an approved person (see SUP 10.12.2D). It is not mandatory to complete all parts of the form. See the notes attached relevant to each form for full details.

10.13.5 G In certain circumstances, when the FSA already has the information it would usually require, a shortened version of the relevant Form A may be completed. See the notes attached relevant to each form for full details.

10.13.12 R (1) ...

(2) ...

... 

(c) section 5 of the relevant Form A in SUP 10 Annex 4 (Application to perform controlled functions under approved persons regime); 

...

10.13.18 R ...

(1) If, in relation to a firm which has completed the relevant Form A (SUP 10 Annex 4), any of the details in section 3.01 (Arrangements and controlled functions) are to change, the firm must notify the FSA
on Form D.

(2) ...

(3) Paragraphs (1) and (2) also apply to a firm in respect of an approved person, to whom the grandfathering arrangements applied as if the firm had completed a the relevant Form A for that person.

10.14.2 G If the firm or its advisers have further questions, they should contact the FSA's Individuals, CIS and Mutuals and Policy Department (see SUP 10.11.6G).

SUP 10 Annex 1 Frequently asked questions

<table>
<thead>
<tr>
<th>G</th>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Requirements of the regime</td>
<td></td>
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<td>...</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>...</td>
<td>The firm should contact the Individuals, CIS and Mutuals and Policy Department. See SUP 10.11.6G.</td>
</tr>
<tr>
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<td>...</td>
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<tr>
<td>10</td>
<td>...</td>
<td>Before the firm submits the relevant Form A, it must verify the information contained in it. As part of this verification, the Form provides for the candidate to confirm the accuracy of the information given by the firm so far as it relates to him.</td>
</tr>
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<tr>
<td>11A</td>
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<td>...(see section Question 5.04a of the relevant Form A (Application to perform controlled functions under the approved persons regime)).</td>
</tr>
<tr>
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<td>...</td>
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</tr>
<tr>
<td>16</td>
<td>...</td>
<td>These can either be ordered through the Individuals, CIS and Mutuals and Policy Department or obtained from the FSA website at <a href="http://www.fsa.gov.uk">www.fsa.gov.uk</a>. There is no charge for an application form.</td>
</tr>
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<td>...</td>
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</tbody>
</table>

11.3.9 D If a relevant controllers form, or an Application to perform controlled functions under the approved persons regime (the relevant Form A in SUP 10
Annex 4) in respect of ...

12.2.7 G (1) ...

(a) ...

(h) *providing providing basic advice on stakeholder products* (article 52B of the Regulated Activities Order);

12.2.8 G (1) ...

(2) ...

(a) ...

(d) *advising on investments, providing providing basic advice on on stakeholder products, advising on a home finance transaction or other activity that might reasonably lead a customer to believe that he had received basic advice or advice on investments or on home finance transactions or that the introducer appointed representative is permitted to provide give basic advice or give advice on investments; personal recommendations on investments or on home finance transactions.*

12.2.11 G If an *introducer appointed representative* is an individual in business on his own, then he will also be an *introducer* (see SUP 12.2.13G). This has certain implications in *COBS* (see *COB 5* (Advising and selling)).

12.4.4 G ...

(1) ...

(2) the fitness and propriety (including good character and competence) and financial standing of the controllers, directors, partners, proprietors and managers of the person; firms seeking guidance on the information which they should take reasonable steps to obtain and verify should refer to *FIT* and the questions in the relevant Form A (Application to perform controlled functions under the approved person regime) in *SUP 10 Ann 4.*

12.4.5E G (1) Under the relevant Advising and Selling chapters of *COB provisions in COBS, ICOB and MCOB,* the *customer* will receive details of how to complain to the *appointed representative* and, when a product is purchased, details of the complaints procedure for the *product provider, insurer or home finance provider.*

12.5.2 G (1) ...

(2) ...
(a) ... 

... 

(g) provides basic advice on stakeholder products.

Notification of appointment of an appointed representative

12.7.1 R [delete current rule and replace with the following, which is not underlined]

1. This rule applies to a firm which intends to appoint:

   (a) an appointed representative to carry on insurance mediation activities; or

   (b) a tied agent.

2. This rule also applies to a firm which has appointed an appointed representative.

3. A firm in (1) must complete and submit the form in SUP 12 Ann 3 before the appointment.

4. A firm in (2) must complete and submit the form in SUP 12 Ann 3 within ten business days after the commencement of activities.

12.7.5 R To contact the Individuals, CIS and Mutuals and Policy Department:

1. telephone 020 7066 0019; fax 020 7066 0017 1099; or

2. write to: Individuals, CIS and Mutuals and Policy Department, The Financial Services Authority, 25 The North Colonnade, Canary Wharf, LONDON E14 5HS; or

3. e-mail apprepsiva@fsa.gov.uk
SUP 12 Annex 3R  Appointed representative appointment form

Add an Appointed Representative or tied agent form

Notification under SUP 12.7.1R (i.e. the form in SUP 12 Ann 3)

... 

Firm name (i.e. the principal firm)  (“The Firm”) 

... 

NOTES

This form should be used to notify the FSA of a new appointed representative to the firm or tied agent. It is the form required by SUP 12.7.1R which is set out in SUP 12 Ann 3.

For the purposes of this form, references to ‘appointed representative’ include ‘tied agent’ unless the context otherwise requires.

Personal Details  Section A

1  Contact’s name for this form (this is not necessarily the same person making the declaration at the end of the form)  

2  Contact’s details: 

   a  Position in the firm  

   b  Daytime telephone number  

   c  E-mail address
New Appointed Representative Details

... 8 Legal status of the appointed representative *

Private Limited Company □ Public Limited Company □
Partnership □ Limited Partnership □
Limited Liability Partnership □ Unincorporated Association □
Sole Trader □ Other, please specify below □

9 Date of commencement of agreement with your firm appointment (if an appointed representative carrying on insurance mediation activities) or commencement of activities (if any other kind of appointed representative or tied agent) * / /

10 ...

13 Will the appointed representative undertake designated investment business activities? *

Is the application in respect of:

(1) an appointed representative who will carry on insurance mediation activities; or □ □
(2) a tied agent? □ □

Declaration and signature

Warning
Knowingly or recklessly giving the FSA information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000).

SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FSA and to notify the FSA immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FSA. It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Data Protection

Declaration

Signature

Name of signatory

Date

/ /

Name of signatory

Position in firm

Individual Registration Number (if applicable)

Signature

### Appointed Representative or tied agent - Change Details

**Notification under SUP 12.7.7R (i.e. the form in SUP 12 Ann 4)**

This form should be used to change the details of an existing appointed representative (or tied agent). It is the form required by SUP 21.7.7R which is set out in SUP 12 Ann 4.

For the purposes of this form, references to 'appointed representative' include 'tied agent' unless the context otherwise requires.

### Personal Details Section A

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>1</td>
<td>Contact Name for this form (this is not necessarily the same person making the declaration at the end of the form)</td>
</tr>
<tr>
<td>2</td>
<td>Contact's Details:</td>
</tr>
<tr>
<td>a</td>
<td>Position in the firm</td>
</tr>
</tbody>
</table>

* indicates a mandatory field.
### Change Details of an Existing Appointed Representative

**Section B**

<table>
<thead>
<tr>
<th>Change Details of an Existing Appointed Representative</th>
<th>Section B</th>
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<tbody>
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</tr>
</tbody>
</table>

What is this Appointed Representative's Firm Reference Number?
(If not known, this can be found on the FSA Register on our website at www.fsa.gov.uk)

<table>
<thead>
<tr>
<th>What is this Appointed Representative's Firm Reference Number?</th>
</tr>
</thead>
<tbody>
<tr>
<td>(If not known, this can be found on the FSA Register on our website at <a href="http://www.fsa.gov.uk">www.fsa.gov.uk</a>)</td>
</tr>
</tbody>
</table>

| 1 | a. ... |
| 2 | ... |
| 3a | a. Do you wish to change the legal status of the appointed representative? |
|    | If ‘Yes’, What is the new legal status of the appointed representative? |

<table>
<thead>
<tr>
<th>Private Limited Company</th>
<th>Public Limited Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partnership</td>
<td>Limited Partnership</td>
</tr>
<tr>
<td>Limited Liability Partnership</td>
<td>Unincorporated Association</td>
</tr>
<tr>
<td>Sole Trader</td>
<td>Other, please specify below</td>
</tr>
</tbody>
</table>

| 3c | b. Has the name change been approved by Companies House? |
|    | Yes No N/A |

---
Note that N.B. if the appointed representative is a UK registered company or LLP, the name of the appointed representative can only be changed if the change has already been approved by Companies House.

If ‘Yes’, please provide details below. If you wish to amend a trading name please delete the name, enter the name to be deleted in the box on the left and add the new one below: in the box on the right.

Please detail the trading name(s) to be deleted below:

Please detail the trading name(s) to be deleted below:

Please detail the trading name(s) to be deleted below:

Please detail the trading name(s) to be added below:

Does the appointed representative undertake insurance mediation?

Do you wish to change this? Please provide details below:

Is the change in respect of an appointed representative who is carrying on insurance mediation activities or a tied agent?

If so please provide details below:
Please enter the date on which these changes take effect: * / / 

**Declaration and signatures Section C**

**Warning**

Knowingly or recklessly giving the FSA information, which is false or misleading in a material particular, may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000).

SUP 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FSA and to notify the FSA immediately if materially inaccurate information has been provided. Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FSA. It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

Sup 15.6.4R requires an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FSA and to notify the FSA immediately if materially inaccurate information has been provided.

Contravention of these requirements may lead to disciplinary sanctions or other enforcement action by the FSA.

It should not be assumed that information is known to the FSA merely because it is in the public domain or has previously been disclosed to the FSA or another regulatory body. If you are not sure whether a piece of information is relevant, please include it anyway.

**Data Protection**

... 

**Declaration**

...

**Signature**

Name of signatory

Date / / 

Name of signatory

Position in firm

Individual Reference Number (if applicable)

Signature
13A.4.3A   G  Guidance on the matters that are reserved to a firm's Home State regulator is located in SUP 13A Annex 2G.

(2) SUP 13A Annex 2G summarises the matters that are reserved to a firm's Home State regulator.

13A.6.5   G SUP 13A Annex 1G does not apply to incoming ECA providers acting as such. Such persons should refer to ECO for information on how the Handbook applies to them.

After SUP 13A.8, insert the following new section. All text is new and is not underlined.

13A.9  The precautionary measure rule for incoming EEA firms

Application

13A.9.1   R (1) The precautionary measure rule (SUP 13A.9.2R) applies to an incoming EEA firm which:

(a) is authorised by a home state regulator with respect to its MiFID business; or
(b) has a top-up permission which covers MiFID business;

but which is not subject to provisions adopted by the Home State which transpose, in full, MiFID or the MiFID implementing Directive.

(2) The precautionary measure rule applies:

(a) with respect to the regulated activities carried on by the firm in the United Kingdom; and
(b) to the extent that the firm is not subject to provisions which are comparable to provisions transposing MiFID or the MiFID implementing Directive.

(3) This section (SUP 13A.9) is effective from 1 November 2007 until 31 October 2008.

