

HANDBOOK ADMINISTRATION (NO 9) INSTRUMENT 2008**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making powers)
 - (b) section 139 (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 213 (The compensation scheme);
 - (f) section 214 (General);
 - (g) section 226 (Compulsory jurisdiction);
 - (h) section 247 (Trust scheme rules);
 - (i) section 248 (Scheme particulars rules); and
 - (j) paragraph 13 (Authority’s procedural rules) of Schedule 17 (The Ombudsman Scheme);
 - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228);
 - (3) the following powers and related provisions in the Regulated Covered Bonds Regulations 2008:
 - (a) regulation 8 (Applications for registration); and
 - (b) regulation 9 (Applications for admission to the register of issuers); and
 - (4) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- 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 on 6 May 2008.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Insurance: Conduct of Business sourcebook (ICOBS)	Annex D

Client Assets sourcebook (CASS)	Annex E
Supervision manual (SUP)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G
Collective Investment Schemes sourcebook (COLL)	Annex H
Regulated Covered Bonds sourcebook (RCB)	Annex I
Perimeter Guidance manual (PERG)	Annex J

Notes

- E. In the Annexes to 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 Handbook Administration (No 9) Instrument 2008.

By order of the Board
24 April 2008

Annex A

Amendments to the Glossary of definitions

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

<i>complaints record rules</i>	<i>DISP 1.9.</i>
<i>ICD claim</i>	<p>a <i>claim</i>:</p> <p>(a) against a <i>MiFID investment firm</i> (including a <i>credit institution</i> which is a <i>MiFID investment firm</i>), whether established in the <i>United Kingdom</i> or in another <i>EEA State</i>; and</p> <p>(b) in relation to:</p> <p>(i) <u>any investment services and activities other than the making of a personal recommendation;</u></p> <p>(ii) <u>the ancillary service of safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;</u></p> <p>(iii) <u>the firm's inability to repay money owed to or belonging to investors and held on their behalf or the firm's inability to return to investors any instruments belonging to them and held, administered or managed on their behalf, in each case, in connection with the investment service of the making of a personal recommendation relating to a financial instrument in accordance with the legal and contractual conditions applicable.</u></p> <p><u>[Note: Article 2(2) of the <i>Investor Compensation Directive</i>]</u></p>
<i>intermediate holding vehicle</i>	a <i>company</i> , trust or partnership but not a <i>collective investment scheme</i> , whose purpose is to enable the holding of <u>overseas</u> immovables on behalf of a <i>non-UCITS retail scheme</i> or a <i>qualified investor scheme</i> .
<i>permitted scheme interests</i>	<p>(a) ...</p> <p>(b) in respect of a firm's business with <i>linked policyholders</i> other than those described in (a), any of the following:</p> <p>...</p> <p>(iii) a UCITS scheme <u>scheme falling within the <i>UCITS Directive</i></u>;</p> <p>...</p>

Annex B

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

1 Application

...

1.1A The rules in Chapters 1, 2, 3 (with the exception of rule 3.1(7)), ~~rules rule 4.20 to 4.23~~, rule 5.1A, Chapters 7, and 8 and ~~Appendix 3~~ also apply to a *directive friendly society* which has permission under the Act to effect or carry out contracts of insurance.

...

8 Transitional Provisions

...

Table 1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional Provision: Dates in force	(6) Handbook provision: coming into force
1	IPRU(FSOC) 4.12, 4.20, 4.21, 4.22, 4.23, Appendix 4 paragraph 15	R	For the period given in column 5, a non-directive incorporated friendly society need not comply with a rule listed in column 2	From 31 December 2004 to 30 December 2005	31 December 2004
...					

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

6 Annex 2 Combined initial disclosure document described in *COBS* 6.3, *ICOBS* 4.5, *MCOB* 4.4.1R(1) and *MCOB* 4.10.2R(1)

...

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

...

[Home Finance Products] [Note 13]

[1] [Mortgages] [Equity Release Products] [Note 13]

...

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]**

...

ICOBS
Sch 5.4

<u>Rule</u>	<u>Right of action under section 150</u>			
	<u>For private person?</u>	<u>Removed?</u>	<u>For other person?</u>	
<u>All rules in ICOBS with the status letter "E"</u>	<u>No</u>	<u>No</u>	<u>No</u>	
<u>Any rule in ICOBS which prohibits an authorised person from seeking to make provision excluding or restricting any duty or liability</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>Any other person</u>
<u>ICOBS 8.2.9 R</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>Any other person</u>
<u>All other rules in ICOBS</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	

ICOBS Sch 6 Rules that can be waived

(to follow)

ICOBS
Sch 6.1

G As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its rules. However, if the rules incorporate requirements laid down in European directives, it will not be possible for the FSA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.

Annex E

Amendments to the Client Assets sourcebook (CASS)

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

- 2.5.11 G The *stock lending* requirements in ~~COB 4 Annex 2(18)~~ CASS 2.5.4R(2) also apply to *safe custody investments* held collectively on behalf of a *firm's customers* in any *custody* or settlement system. If the *custody* or settlement system operates an 'automatic' *stock lending* programme, the *firm* should maintain a separate account or be able to demonstrate that it maintains adequate systems to differentiate between the *safe custody investments* of those *customers* who have not consented to *stock lending activity* through that programme from the *designated investments* of those that have