The precautionary measure rule

13A.9.2   R (1) A firm must comply with standards which are comparable to those required by the provisions of MiFID and the MiFID implementing Directive specified in rows (1) and (4) of the table in SUP 13A.9.3R.

(2) An MTF must also comply with standards in row (2).

(3) The following firms must also comply with standards in row (3):
(a) a systematic internaliser;

(b) a firm, which, either on its own account or on behalf of clients, concludes transactions in shares admitted to trading on a regulated market outside a regulated market or MTF (see MAR 7.1.2R).

13A.9.3 R Table: MiFID provisions for incoming EEA firms

<table>
<thead>
<tr>
<th>Articles of MiFID or the MiFID implementing directive</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Articles 13(3) and (6), 18 to 22 and 24 and Annex II of MiFID</td>
</tr>
<tr>
<td>2 Articles 12, 14, 26, 29 and 30 of MiFID</td>
</tr>
<tr>
<td>3 Articles 27 and 28 of MiFID</td>
</tr>
<tr>
<td>4 All related Articles of MiFID and the MiFID implementing Directive</td>
</tr>
</tbody>
</table>

13A.9.4 E (1) A firm should comply with the provisions of the Handbook which transpose the provisions of MiFID and the MiFID implementing Directive referred to in SUP 13A.9.3R (even if they are expressed not to apply to an incoming EEA firm).

(2) Compliance with (1) may be relied upon as tending to establish compliance with the precautionary measure rule.

13A.9.5 G (1) The purpose of the precautionary measure rule is to ensure that an incoming EEA firm is subject to the standards of MiFID and the MiFID implementing Directive to the extent that the Home State has not transposed MiFID or the MiFID implementing Directive by 1 November 2007. It is to ‘fill a gap’.

(2) The rule is made in the light of the duty of the United Kingdom under Article 62 of MiFID to adopt precautionary measures to protect investors.

(3) The rule will be effective for 12 months only; it reflects the scope of the Regulated Activities Order (including, for example, the overseas persons exclusion); and it allows for the possibility of a partial transposition by the Home State.

(4) An indication of the Handbook provisions which transpose MiFID and the MiFID implementing Directive can be found in the websites http://www.hm-treasury.gov.uk/media/C/7/transfinal1b120707.pdf and http://www.hm-treasury.gov.uk/media/C/E/transfinal2b120707.pdf. For the purposes of the precautionary measure rule, the principal provisions are the rules in COBS (including in particular those relating to inducements in COBS 2.3) and the conflicts and record keeping provisions in SYSC.
The provisions applying to an incoming EEA firm are set out in SUP 13A Annex 1G. The effect of SUP 13A.9.4E(1) is that some of the provisions which are expressed as not applying may need to be applied by a firm in order to meet a MiFID standard.

SUP 13A Annex 1 G Application of the Handbook to Incoming EEA Firms

1. The table below summarises the application of the Handbook to an incoming EEA firm. Where the table indicates that a particular module of the Handbook may apply, its application in relation to any particular activity is dependent on the detailed application provisions in that module. The table does not apply to incoming ECA providers. These should refer to COBS 1 Ann 1 Part 3 section 7 ECO for guidance on how the Handbook COBS applies to them.

2. In some cases, the application of the Handbook depends on whether responsibility for a matter is reserved under a European Community instrument to the incoming EEA firm's Home State regulator. Guidance on the reservation of responsibility is contained in SYSC App 1 SUP 13A Ann 2 (Matters reserved to a Home State regulator). Guidance on the territorial application of MiFID is contained in PERG 13.6 and 13.7 and SUP 13A Anex 2G.

3. …

<table>
<thead>
<tr>
<th>(1) Module of Handbook</th>
<th>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
<th>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRIN</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>SYSC</td>
<td>SYSC 1 contains …</td>
<td>The common platform requirements in SYSC 4 - 10 apply as set out in SYSC 1.3.1R and SYSC 1.3.1BG, SYSC 9 applies to activities carried on from an establishment in the United Kingdom. SYSC 9 does not apply.</td>
</tr>
</tbody>
</table>

The common platform requirements in SYSC 4 - 10 apply as set out in SYSC 1.3.1R and SYSC 1.3.1BG.

SYSC 1.3.1BG states that whilst the common platform requirements do not generally apply to incoming EEA firms, EEA MiFID investment firms must comply with the common platform record-keeping requirements in relation to a branch in the United Kingdom.
unless another applicable *rule* which is relevant to the activity has a wider territorial scope, in which case the *common platform* record-keeping requirements apply with that wider scope in relation to the activity described in that *rule* (*SYSC* 1.3.10AR).

*SYSC* 11 applies to an *incoming EEA firm* which:

1. is a *full BCD credit institution*; and
2. has a *branch* in the *United Kingdom* (*SYSC* 11.1.1R(3)).

*SYSC* 12 does not apply (*SYSC* 12.1.3R).

*SYSC* 13 does not apply (*SYSC* 13.1.1G).

*SYSC* 14 does not apply (*SYSC* 14.1.1R).

*SYSC* 15 does not apply (*SYSC* 15.1.1G).

*SYSC* 16 does not apply (*SYSC* 16.1.1G).

*SYSC* 17 does not apply (*SYSC* 17.1.1G).

*SYSC* 18 applies.  

*SYSC* 11 – 17 do not apply.  

*SYSC* 18 applies.  

*FIT*  

*FIT* applies to a *firm* wishing to establish a *branch* in the *United Kingdom* or to apply for a *top-up permission* in respect of any application that it makes for the approval of a *person* to perform a *controlled function* (*FIT* 1.1). See under *SUP* 10 below as to whether such approval is required.

*FIT* applies in a limited way in relation to an *incoming MiFID investment firm* (see *FIT* 1.2.4AG).

*Does not apply.*

*GEN*  

*GEN* applies ...  

*GEN* 4 does not apply in relation to *MiFID or equivalent third country business* (see *GEN* 4.1.1R).

*GEN* 4 does not apply if the *firm* has *permission* only for *cross-border services* and does not carry on *regulated activities* in the *United Kingdom* (see *GEN* 4.1.1R). Otherwise, as column (2).

*COB*  

[deleted]

[deleted]

*COBS*  

*Guidance on the territorial application of COBS* is contained in *COBS* 1 Ann 1 Part 3.  

*Guidance on the territorial application of COBS* is contained...
| **ICOB** | As column (3) plus, in the case of a distance contract with a retail customer consumer, unless the firm’s Home State imposes measures which implement or correspond to obligations of the **Distance Marketing Directive**: (1) … … | Only the following provisions of **ICOB** apply: … (4) **ICOB 5.20R(4) to (15) and (22)**, but only in respect of non-investment insurance contracts which are pure protection contracts where the habitual residence of the customer, other than an EEA ECA recipient present in an EEA State other than the United Kingdom, is in the United Kingdom; (5) **ICOB 6 (Cancellation)**, but only in respect of non-investment insurance contracts which are pure protection contracts where the habitual residence of the customer, other than an EEA ECA recipient present in an EEA State other than the United Kingdom, is in the United Kingdom; (6) unless the firm’s Home State regulator has implemented articles 12 and 13 of the **Insurance Mediation Directive** for those activities: (a) … … |}

<table>
<thead>
<tr>
<th><strong>MAR</strong></th>
<th><strong>MAR 1</strong> …</th>
<th><strong>MAR 1</strong> …</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>MAR 3 (Inter-professional conduct)</strong></th>
<th>Applies (<strong>MAR 3.1.4R</strong>).</th>
<th><strong>MAR 3 (Inter-professional conduct)</strong> Does not apply <strong>MAR 3.1.4R</strong>.</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>
**SUP** | **SUP 1** | **SUP 1**
---|---|---
| [Delete the entry for SUP 17 and replace it with the following]
*SUP 17 (Transaction reporting)*
Applies to UK branches of incoming EEA firms which are MiFID investment firms in respect of reportable transactions executed in the course of services provided, whether within in the United Kingdom and outside. *(SUP 17.1.2G and SUP 17.1.3AG)* | | *SUP 17 (Transaction reporting)*
Does not apply *(SUP 17.1.1R(2)(a)).*
Applies as appropriate to incoming EEA firms which are MiFID investment firms in respect of reportable transactions. *(SUP 17.1.1R and SUP 17.1.4R).*
| ... |
---|---|---
| **DISP** |
Applies *(DISP 1.1.1G)* and applies in a limited way in relation to MiFID business. | Does not apply *(DISP 1.1.1G)*.
| ... |
---|---|---
| **ECO**
[deleted] | [deleted] | [deleted]
| ... |
---|---|---

In the following Annex all text is new and is not underlined.

**SUP 13A Annex 2G: Matters reserved to a Home State regulator**

**Introduction**

1. The application of certain provisions in the *Handbook* to an incoming EEA firm or incoming Treaty firm depends on whether responsibility for the matter in question is reserved to the firm's Home State regulator. This annex contains guidance designed to assist such firms in understanding the application of those provisions. This annex is not concerned with the FSA’s rights to take enforcement action against an incoming EEA firm or an incoming Treaty firm, which are covered in the Enforcement Guide (EG), or with the position of a firm with a top-up permission.

**Requirements in the interest of the general good**

2. The *Single Market Directives*, and the Treaty (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the Home State regulator. To summarise, the FSA, as Host State regulator, is entitled to impose requirements with respect to activities carried on within the United Kingdom if these can be justified in the interests of the "general good" and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the Single Market Directives:

   (1) the Single Market Directives expressly reserve responsibility for the prudential supervision of a MiFID investment firm, BCD credit institution, UCITS management company or passporting insurance undertaking to the firm's Home
State regulator. The Insurance Mediation Directive reaches the same position without expressly referring to the concept of prudential supervision. Accordingly, the FSA, as Host State regulator, is entitled to regulate only the conduct of the firm's business within the United Kingdom;

(2) there is no "general good" provision in MiFID. Rather, MiFID states exactly what the Host State regulator regulates (see paragraphs 8 - 10);

(3) for a BCD credit institution, the FSA, as Host State regulator, is jointly responsible with the Home State regulator under article 41 of the Banking Consolidation Directive for supervision of the liquidity of a branch in the United Kingdom;

(4) for a MiFID investment firm including a BCD credit institution which is a MiFID investment firm, the protection of clients' money and clients' assets is reserved to the Home State regulator under MiFID; and

(5) responsibility for participation in compensation schemes for BCD credit institutions and MiFID investment firm is reserved in most cases to the Home State regulator under the Deposit Guarantee Directive and the Investor Compensation Directive.

3. It is necessary to refer to the case law of the European Court of Justice to interpret the concept of the "general good". To summarise, to satisfy the general good test, Host State rules must come within a field which has not been harmonised at a Community level, satisfy the general requirements that they pursue an objective of the general good, be non-discriminatory, be objectively necessary, be proportionate to the objective pursued and not already be safeguarded by rules to which the firm is subject in its Home State.

Application of SYSC 2 and SYSC 3

4. SYSC 2 and SYSC 3 do not apply to a UK MiFID investment firm. They only apply to an EEA MiFID investment firm on a limited basis. This is explained more fully in PERG 13.7 Q. 70 (systems and controls). See paragraph 8 below for a discussion of how the common platform requirements apply to an EEA MiFID investment firm. The FSA considers that it is entitled, in the interests of the general good, to impose the requirements in SYSC 2.1.3R to SYSC 2.2.3G (in relation to the allocation of the function in SYSC 2.1.3R (2)) and SYSC 3 on an incoming EEA firm and an incoming Treaty firm; but only in so far as they relate to those categories of matter responsibility for which is not reserved to the firm's Home State regulator.

5. Should the FSA become aware of anything relating to an incoming EEA firm or incoming Treaty firm (whether or not relevant to a matter for which responsibility is reserved to the Home State regulator), the FSA may disclose it to the Home State regulator in accordance with any applicable directive and the applicable restrictions in Part XXIII of the Act (Public Record, Disclosure of Information and Co-operation).

6. This Annex represents the FSA's views, but a firm is also advised to consult the relevant European Community instrument and, where necessary, seek legal advice. The views of the European Commission in the banking and insurance sectors are contained in two Commission Interpretative Communications (Nos. 97/C209/04 and C(1999)5046).
Examples of how the FSA considers that SYSC 3 will apply in practice to an incoming EEA firm are as follows:

(1) The Prudential Standards part of the Handbook (with the exception of INSPRU 1.5.33R on the payment of financial penalties and the Interim Prudential sourcebook (insurers) (IPRU (INS)) (rules 3.6 and 3.7) do not apply to an insurer which is an incoming EEA firm. Similarly, SYSC 3 does not require such a firm:

(a) to establish systems and controls in relation to financial resources (SYSC 3.1.1R); or

(b) to establish systems and controls for compliance with that Prudential Standards part of the Handbook (SYSC 3.2.6R); or

(c) to make and retain records in relation to financial resources (SYSC 3.2.20 R).

(2) The Conduct of Business sourcebook (COBS) applies to an incoming EEA firm. Similarly, SYSC 3 does require such a firm:

(a) to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of COBS (SYSC 3.1.1R);

(b) to establish systems and controls for compliance with the applicable sections of COBS (SYSC 3.2.6R); and

(c) to make and retain records in relation to those aspects of the conduct of its business (SYSC 3.2.20R).

See also Question 12 in SYSC 2.1.6G for guidance on the application of SYSC 2.1.3R (2)

Application of the common platform requirements in SYSC

Whilst the common platform requirements (located in SYSC 4 - 10) do not generally apply to incoming EEA firms, EEA MiFID investment firms must comply with the common platform record-keeping requirements in relation to a branch in the United Kingdom.

Requirements under MiFID

Article 31(1) of MiFID prohibits Member States from imposing additional requirements on a MiFID investment firm in relation to matters covered by MiFID if the firm is providing services on a cross-border basis. Such firms will be supervised by their Home State regulator.

Article 32 of MiFID requires the FSA as the Host State regulator to apply certain obligations to an incoming EEA firm with an establishment in the UK. In summary, these are Articles:

(1) 19 (conduct of business obligations);

(2) 21 (execution of orders on terms most favourable to the client);
(3) 22 (client order handling);
(4) 25 (upholding the integrity of markets, reporting transactions and maintaining records);
(5) 27 (making public firm quotes); and
(6) 28 (post-trade disclosure).

The remaining obligations under MiFID are reserved to the Home State regulator.

11. MiFID is more highly harmonising than other Single Market Directives. Article 4 of the MiFID implementing Directive permits Member States to impose additional requirements only where certain tests are met. The FSA has made certain requirements that fall within the scope of Article 4. These requirements apply to an EEA MiFID investment firm with an establishment in the United Kingdom as they apply to a UK MiFID investment firm.

12. Further guidance on the territorial application of the Handbook can be found at PERG 13.6 and 13.7.

15.1.5 G Firms are reminded that:

(1) unless expressly stated otherwise, where a rule or guidance includes a reference to a firm this includes all UK and overseas branches and representative offices of that firm, whether or not those branches or offices carry on any regulated activities; and

(2) ECO 1.1.6R has the effect that this chapter does not apply to an incoming ECA provider acting as such.

15.1.6 R This chapter does not apply to an incoming ECA provider acting as such.

15.3.11 R (1) A firm must notify the FSA of:

(a) …

(c) the bringing of a prosecution for, or a conviction of, any offence under the Act; or

(d) a breach of a directly applicable provision in the MiFID Regulation; or

(e) a breach of any requirement in regulation 4C(3) (or any successor provision) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007; by (or as regards (c) against) the firm or any of its directors, officers, employees, approved persons, or appointed representatives, or, where applicable, tied agents.
15.3.11A G \textit{SUP 15.3.11R(1)(e)} relates to the standard requirement in the \textit{permission} of those \textit{firms} which fall outside \textit{MiFID} because of the Treasury’s implementation of Article 3 of \textit{MiFID}. \textit{Guidance} on how the Treasury has exercised the Article 3 exemption for the \textit{United Kingdom} is given in Q48 and the following questions and answers in \textit{PERG 13.5 (Exemptions from MiFID)}.

15.6.2 G \textit{SUP 15.6.1R} applies also in relation to \textit{rules} outside this chapter, and even if they are not \textit{notification rules}. Examples of \textit{rules} and chapters to which \textit{SUP 15.6.1R} is relevant, are:

(1) …

…

(5) any \textit{notification rule} (see Schedule 2 which contains a consolidated summary of such \textit{rules}); \textit{and},

(6) \textit{DISP 1.5 (Record keeping and reporting)} 1.9 (Complaints record rule); \textit{and}

(7) \textit{DISP 1.10 (Complaints reporting rule)}.
Form F

Changes in notified persons


<table>
<thead>
<tr>
<th>Employment history for past 5 years</th>
<th>Section 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Note: ALL gaps must be accounted for</td>
<td></td>
</tr>
</tbody>
</table>

4.01 Employment details (1)

<table>
<thead>
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<th>a</th>
<th>Period (mm/yyyy)</th>
<th>From /</th>
<th>To /</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>h</td>
<td>Is / was employer an appointed representative/tied agent</td>
<td>Yes ☐ No ☐</td>
<td>If yes, of which firm?</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<td></td>
</tr>
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4.02 Employment details (2)

<table>
<thead>
<tr>
<th>a</th>
<th>Period (mm/yyyy)</th>
<th>From /</th>
<th>To /</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>h</td>
<td>Is / was employer an appointed representative/tied agent</td>
<td>Yes ☐ No ☐</td>
<td>If yes, of which firm?</td>
</tr>
<tr>
<td></td>
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</table>

4.03 Employment details (3)

<table>
<thead>
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<th>a</th>
<th>Period (mm/yyyy)</th>
<th>From /</th>
<th>To /</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</tr>
<tr>
<td>h</td>
<td>Is / was employer an appointed representative/tied agent</td>
<td>Yes ☐ No ☐</td>
<td>If yes, of which firm?</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

...
4.04 Employment details (4)
   a Period (mm/yyyy)  From /  To / …

   h Is / was employer an appointed representative/tied agent  Yes ☐ No ☐ If yes, of which firm?

…

4.05 Employment details (5)
   a Period (mm/yyyy)  From /  To / …

   h Is / was employer an appointed representative/tied agent  Yes ☐ No ☐ If yes, of which firm?

…

16.1.5 G [deleted]

16.1.6 G [deleted]

16.7.6D G The RMAR comprises sections relating both to financial reporting and other sections (e.g. Training and Competence and COBS data).

16.8.8 R A persistency report or data report must report on a life policy or stakeholder pension if:

   (1) …

   …

   (3) the person who sold it or who was responsible for its promotion was, in so doing, subject to rules in COBS or (before commencement) conduct of business rules made by a previous regulator.

16.8.13 R A persistency or data report must not report on any of the following:

   (1) a life policy or stakeholder pension that was cancelled from inception whether or not this was as a result of service of a notice under COB 6.7 (Cancellation and withdrawal) the rules on cancellation (COBS 15);

16.8.22 G (1) …

   …

   (3) [deleted]
**SUP App 2.13**

G  *SUP App 2.15 applies to an insurer carrying on with-profits business, but only if COB 6.12.94R COBS 20.2.53R (Ceasing to effect new contracts of insurance in a with-profits fund) also applies.*

**SUP App 2.15.1**

G  The run-off plan required by COB 6.12.94R(2) COBS 20.2.53R should include the information described in SUP App 2.15.2G to SUP App 2.15.13G in respect of the relevant *with-profits fund.*

**App 2.15.7**

G  A firm's run-off plan should include:

1. …

…

7. details of any new deductions to be made from the firm’s surrender payments, together with an explanation as to how those deductions are consistent with:

   a. …

   b. COB 6.12.39R to COB 6.12.45R COBS 20.2.11G to COBS 20.2.16R (Amounts payable under with-profits policies: Surrender payments);

…

9. details of the information that the firm gives to its with-profits policyholders about their open market options when its pension policies vest right (if any) to use the proceeds of a personal pension scheme, stakeholder pension scheme, FSAVC, retirement annuity contract or pension buy-out contract to purchase an annuity on the open market when the relevant contracts or schemes vest or mature and any changes that will be made to that information as a result of the closure;

**App 3.3.12**

G  [deleted]

**App 3.9**


**App 3.9.4**

G  Activities set out in Annex I of the BCD

<table>
<thead>
<tr>
<th>Table 1: BCD activities</th>
<th>Part II RAO Activities</th>
<th>Part III RAO Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note 1.** The *BCD* activity of trading for account of customers does not extend...
to the regulated activity of making arrangements with a view to transactions in investments under article 25(2) of the Regulated Activities Order unless the arrangements bring about or would bring about particular transactions.

Note 2: The services and activities provided for in Sections A and B of Annex I of MiFID when referring to the financial instruments provided for in Section C of Annex I of that Directive are subject to mutual recognition according to the BCD from 1 November 2007. Please refer to See the table at SUP App 3.9.5G below for mapping of MiFID investment services and activities. For further details relating to this residual category, please see the "Banking Consolidation Directive" section of the passporting forms entitled "Notification of intention to establish a branch in another EEA State" and "Notification of intention to provide cross border services in another EEA State".

---

**Table 2: MiFID investment services and activities**

<table>
<thead>
<tr>
<th>Services set out in Annex I to MiFID</th>
<th>Part II RAO Investments</th>
<th>Part III RAO Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Reception and transmission of orders in relation to one or more financial instruments</td>
<td>Article 25 (see Note 1)</td>
<td>Article 76-81, 83-85, 89</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Portfolio management</td>
<td>Article 37 (14, 21, 25 – see Note 1.2)</td>
<td>Article 76-81, 83-85, 89</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note 1.** The MiFID service of receiving and transmitting orders does not extend to the regulated activity of making arrangements with a view to transactions in investments under article 25(2) of the Regulated Activities Order unless the arrangements bring about or would bring about particular transactions. This is the case, whether or not the bringing about arises or would arise as a result of the person who makes the arrangements receiving and transmitting orders in relation to particular transactions or in any other way.

**Note 1.** A firm may also carry on these other activities when it is managing investments.
<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td><strong>SUP 10.12.2D</strong></td>
<td><strong>...</strong></td>
<td><em>Approved persons the relevant Form A Application to perform controlled functions under the approved persons regime (see SUP 10 Annex 4)</em></td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td><strong>SUP 15.3.11R</strong></td>
<td>Notifications - breaches of rules and other requirements in or under the Act</td>
<td>(1) information about any circumstances relevant to the breach or offence; (2) identification of the rule or requirement or offence; and (3) information about any steps which a firm or other person has taken or intends to take to rectify or remedy the breach or prevent any future potential occurrence.</td>
<td>Becoming aware, or having information which reasonably suggests, that any of the following matters has occurred, may have occurred or may occur in the foreseeable future as regards the firm, any of its directors, officers, employees, approved persons, or appointed representatives, or tied agents: (a)...</td>
<td>Immedi ately</td>
</tr>
<tr>
<td><strong>SUP 16.8</strong></td>
<td>Reporting - persistency reports from insurers</td>
<td>Persistency report. The report must report on every life policy which was promoted subject to rules in COB or COBS, or conduct of business rules made by a previous regulator, is not a life policy of a type listed in SUP</td>
<td>Annually</td>
<td>By 30 April each year</td>
</tr>
</tbody>
</table>
16.8.13R or *SUP  
16.8.14R, and which:
(1) …
17 Transaction Reporting

17.1.3 G In line with guidance from CESR, the FSA acknowledges that, from a practical point of view, it would be burdensome for branches of investment firms to be obliged to report their transactions to two competent authorities. Therefore, all transactions executed by branches may be reported to the competent authority of the Host State, if the investment firm elects to do so. In these cases transaction reports should follow the rules of the competent authority to which the report is made. However, where an investment firm chooses to report to two competent authorities, this choice will not be challenged by the FSA.

Where?

17.1.5 R This chapter applies in respect of transactions executed in the United Kingdom. This chapter applies in respect of transactions which are to be reported to the FSA.

... Transactions made through trade matching or reporting systems

17.2.3 R A firm is relieved of its obligation to make a transaction report if the transaction is instead reported directly to the FSA by a trade matching or reporting system approved by the FSA, an approved reporting mechanism, or by a regulated market or MTF through whose systems the transaction was completed.

[Note: article 25(5) of MiFID]

17.2.3 G The regulated markets and MTFs that report transactions undertaken on their systems to the FSA are listed on the FSA's website at: http://www.fsa.gov.uk/Pages/Doing/Regulated/Returns/mtr/regulated_markets/index.shtml.

Compliance by trade matching or reporting systems: approved reporting mechanisms or MTFs with the provisions of this Chapter

17.2.5 R (1) The operator of a trade matching or reporting system approved by the FSA, an approved reporting mechanism, or the operator of an MTF or a market operator through whose systems a reportable transaction is to be completed and which has, pursuant to SUP 17.2.3R, agreed to make transaction reports to the FSA on behalf of a firm, must:

17.2.5 R (a) make reports to the FSA in respect of each transaction to which
the agreement relates;

(2) (b) ensure such reports conform with the requirements of this chapter (both as to time limits for making reports and as to content) as if it were the transacting firm contain the reporting fields specified in SUP 17 Ann 1, where applicable; and

(3) (c) ensure that, once received from the reporting firm, such reports are submitted to the FSA within the time limit for making reports.

(2) The obligations of the operator under this Rule do not affect the liability of the reporting firm for ensuring the accuracy of the information contained in the transaction report that it submits to the operator.

17.3.2 A firm that proposes reporting to the FSA either directly or through a third party that is an approved reporting mechanism, should notify the FSA of its intention to do so, in order for the FSA to be able in particular to verify that the firm's or third party's technical arrangements for the submission of reports are consistent and compatible with the FSA's arrangements. [deleted]

17.3.4 The approved trade matching and reporting systems that have been approved by the FSA approved reporting mechanisms are [Note: These systems will be listed following the approval of a trade matching or trade reporting system] listed on the FSA's website at:


...
SUP 17 Ann 1 EU: Minimum content of a transaction report

Table 1: List of fields for reporting purposes

[Note: This table includes information required under MiFID Article 25(4) and contains additional FSA requirements permitted under Articles 13(3) and (4) of the MiFID Regulation]

Where appropriate, firms should complete these fields in the formats described, or these formats must be contained in the fields that their approved reporting mechanism will use when sending a transaction report to the FSA on behalf of a firm.

<table>
<thead>
<tr>
<th>Field Identifier</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU 1. Reporting Firm Identification</td>
<td>A unique code to identify the firm which executed the transaction. This code should be the FSA reference number of the firm or the Swiss Bank Identifier Code (BIC).</td>
</tr>
<tr>
<td>G</td>
<td>This code should be the FSA reference number of the firm or the Swift Bank Identifier Code (BIC).</td>
</tr>
<tr>
<td>EU 2. Trading Day</td>
<td>The trading day on which the transaction was executed.</td>
</tr>
<tr>
<td>EU 3. Trading Time</td>
<td>The time at which the transaction was executed, reported in the local time of the competent authority to which the transaction will be reported and the basis in which the transaction is reported expressed as Coordinated Universal Time (UTC) +/- hours London local time. The time should be specified in hours, minutes and seconds (hhmmss). Where it is not possible to input seconds, '00' may be entered in this field.</td>
</tr>
<tr>
<td>G</td>
<td>The time should be specified in hours, minutes and seconds (hhmmss). Where it is not possible to input seconds, '00' may be entered in this field.</td>
</tr>
<tr>
<td>EU 4. Buy/Sell Indicator</td>
<td>Identifies whether the transaction was a buy or sell from the perspective of the reporting MiFID investment firm or, in the case of a report to a client, of the client.</td>
</tr>
<tr>
<td>EU 5. Trading Capacity</td>
<td>Identifies whether the firm executed the transaction</td>
</tr>
<tr>
<td>EU</td>
<td>6. Instrument Identification</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>G</td>
<td>- an ISO 6166 ISIN, a unique code, decided by the FSA, identifying the financial instrument which is the subject of the transaction;</td>
</tr>
<tr>
<td>EU</td>
<td>- or, where if a the financial instrument in question which does not have a unique identification code, the report must include the name of the instrument or, in the case of is an over the counter derivative contract, the subject of the transaction, the name of the underlying financial instrument and, the characteristics of the financial instrument;</td>
</tr>
<tr>
<td>G</td>
<td>- in an agency cross capacity (that is where the firm has acted as agent for both the selling and the buying counterparties) where the firm has chosen to submit a single report made to the FSA represents both of these transactions;</td>
</tr>
<tr>
<td>G</td>
<td>- for the account and on behalf of a client (that is as agent);</td>
</tr>
<tr>
<td>G</td>
<td>- on its own account (either on its own behalf or on behalf of a client) (that is as principal);</td>
</tr>
<tr>
<td>EU</td>
<td>7. Instrument code type</td>
</tr>
<tr>
<td>G</td>
<td>Where the subject of the transaction is a financial instrument admitted to trading on a market this field should indicate whether that financial instrument has been identified using an ISO 6166 ISIN or, where the ISIN is not the industry method of identification for that market, a code assigned to that financial instrument by that market.</td>
</tr>
<tr>
<td>EU</td>
<td>78. Underlying Instrument Identification</td>
</tr>
<tr>
<td>G</td>
<td>This field is only mandatory when the transaction involves an OTC derivative and the underlying is a single equity or single debt financial instrument admitted to trading on a regulated market or prescribed market.</td>
</tr>
<tr>
<td>EU</td>
<td>9. Underlying instrument identification code type</td>
</tr>
<tr>
<td>G</td>
<td>Firms do not need to complete this field since the FSA already has access to this information.</td>
</tr>
<tr>
<td>EU</td>
<td>810. Instrument Type</td>
</tr>
<tr>
<td>G</td>
<td><strong>is an over the counter derivative and must be used to indicate the instrument type of the underlying financial instrument, e.g. equity, bond, index, or other.</strong></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>EU</td>
<td><strong>911. Maturity Date</strong> The maturity date of a bond or other form of securitized debt, or the exercise date / maturity date of a derivative contract. This field is not mandatory when the transaction is in a financial instrument and an ISO 6166 ISIN has been provided. This field will be mandatory where the financial instrument is an over the counter derivative where applicable.</td>
</tr>
<tr>
<td>G</td>
<td><strong>This field is only mandatory when the transaction involves an OTC derivative or a financial instrument admitted to trading on a market where the ISIN is not the industry method of identification.</strong></td>
</tr>
<tr>
<td>EU</td>
<td><strong>4912. Derivative Type</strong> The harmonised description of the derivative type. This field is not mandatory when the transaction is in a financial instrument and an ISO 6166 ISIN has been provided. This field will be mandatory where the financial instrument is an over the counter derivative, where applicable, and must indicate the derivative type, e.g. option, future, contract for difference, warrant, spreadbet, credit default swap or other swap.</td>
</tr>
<tr>
<td>G</td>
<td><strong>This field is only mandatory when the transaction involves an OTC derivative or a financial instrument admitted to trading on a market where the ISIN is not the industry method of identification, and must indicate the derivative type, e.g. option, future, contract for difference, warrant, spreadbet, credit default swap or other swap.</strong></td>
</tr>
<tr>
<td>EU</td>
<td><strong>4413. Put/Call</strong> Specification whether an option or any other financial instrument is a put or call. This field is not mandatory when the transaction is in a financial instrument and an ISO 6166 ISIN has been provided. This field will be mandatory where the financial instrument is an over the counter derivative.</td>
</tr>
<tr>
<td>G</td>
<td><strong>This field is only mandatory when (i) the transaction</strong></td>
</tr>
<tr>
<td>EU</td>
<td>1214. Strike Price</td>
</tr>
<tr>
<td>G</td>
<td>This field is only mandatory when (i) the transaction involves an OTC derivative or a financial instrument admitted to trading on a market where the ISIN is not the industry method of identification; and (ii) the derivative type is option or warrant.</td>
</tr>
</tbody>
</table>

| EU  | 1315. Price Multiplier | The number of units of the financial instrument in question which are contained in a trading lot; for example, the number of derivatives or securities represented by one contract. This field is not mandatory when the transaction is in a financial instrument and an ISO 6166 ISIN has been provided. This field will be mandatory where the financial instrument is an over the counter derivative. |
| G | This field is only mandatory where the transaction involves an OTC derivative. |

| EU  | 1416. Unit Price | The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage. |

| EU  | 1517. Price Notation | The currency in which the price is expressed. If, in the case of a bond or other form of securitized debt, the price is expressed as a percentage, that percentage shall be included. The ISO 4217 currency code must be used. The major currency must be used (e.g. pounds rather than pence). If the price is expressed as a percentage of nominal value then the ISO 4217 currency code of the nominal value must be used. |
| G | The ISO 4217 currency code must be used. The major currency must be used (e.g. pounds rather than pence). If the price is expressed as a percentage of nominal value then the |
The ISO 4217 currency code of the nominal value must be used.

### EU 18. Quantity

**ISO 4217 currency code of the nominal value must be used.**

The number of units of the financial instruments, the nominal value of bonds, or the number of derivative contracts included in the transaction.

### EU 19. Quantity notation

An indication as to whether the quantity is the number of units of financial instruments, the nominal value of bonds, or the number of derivative contracts.

*Firms do not need to complete this field since the FSA already has access to this information.*

### EU 20. Counterparty

**Identification of the counterparty to the transaction.** That identification shall consist of:

- where an FSA reference number or a Swift Bank Identification Code (BIC) exists one of these codes must be used, or in the case that a firm has neither an FSA reference code or a BIC, a unique internal code allocated by the reporting firm must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.

- where the counterparty is a MiFID investment firm, a unique code for that firm, to be determined by the FSA; or

- where the counterparty is a regulated market or MTF or an entity acting as its central counterparty, the unique harmonised identification code for that market, MTF or entity acting as central counterparty, as specified in the list published by the competent authority of the home Member State of that entity in accordance with Article 13(2).

*The FSA has determined that where an FSA reference number or a Swift Bank Identification Code (BIC) exists for the counterparty, one of these codes must be used, or in the case that a counterparty has neither an FSA reference number or a BIC, a unique internal code allocated by the reporting firm must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.*

### EU 21. Venue

**Identification of the venue where the transaction was executed.** That identification shall consist in:

- where the venue is a trading venue or an MTF the four
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>character Swift Market Identifier Code ISO 10383</strong></td>
<td>must be used: its unique harmonised identification code.</td>
</tr>
<tr>
<td><strong>Where the venue is a regulated market, prescribed market</strong></td>
<td>or an MTF (or, where appropriate, an equivalent venue outside the EEA), the four character Swift Market Identifier Code ISO 10383 must be used. However, where the venue has been identified as a systematic internaliser, a Swift Bank Identification Code (BIC) should be used.</td>
</tr>
<tr>
<td><strong>If where the transaction is made off market or over the counter</strong></td>
<td>the subject of the transaction is an OTC derivative then this must be made clear.</td>
</tr>
<tr>
<td><strong>A unique identification number for the transaction</strong></td>
<td>provided by the MiFID investment firm or a third party reporting on its behalf.</td>
</tr>
<tr>
<td><strong>An indication as to whether the transaction was cancelled.</strong></td>
<td></td>
</tr>
</tbody>
</table>
| **This field contains the identification of the client** | or customer on whose behalf the reporting firm was acting. and should be completed as follows:

For agency transactions a customer/client identifier is required to identify the client on whose behalf the transaction has been conducted. Where an FSA reference number or, a Swift Bank Identification Code (BIC) exists one of these codes must be used, or in the case that a firm has neither an FSA reference number or a BIC, a unique internal code allocated by the reporting firm must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty. |
| **For agency transactions a customer/client identifier is required to identify the client** | on whose behalf the transaction has been conducted. Where an FSA reference number or a Swift Bank Identification Code (BIC) exists, one of these codes must be used or, in the case that a customer/client has neither an FSA reference number or a BIC, a unique internal code allocated by the reporting firm must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty. |
|   EU    | 2225. Any other fields | Any other mandatory fields required by the reporting system. |
Annex T

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

1.1.1A  R  This sourcebook does not apply to an incoming ECA provider acting as such.

...  

4.2.5R  Table: contents of the prospectus

This table belongs to COLL 4.2.2R (Publishing the prospectus).

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Investment objectives and policy**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The following particulars of the investment objectives and policy of the authorised fund:</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(o)</td>
<td>information concerning the historical performance of the scheme presented in accordance with COB 3.8.11R (Specific non-real time financial promotions: past performance) COBS 4.6.2R (the rules on past performance):</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Contents of the simplified prospectus

4.6.8  R  This table belongs to the rule on production and publication of a simplified prospectus (COLL 4.6.2R and COLL 4.6.6R)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contents of simplified prospectus</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(14)</td>
<td>details of any entry and exit commissions relating to the scheme and details of the scheme’s other possible expenses or fees, distinguishing between those to be paid by the unitholder and</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
those to be paid from the scheme's or the sub-fund's assets, including:

Notes: …

5. [Intentionally left blank] Details of entry and exit commissions relating to the scheme and details of the scheme's other possible expenses or fees, must be presented in the simplified prospectus in the form required by COLL 4.6.9R (Charges and reduction in yield).

…

[Intentionally blank] Charges and reduction in yield

4.6.9 R (1) [Intentionally blank] In disclosing the information required by paragraph 14 of COLL 4.6.8R (Table: Contents of the simplified prospectus), a firm must include an effect of charges table and a reduction in yield figure prepared in accordance with the rules in sections 2 (Effect of charges table) and 3 (Reduction in yield) of COBS 13 Annex 3.

(2) [Intentionally blank] This rule does not apply to a simplified prospectus for units in a simplified prospectus scheme that will be marketed and sold in another EEA State or exclusively to those who are not retail clients.

(3) Note (5) to paragraph (14) of COLL 4.6.8R, and COLL 4.6.9 cease to have effect on 30 June 2009, unless remade.

4.6.12 R An authorised fund manager must ensure that its financial promotions which contain an invitation to purchase units in a UCITS scheme indicate that a simplified prospectus and a full prospectus exist, and the places where they may be obtained by the public or how the public may have access to them.

Use of the "keyfacts" logo within a simplified prospectus

4.6.13 R A simplified prospectus may include the "keyfacts" logo if:

(1) the "keyfacts" logo is situated in a prominent position at the top of the document; and

(2) The document also contains the following statement in a prominent position:
The Financial Services Authority is the independent financial services regulator. It requires us, [provider name], to give you this important information to help you to decide whether our [product name] is right for you. You should read this document carefully so that you understand what you are buying, and then keep it safe for future reference.

Conflicts of interest: guidance

6.6.18 G (1) The effect of COBS TP 2.12R is that COB 7.1 (Conflict of interest and material interest) (as it was in force on 31 October 2007) continues to apply for scheme management activity and contains rules on the fair treatment of customers where a firm has a conflict of interest in relation to a transaction. COLL 6.6.17R(1) provides rules for specific circumstances where COB 7.1 would not be appropriate for an authorised fund.

(2) …

Payments out of scheme property: guidance

6.7.5 G (1) …

(2) An authorised fund manager should consider COB 5.6.3R (Charges to a private customer) in determining whether a payment to an affected person is unfair because of its amount or because it confers a disproportionate benefit on the affected person.

(3) …

Prohibition on promotional payments

6.7.12 R (1) …

(2) Paragraph (1) does not apply to the costs of an authorised fund incurs preparing and printing the simplified prospectus, or key features document or key features illustration of the authorised fund, provided the prospectus states, in accordance with COLL 4.2.5R(13) and (14) (Table: contents of the prospectus), that these costs are properly payable to the authorised fund manager from scheme property.

Qualified investor schemes: eligible investors

8.1.3 R (1) The authorised fund manager of a qualified investor scheme must take reasonable care to ensure that ownership of units in that scheme is only recorded in the register for the categories of person to whom it can be promoted under COB 3 Annex 5 (Permitted promotion of unregulated collective investment schemes and qualified investor schemes) a person that falls into one or more of the categories set out
Qualified investor schemes - explanation

8.1.4 G (1) Qualified investor schemes are authorised funds which may only be sold or marketed to sophisticated investors. Therefore, the authorised fund manager must take reasonable care to ensure that subscription in relation to the units of this type of scheme should only be in relation to the client types set out in COB 3 Annex 5 COLL 8 Annex 1R. COB 3.11.6 R (Promotion of qualified investor schemes) also restricts promotion of qualified investor schemes to the categories of person set out in COB 3 Annex 5.

(2) …

Insert COLL 8 Annex 1R as follows. The text is new and not underlined.

COLL 8 Annex 1R

This Annex belongs to COLL 8.1.3R (Qualified Investor Schemes: eligible investors).

Qualified investor schemes: eligible investors

For the purposes of the rule on qualified investor schemes: eligible investors (COLL 8.1.3R) a firm must only record ownership of units in the register of a qualified investor scheme in accordance with the following table:

<table>
<thead>
<tr>
<th>Issue or transfer of units to:</th>
<th>Issue or transfer of units (see Note 1) in a qualified investor scheme which is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1 person</td>
<td>(1) that collective investment scheme; or</td>
</tr>
<tr>
<td>A person:</td>
<td>(2) any other collective investment scheme whose underlying property and risk profile are both 'substantially similar' (see Note 2) to those of that collective investment scheme; or</td>
</tr>
<tr>
<td>(1) who is already a participant in an unregulated collective investment scheme or a qualified investor scheme; or</td>
<td>(3) a collective investment scheme which is intended to absorb or take over the assets of that collective investment scheme; or</td>
</tr>
<tr>
<td>(2) who has been, in the last 30 months, a participant in an unregulated collective investment scheme or a qualified investor scheme.</td>
<td>(4) a collective investment scheme, units in which are being offered by its operator as an alternative to cash on the liquidation of that collective</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Category 2 person</th>
<th>A person:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1) for whom the <em>authorised fund manager</em> or an <em>associate</em> has taken reasonable steps to ensure that <em>investment</em> in the <em>collective investment scheme</em> is suitable; and</td>
</tr>
<tr>
<td></td>
<td>(2) who is an 'established' or 'newly accepted' <em>client</em> of the <em>authorised fund manager</em> or of an <em>associate</em> (see Notes 3 &amp; 4).</td>
</tr>
<tr>
<td>Category 3 person</td>
<td>A person who is eligible to participate in a scheme constituted under:</td>
</tr>
<tr>
<td></td>
<td>(1) the Church Funds Investment Measure 1958;</td>
</tr>
<tr>
<td></td>
<td>(2) section 24 of the Charities Act 1993; or</td>
</tr>
<tr>
<td></td>
<td>(3) section 25 of the Charities Act (Northern Ireland) 1964.</td>
</tr>
<tr>
<td>Category 4 person</td>
<td>An eligible employee, that is, a <em>person</em> who is:</td>
</tr>
<tr>
<td></td>
<td>(1) an officer;</td>
</tr>
<tr>
<td></td>
<td>(2) an <em>employee</em>;</td>
</tr>
<tr>
<td></td>
<td>(3) a former officer or <em>employee</em>; or</td>
</tr>
<tr>
<td></td>
<td>(4) a member of the immediate family of any of (1)-(3);</td>
</tr>
<tr>
<td></td>
<td>of an employer which is (or is in the same <em>group</em> as) the <em>firm</em>, or which has accepted responsibility</td>
</tr>
</tbody>
</table>

(1) A *collective investment scheme* of which the *instrument constituting the scheme*: |

(a) restricts the *scheme property*, apart from cash and near cash, to: |

(i) (where the employer is a company) *shares* in and *debentures* of the *company* or any other connected *company* (see Note 5); |

(ii) (in any case), any property, provided that the *scheme* takes the form of a trust which the *firm* reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments (other than *charges*) for *investment* transactions earlier entered into, which the eligible employee was not aware of at the time.
for the activities of the *firm* in carrying out the *designated investment business* in question. he entered into them; and

(b) (in a case falling within A(1) above) restricts participation in the *scheme* to eligible employees, the employer and any connected *company*.

(2) Any *collective investment scheme* provided that the participation of eligible employees is to facilitate their co-investment:

(a) with one or more *companies* in the same *group* as their employer (which may include the employer); and/or

(b) with one or more *clients* of such a *company*.

<table>
<thead>
<tr>
<th>Category 5 person</th>
<th>Category 6 person</th>
<th>Category 7 person</th>
</tr>
</thead>
<tbody>
<tr>
<td>An exempt <em>person</em> (other than a <em>person</em> exempted only by section 39 of the <em>Act</em> (Exemption of appointed representatives)) if the <em>issue</em> or transfer of <em>units</em> relates to a <em>regulated activity</em> in respect of which the <em>person</em> is exempt from the <em>general prohibition</em>.</td>
<td></td>
<td>Any <em>collective investment scheme</em>.</td>
</tr>
<tr>
<td>An <em>eligible counterparty</em> or a <em>professional client</em>.</td>
<td></td>
<td>Any <em>collective investment scheme</em> in relation to which the <em>client</em> is categorised as a <em>professional client</em> or <em>eligible counterparty</em>.</td>
</tr>
<tr>
<td>A <em>person</em>:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) in relation to whom the <em>authorised fund manager</em> or an <em>associate</em> has undertaken an adequate assessment of his expertise, experience and knowledge and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the <em>person</em> is capable of making his own investment decisions and understanding the risks involved;</td>
<td></td>
<td>Any <em>collective investment scheme</em> covered by the assessment.</td>
</tr>
</tbody>
</table>
(2) to whom the *authorised fund manager* or an *associate* has given a clear written warning of the protections he may lose; and

(3) who has stated in writing, in a separate *document* from the contract, that he is aware of the consequences of losing such protections.

The following Notes explain certain words and phrases used in the table above.

<table>
<thead>
<tr>
<th>Note</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Note 1</td>
<td>Issue or transfer of <em>units</em> to a category of <em>person</em> includes any <em>nominee company</em> acting for such a <em>person</em>.</td>
</tr>
<tr>
<td>Note 2</td>
<td>The risk profile of a <em>scheme</em> will be substantially similar to that of another <em>scheme</em> only if there is such similarity in relation to both liquidity and volatility.</td>
</tr>
<tr>
<td>Note 3</td>
<td>A <em>person</em> is an 'established client' of another <em>person</em> if he has been and remains an actual <em>client</em> of that <em>person</em> in relation to <em>designated investment business</em> done with or through that other <em>person</em>.</td>
</tr>
</tbody>
</table>
| Note 4 | A *person* is a 'newly accepted' *client* of a *firm* if:  

(1) a written agreement relating to *designated investment business* exists between the *client* and the *firm* (or, if the *client* is normally resident outside the *United Kingdom*, an oral or written agreement); and  

(2) that agreement has been obtained without any contravention of any *rule* in *COBS* applying to the *firm* or (as far as the *firm* is reasonably aware) any other *authorised person*. |
| Note 5 | A *company* is 'connected' with another *company* if:  

(1) they are in the same *group*; or  

(2) one *company* is entitled either alone or with another *company* in the same *group*, to exercise or control the exercise of a majority of the voting rights attributable to the share capital, which are exercisable in all circumstances at any general meeting of the other *company* or of its holding *company*. |
Annex U

Amendments to the Credit Unions sourcebook (CRED)

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

2.6.2 G … For example, the third paragraph of the second section of the first chapter in the Conduct of Business sourcebook, if it were a rule, would be COBS 1.2.3G. If there were two further sub-paragraphs, it would be COBS 1.2.3R(1)(a).

6.3.11 G SUP 10.10.11R gives guidance on forms and procedures relating to approved persons: [deleted]

Conduct of business

11.1.1 G The Conduct of Business sourcebook (COBS) sets out rules and guidance for firms …

11.1.2 G (1) The rules and guidance set out in COBS mainly apply to designated investment businesses and, as stated in COB 1.3.2 G (2), have limited application to deposits.

   (2) The only parts of COBS that set out rules and guidance on deposits, other than for a cash deposit ISA or cash deposit CTF, are those relating to the financial promotion rules in COB 3 and those relating to distance contracts for accepting deposits in COBS 2.6 5 (General provisions related to distance Distance contracts); and COBS 6.7 15 (Cancellation) and withdrawal), COB 6.4.25 (Entering into a distance contract for accepting deposits)…

Electronic commerce activities

11.1.5 G The E-Commerce Directive sourcebook (ECO) COBS 5.2 (E-Commerce) contains rules and guidance applicable to a credit union which carries on an electronic commerce activity; that is, a credit union which accepts deposits, or carries on certain other activities, by way of an information society service. An information society service is, generally speaking and subject to certain exclusions, a service that:

   (1) is normally provided for remuneration;

   (2) is provided at a distance;

   (3) is so provided by means of electronic equipment for the processing (including digital compression) and storage of data; and

   (4) is so provided at the individual request of a recipient of the service.

11.1.6 G In particular, a credit union which carries on an electronic commerce
activity needs to be aware of the minimum information requirements in ECO 3.2 (Minimum information requirements). [deleted]

CTF providers

11.1.7 G A credit union which acts as a CTF provider needs to be aware of the requirements relating to CTFs in COBS, in particular COBS Chapters 3, 4, 5, 6 and 8, and 9 Annex 1, 10, 13, 14 and 15 …

11.2.3 G Where a financial promotion relates to a deposit (other than a cash deposit ISA or cash deposit CTF) only certain parts of COB 3 the financial promotion rules apply. These are COB 3.1 COB 3.5 and COB 3.8.4 R to COB 3.8.6 G and COB 3.14 COBS 4.2.1R, COBS 4.5.2R, COBS 4.5.7R, COBS 4.6.2R, COBS 4.6.6R, COBS 4.6.7R, COBS 4.7.1R, COBS 4.10.2R, COBS 4.10.4R, COBS 4.10.5R and COBS 4.10.10R.

11.2.4 G In addition to the limited application of COB 3 the financial promotion rules, a number of exemptions from the rules and guidance on financial promotions are listed in COB 3.2.5 R. Some exemptions are particularly relevant to credit unions namely exemptions (2), (4) and (5) within the defined term excluded communication are relevant. In particular, paragraphs (a) and (e) of the definition provide further limitations on the application of the financial promotion rules in relation to credit unions:

(1) Exemption (2a): A financial promotion which can lawfully be communicated by an unauthorised communicator without approval. A financial promotion that would benefit from an exemption in the Financial Promotion Order if it were communicated by an unauthorised person, or which originates outside the United Kingdom and is not capable of having an effect in the United Kingdom.

(2) Exemption (4e): A "one off" non-real time financial promotion or a "one off" solicited real time financial promotion that is not a cold call. …

(3) [deleted]

11.2.5 G Despite the limited application of COBS to deposits and the exemptions mentioned in CRED 11.2.4G, COB 3.2.8 G(1) reminds firms that financial promotions (including those which are exempt) may be subject to more general rules including Principle 7 (Communications with clients) and SYSC 3 (Systems and controls) and the fair, clear and not misleading rule COB 2.1.3 R (Clear, fair and not misleading communication).

11.2.6 G The requirement on a firm under COBS 3.8.4R(1) 4.2.1R(1) is that it should be able to show that it has taken reasonable steps to must ensure that a non-real time financial promotion is fair, clear, fair and not misleading. This is supported by an evidential provision COB 3.8.5 E) further detailed rules including COBS 4.5.2R:
A firm must ensure that information for a retail client:

(a) includes the name of the firm;

(b) is accurate and in particular does not emphasise any potential benefits of relevant business or a relevant investment without also giving a fair and prominent indication of any relevant risks;

(c) is sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received; and

(d) does not disguise, diminish or obscure important items, statements or warnings.

Those parts of COBS that relate to distance contracts for accepting deposits will have limited application to a credit union. This is because the Distance Marketing Directive only applies where there is "an organised distance sales or service-provision scheme run by the supplier" (Article 2(a)). … A one-off transaction dealt with by distance means in order to deal with a particular contingency or emergency will not fall under the COBS provisions.

For those credit unions to which the provisions in COBS will apply, the provisions which are of particular relevance concern the distance communications general provisions (COBS 2.6), pre-contract information (COBS 6.4.25, 13 and 14), cancellation rights (COBS 6.7) and the financial promotion financial promotion rules (discussed at CRED 11.2). If the credit union provides cash deposit ISAs or cash deposit CTFs further rules may apply.

COBS 6.4.25 5.1 sets out the basic requirement that applies before a credit union enters into a distance contract for accepting deposits or, …

The required information is the contractual terms and conditions and the other information set out in COBS App 5 Ann 1R, …

The exemptions referred to in CRED 11.4.3G are set out in COBS 6.4.27R to COBS 6.4.31R. They are relevant:

where the contract is concluded by telephone and the retail customer consumer gives explicit consent to receiving a more limited range of
information. COBS 6.4.27R (1) 5.1.12R sets out the information to be provided in such cases. Full information has to be provided, in a durable medium, immediately after conclusion of the distance contract (COBS 6.4.27R (2) 5.1.13R);

(2) … in this case full information must also be provided in a durable medium immediately after conclusion of the distance contract (COBS 6.4.29R 5.1.13R);

(3) where there is an initial service agreement and the contract is in relation to a successive or separate operation of the same nature under that agreement, or there is no initial service agreement and the contract is in relation to a successive or separate operation of the same nature and is being performed no more than one year from the date of performance of the last operation (COBS 6.4.30R 5.1.8R, 5.1.9R and COBS 5.1.10R to COB 6.4.31R; and see COB 1.10.2G).

11.4.6 G The other provisions in COB which relate to the disclosure requirements and are of relevance to credit unions entering into a distance contract for accepting deposits are in COB 2.6 (General provisions related to distance contracts). [deleted]

11.4.7 G …The right to cancel has to be exercised within 14 days of the day of the conclusion of the contract or the day on which he received the contractual terms and conditions, if later (COBS 6.7.10-15.2.1R).

11.4.8 G The only exemptions from the right to cancel are when:

…

(3) the credit union has an initial service agreement with the retail customer consumer and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see COBS 1.9.2.G (3) 15.2.1R).

11.4.9 G The effects of cancellation are set out in COBS 6.7.51R to COB 6.7.52R 15.4 (Effects of cancellation). …

11.4.10 G If there are other ancillary distance contracts related to the first, those ancillary contracts may also be cancelled automatically when a retail customer consumer exercises a right to cancel (see COBS 6.7.51 15).

11.4.11 G This guidance is not a substitute for, and should be read in conjunction with, the requirements contained in the relevant parts of COBS.

14.1.3 The Act requires the FSA to "maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed by or under this Act are complying with them" (paragraph 6(1) of Schedule 1 to the Act).
17.4.2 G DISP 2.6 sets out the activities which come under the jurisdiction of the Financial Ombudsman Service, as follows:

... 

(5) the provision of ancillary banking services;

(6) consumer credit activities;

or activities ancillary to them (see DISP 2.6.2R).

... 

Appendix 1 Contents of the Handbook

1.1 This is the table referred to in CRED 2.2.2G

1.1.1 Table

<table>
<thead>
<tr>
<th>Sourcebook or manual</th>
<th>Reference code</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Business standards</td>
<td>...</td>
</tr>
<tr>
<td>Conduct of business</td>
<td>COBS</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>Specialist Sourcebooks</td>
<td>...</td>
</tr>
<tr>
<td>E-commerce Directive</td>
<td>ECO</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>
Annex V

Amendments to the Electronic Money sourcebook (ELM)

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

1.1.5 G (1) ELM 1.4A sets out certain minimum requirements under the Distance Marketing Directive in respect of a customer's cancellation rights. These rules are supplemented by the requirements in COBS 6.7.42R 15.2 (Exercising the right to cancel), COBS 6.7.47R 15.3 (Cancellation notices served out of time Notice of exercise) and COBS 6.7.51R to COB 6.7.53R 15.4 (Effects of cancellation) which all apply to e-money firms.

(2) As set out in ELM 6.8, COBS 6.4.25R 15 applies to e-money firms as if references to 'issuing accepting deposits' and 'deposits' were references to 'issuing e-money' and 'e-money' respectively.

1.4A.1 R A retail customer consumer has a right to cancel a distance contract the making or performance of which by the firm constitutes, or is part of, issuing e-money unless:

…

(2) the firm has an initial service agreement with the customer consumer and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see COBS 1.11.3R 15 Annex 1 1.11R), in which case the right to cancel applies only to the initial agreement.

1.4A.2 R The right to cancel referred to in ELM 1.4A.1R starts on the later of:

…

(2) the day on which the retail customer consumer receives the contractual terms and conditions and other information required by ELM 6.8 (Information) and lasts for 14 calendar days.

Failure to give information on cancellation rights

1.4A.3 R If a firm does not give a retail customer consumer notice of his cancellation rights in accordance with ELM 6.8.2AR and COBS 6.4.25R 15.2.4G, the contract remains cancellable and the retail customer consumer can cancel the agreement at any time consumer is not liable for any shortfall.

1.4A.4 R A retail customer consumer may, without giving any reason, cancel the contract by serving notice upon the firm, before expiry of the relevant cancellation period, in accordance with the instructions for exercising that right provided to the customer consumer in accordance with ELM 6.8.2AR, and COBS 6.4.25R 15.3.1R and COBS 15.3.2R.
The following rules also apply as if issuing e-money were accepting deposits: COBS 6.7.47R 15.3.4R (Record keeping), COBS 6.7.48R 15.3.1R (Cancellation notices served out of time Notice of exercise) and COBS 6.7.51R to COB 6.7.53R 15.4 (Effects of cancellation).

Table Application of other parts of the Handbook to ELMIs

<table>
<thead>
<tr>
<th>Block</th>
<th>Module</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business standards</td>
<td>Conduct of Business sourcebook (COBS)</td>
<td>The effect of:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1) ELM 6.8.2AR is that COBS 2.6.5 (General provisions in relation to Distance contracts) applies to a firm issuing e-money;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) ELM 1.4A.5R is that COBS 6.7.47R 15.3.4R, COBS 6.7.48R 15.3.1R and COBS 6.7.51R to COB 6.7.53R 15.4 apply; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3) [deleted]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Otherwise, COBS does not apply to an ELMI when issuing e-money and As explained in PERG 3, the rules in COBS about financial promotions do not usually apply to e-money, but may do so in certain situations.</td>
</tr>
<tr>
<td></td>
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<tr>
<td>…</td>
<td></td>
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<tr>
<td>Specialist sourcebooks other than ELM</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>E-Commerce Directive sourcebook (ECO)</td>
<td></td>
<td>Applies to every ELMI that carries on electronic commerce activities. Also applies to every ELMI in relation to a financial promotion which is an outgoing electronic commerce communication.</td>
</tr>
<tr>
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<td></td>
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<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6.8.2A R COBS 2.6.5.1 (General provisions related to distance contracts The distance marketing disclosure rules) and COB 6.4.25R (Entering into a distance
contract for accepting deposits) applies to a firm issuing e-money as if references to 'accepting deposits' and 'deposits' were references to 'issuing e-money' and 'e-money' respectively.

Additional rules for e-commerce

6.8.7 GR [deleted] A firm carrying on an electronic commerce activity from an establishment in the United Kingdom with or for a person in the United Kingdom or another EEA state, in relation to e-money, must also comply with the e-commerce rules (COBS 5.2).
Annex W

Amendments to the Professional Firms sourcebook (PROF)

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

1.1.1A  R  This sourcebook does not apply to an incoming ECA provider acting as such.

5.3.2  G  COBS 18.11  COB 1.2.1R(4) provides that COBS does not apply to an authorised professional firm with respect to its non-mainstream regulated activities, except for:

(1)  COB 2.1 (Clear, fair and not misleading communication), COB 3 (Financial promotion) and COB 4.2.1R to COB 4.2.6G, COB 4.2.9R and COB 4.2.11E (Content of terms of business); and the fair, clear and not misleading rule;

(1A)  the financial promotion rules, but only in limited circumstances;

(2)  (where these are insurance mediation activities) COBS 7 (Insurance mediation) the IMD implementation provisions and COB 4.3.19R to COB 4.3.25R as if they also applied to a firm carrying out the activities in COB 4.3.19R(1)(a)-(c) with or on behalf of private customers, unless:

(a)  the designated professional body of the firm has made rules which implement some or all of articles 12 and 13 of the Insurance Mediation Directive IMD;

(b)  those rules have been approved by the FSA under section 332(5) of the Act; and

(c)  the firm is subject to the rules in the form in which they were approved;

in which case they are disapplied to the extent that articles 12 and 13 of the IMD are implemented by the rules of the designated professional body.

(3)  COB 1.2.1AG provides that the effect of COB 1.2.1R(4)(d) is that if the relevant designated professional body of an authorised professional firm does not make rules implementing articles 12 and 13 of the IMD applicable to authorised professional firms, those firms will need to comply with the IMD implementation provisions and COB 4.3.19R to COB 4.3.25R as if they also applied to a firm carrying out the activities in COB 4.3.19R(1)(a)-(c) with or on behalf of private customers, COBS 8.1.3R (Client agreements), except for the requirement to provide information on conflicts of interest.
5.3.6 G  DISP 1.1.5R (3) provides that DISP 1 (Treating complainants fairly) does not apply only applies to an authorised professional firm in so far as its non-mainstream regulated activities are concerned. ...

5.3.9 G  CASS 1.2.4R provides that with the exception of CASS 1 and the insurance client money chapter, CASS 2, CASS 3 and CASS 4 does not apply to authorised professional firms when carrying on non-mainstream regulated activities. CASS 1.2.5R further provides that if the non-mainstream regulated activities are insurance mediation activity, CASS 5 (the insurance client money chapter) does not apply to an authorised professional firm, if the firm's designated professional body has rules applicable to the firm which implement the IMD Insurance Mediation Directive and which are in the form approved by the FSA under section 332(5) of the Act.

5.4.1 R (1) In addition to those provisions of the Distance Marketing Regulations which apply directly (see COB 1.9.2 G (3)), an authorised professional firm must, with respect to its non-mainstream regulated activities, comply with regulations 7 to 11 and 15 of the Distance Marketing Regulations. …

…
Annex X

Amendments to the Listing Rules (LR)

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

LR Appendix 1 Relevant definitions

1.1 Relevant definitions

1.1.1 …

…

COBS the Conduct of Business Sourcebook, from 1 November 2007.

employee an individual:

(a) …

(b) …

but excluding an appointed representative or, where applicable, a tied agent of that person.

regulated market [delete existing definition and replace with the following:]

a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments in the system and in accordance with its non-discretionary rules in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of MiFID.

transferable security (as defined in section 102A of the Act) anything which is a transferable security for the purposes of the investment services directive MiFID, other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.
## Annex Y

### Amendments to the Prospectus Rules (PR)

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

<table>
<thead>
<tr>
<th>PR Appendix 1</th>
<th>Relevant definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>…</td>
</tr>
<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>Investment Services Directive</td>
<td>[deleted]</td>
</tr>
<tr>
<td>ISD</td>
<td>[deleted]</td>
</tr>
</tbody>
</table>

See also *MiFID Regulation* and *MiFID implementing Directive*.

**regulated market**

[delete existing definition and replace with the following]

a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* in the system and in accordance with its non-discretionary rules in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of *MiFID*.

**transferable security**

(as defined in section 102A of the *Act*) anything which is a transferable security for the purposes of the *investment services directive MiFID*, other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.
Annex Z

Amendments to the Perimeter Guidance manual (PERG)

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

2.4.3 G …

(1) …

…

(5) The fifth case, inserted by the ECD Regulations is, in effect, where an electronic commerce activity is carried on, from an establishment in the United Kingdom, in another EEA State. The ECO includes rules and guidance that apply to ECA providers based in the United Kingdom.

2.9.14 G In broad terms … debentures under the scheme. They do not apply to the activities of a person who is neither such a company nor such a trustee (for example, a third party administration service provider).

2.9.18 G (1) …

(2) The Regulated Activities Order was amended … falling under the Insurance Directives (see PERG 2.8.3G). However, services provided off-line in the United Kingdom (that is, other than as an electronic commerce activity) by such a firm which amount to regulated activities still require authorisation. ECO provides includes guidance and sets out rules that are relevant to both incoming and outgoing ECA providers. Incoming ECA providers have also to comply with any authorisation requirements in the country of origin of the services.

2.9.22 G [deleted]

2.11 What to do now?

2.11.2 G As part of its application for Part IV permission, an applicant may wish to apply for certain limitations (details of which are given in the application pack).

2.11.3 G An example of limitations which may be applied for or imposed include a limit on the types of client that a firm may deal with including:

(1) retail (investment);

(2) professional;

(3) eligible counterparty;

These limitations correspond to the Glossary terms retail client, professional
client and eligible counterparty.

E-Commerce Directive

4.11.21 G The E-Commerce Directive removes ... Further guidance is contained in the FSA's E-Commerce Directive sourcebook (ECO).

5.12.15 G The E-Commerce Directive removes ... Further guidance is contained in ECO.

8.12.18 G The purpose of these exemptions ... the mere conduit to make the communication. Neither does it apply where the financial promotion is an outgoing electronic commerce communication that is, or will be, communicated from an establishment in the United Kingdom to a person in an EEA State other than the United Kingdom. A person ...

8.12.38 G Article 20B gives effect to the provisions of the E-Commerce Directive by exempting incoming electronic commerce communications made from an establishment in an EEA State other than the United Kingdom to an ECA recipient in the United Kingdom. However, article 20B does not apply to the following communications:

...

9.1.6 G [deleted]

13.4 Financial Instruments

Q34. Are there any other derivatives subject to MiFID regulation?

There is a miscellaneous category of derivatives in C10, which is supplemented by articles 38 and 39 of the MiFID Regulation. These relate to:

- climatic variables;
- freight rates;
- emission allowances;
- inflation rates or other official economic statistics;

...

Q58. How do we know whether we are an exempt CAD firm and what does this mean in practice?

...

... You will be subject to the relevant ongoing requirements in the Interim Prudential Sourcebook for Investment Businesses relating to securities and futures firms and personal investment firms and securities and futures firms, as appropriate (see IPRU(INV) 13.1A.6R 13.1A.13R and IPRU(INV) 9.2.8R 9.2.9R).

If you are an exempt CAD firm which has opted into MiFID legislation (see Q52), you will need to consider whether you are subject to the audit requirements of
companies legislation (see Part VII of the Companies Act 1985 and Part 16 of the Companies Act 2006). You can benefit from the auditing exemption for small companies in companies legislation if you fulfil the conditions of regulation 4C(3) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments Regulations) 2007. In other words, if you continue to meet the conditions of the article 3 MiFID exemption (notwithstanding that you are an exempt CAD firm), you can benefit from the auditing exemption for small companies, as provided for in companies legislation. For further details, see The Markets in Financial Instruments Directive (Consequential Amendments) Regulations 2007 (SI 2007/2932). The same regulations also contain a transitional regime which has the effect of exempting exempt CAD firms from statutory audit requirements in relation to a financial year beginning before 1 November 2007 and ending on or after that date, where the exempt CAD firm was not an ISD investment firm.

After PERG 13.6 insert the following new section. The text is not underlined.

**The territorial application of MiFID**

13.7  **Q67. What is the territorial application of MiFID?**

If a firm is established in one Member State, and carries on all its investment business in that state, that state has responsibility for the entire financial services regulation of the firm.

If, however, the firm provides investment services or activities in another Member State, or establishes a branch in another Member State, the questions arise ‘Whose rules apply?’ and ‘Which regulator has responsibility for enforcing them?’.

The general principle is that prudential regulation is the responsibility of the Home State but conduct of business regulation is the responsibility of the Host State.

A Host State may also impose requirements relating to matters that fall outside of the scope of the directive - for example, market abuse, anti-money laundering controls and the conditions for cold calling.

We have added further guidance in PERG on the ability of a Host State to impose conduct of business requirements (see Q67).

**Q68. What is ‘prudential regulation’ and ‘conduct of business regulation’ in this context?**

Prudential regulation relates primarily to the capital adequacy of a firm and its systems and controls. In general terms, this means every aspect of a firm’s activities relating to financial services except those areas where the firm is concerned with a client. So provisions, for example, relating to communicating with clients, client agreements, best execution and order handling are seen as ‘conduct of business’ requirements and are not prudential.
Q69. What does this mean for my firm?

MiFID is about the regulation of markets in financial instruments – it is not about setting capital standards. It does, however, contain provisions about systems and controls and conduct of business. It also contains other market specific provisions which allocate the responsibilities between the home and host Member States.

If a firm establishes a branch in another Member State, the competent authority of the State where the branch is located has responsibility for the services and activities provided by the branch within that territory. As article 32(7) of MiFID provides, that authority has responsibility for ensuring compliance with the rules referred to in column 1 of the table below. The location of those rules is set out in column 3.

<table>
<thead>
<tr>
<th>Subject matter</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Conduct of business obligations to clients</td>
<td>COBS generally but see Notes 1 and 2</td>
</tr>
<tr>
<td>2. Best execution</td>
<td>COBS 11.2 (Best execution)</td>
</tr>
<tr>
<td>3. Client order handling</td>
<td>COBS 11 (Dealing and managing)</td>
</tr>
<tr>
<td>4. Market integrity, transaction reporting and maintaining records</td>
<td>SUP 17 (Transaction reporting)</td>
</tr>
<tr>
<td>5. Making public firm quotes (transparency)</td>
<td>MAR 6 (Systematic internalisers)</td>
</tr>
<tr>
<td>6. Post-trade disclosure</td>
<td>MAR 7 (Disclosure of information on certain trades undertaken outside a regulated market or MTF)</td>
</tr>
</tbody>
</table>

Notes:
1. Further guidance on the territorial scope of COBS is given in COBS 1 Annex 1, Part 3 and in SUP 13A Annex 2.
2. The MiFID conduct of business rules in article 19 are implemented in:
   (a) COBS 2.1 (Acting honestly, fairly and professionally)
   (b) COBS 2.2 (Information disclosure before providing services)
   (c) COBS 4.2 (Fair, clear and not misleading communications)
   (d) COBS 4.3 (Financial promotions to be identifiable as such)
   (e) COBS 8.1 (Client agreements: designated investment business)
Q70. How are the high level standards, like the Principles, affected by MiFID?

The position is summarised in the table below.

<table>
<thead>
<tr>
<th>Subject matter</th>
<th>References</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The Principles</td>
<td>PRIN 3.1.6R (Who?)</td>
</tr>
<tr>
<td>2</td>
<td>PRIN 4.1.2G (Where?)</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Systems and controls</td>
<td>SYSC 1.1.1R(6) and SYSC 1.3.9R to SYSC 1.3.11R SYSC 1.1.1R(1)(a), SYSC 1.1.7R and SYSC 1.3.10AR</td>
</tr>
</tbody>
</table>
regulator. This is particularly relevant to the provisions on systems and controls concerning financial crime and money laundering in SYSC 3.

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Approved persons</td>
<td>SUP 10.1, APER 1.1.4G and APER 2.1.1AP</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The territorial scope of some of the controlled functions under the approved persons regime and of the application of the Statements of Principle is modified as a result of MiFID.</td>
</tr>
<tr>
<td>5</td>
<td>The threshold conditions</td>
<td>COND 1.1.4G (Where?)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The guidance indicates that the threshold conditions apply in relation to all the regulated activities of a firm wherever they are carried on except, for example, in relation to incoming EEA firms in certain cases. MiFID has not affected this.</td>
</tr>
</tbody>
</table>

Q71. What is the position in relation to record keeping in branches?

The effect of article 13(9) of MiFID is also to shift the default position (of regulation by the Home State) to regulation by the Host State for the record-keeping requirements imposed on a branch (see SYSC 1.3.10AR).

Q72. Will a branch need to report to the competent authority of the Member State where it is located?

For some purposes, yes. Article 61 of MiFID gives a Host Member State the power to require reports for statistical purposes and to require branches to provide information necessary for monitoring compliance with the standards of the Host Member State (see SUP 16.7 (Financial reports)). These standards are the ones referred to in Article 32(7) as set out in Q69.

PERG 13 Annex 3

Flow chart 2 – CAD investment firms (excluding UCITS investment firms)

Are we a BIPRU 50K firm, a BIPRU 125K firm or a BIPRU 730K firm?
Do you deal on own account in financial instruments?

- No
  - Do you underwrite financial instruments on a firm commitment basis?
    - No
      - Do you operate a multilateral trading facility?
        - No
          - Do you offer one or more of the following services (with or without investment advice, personal recommendations) to your clients:
            - reception and transmission of orders
            - execution of client orders
            - portfolio management
            - place financial instruments without a firm commitment basis? (see Note)
              - Yes
                - Does your Part IV permission allow you to hold client money or securities?
                  - Yes
                    - You are a BIPRU 125K firm (see Q62-61).
                  - No
                    - You are a BIPRU 50K firm (see Q64-60).
        - Yes
          - You are a BIPRU 730K firm (see Q63-62).
  - Yes
    - You are a BIPRU 50K firm (see Q61-60).
2.1.2 R Table

This table belongs to *MCOB 2.1.1R*

<table>
<thead>
<tr>
<th>(1) Category of firm</th>
<th>(2) Applicable section</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td><em>home purchase provider</em></td>
<td>… , <em>MCOB 2.7A</em> and <em>MCOB 2.8.6G</em></td>
</tr>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td><em>a firm that communicates or approves a financial promotion of qualifying credit or of a home reversion plan</em></td>
<td>… , <em>MCOB 2.7A</em> and <em>MCOB 2.8</em> (except <em>MCOB 2.8.6G</em>)</td>
</tr>
<tr>
<td><em>a firm that communicates or approves a financial promotion of a home purchase plan</em></td>
<td>… , <em>MCOB 2.7A</em> and <em>MCOB 2.8.6G</em></td>
</tr>
</tbody>
</table>

Addendum

25 October 2007
ERRATA

Amendments to the Conduct of Business sourcebook (COBS)

Underlining indicates new text and striking through indicates deleted text.

The ‘Explanations of changes’ shown below do not form part of the legislative text.

Amend COBS 18 as shown.

Explanation of changes
COBS 18.11.2R applies the relevant COBS rules to authorised professional firms in respect of their non-mainstream regulated activities. The text omitted a provision extending the application to the e-commerce rules in COBS 5.2. The text we are publishing now corrects this.

18 Specialist Regimes

…

18.11 Authorised professional firms

…

18.11.2 R COBS does not apply to an authorised professional firm with respect to its non-mainstream regulated activities, except that:

(1) the fair, clear and not misleading rule applies;

(2) the financial promotion rules apply as modified below;

(3) COBS 7 (Insurance mediation) applies but only if the designated professional body of the firm does not have rules approved by the FSA under section 332(5) of the Act that implement articles 12 and 13 of the Insurance Mediation Directive and that apply to the firm; and

(4) COBS 8.1.3 R (Client agreements) applies, except for the requirement to provide information on conflicts of interest; and

(5) COBS 5.2 (E-commerce) applies.
Amend COBS TP 1 as shown.

**Explanation of changes**

COBS TP 1.9 is a transitional rule designed to allow firms other than MiFID firms and equivalent third country firms to continue to use the pre-1 November client classification provisions in relation to new clients for a limited period. The text of TP 1.9 omitted a sub heading and a paragraph that make this clear and there is a risk that the scope of the provision could be misunderstood. The text we are publishing now corrects this.

COBS TP 1: Transitional Provisions relating to Client Categorisation

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provisions: coming into force</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>COBS 3 G</td>
<td>…</td>
<td>(6) COBS TP 3(_)9 contains…</td>
<td>From 1 November 2007 indefinitely</td>
<td>1 November 2007</td>
</tr>
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<td>…</td>
<td>…</td>
<td>…</td>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td><strong>Categorisation of new clients before 30 June (business that is not MiFID or equivalent third country business)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.9</td>
<td>COBS 3 R</td>
<td>(1) A new client that could have been correctly categorised as an intermediate customer under the rules in force on 31 October 2007: (a) may be treated as an elective professional client if it could have been categorised as an expert private customer that had been categorised as an intermediate customer in accordance with COB 4.1.9R on the basis of its experience and understanding; or (b) otherwise may be treated as a per se</td>
<td>From 1 November 2007 to 30 June 2008</td>
<td>1 November 2007</td>
<td></td>
</tr>
</tbody>
</table>
(2) A firm may categorise as an eligible counterparty or a per se professional client any new client that could have been correctly categorised as a market counterparty under the rules in force on 31 October 2007, provided that the firm may only treat the client as an eligible counterparty for the purposes of eligible counterparty business.

(3) Clients categorised under COBS TP 3.1.9 must be dealt with in accordance with the relevant procedures and notifications in COBS 3.

(4) This rule only applies in relation to business that is not MiFID or equivalent third country business.

1 November 2007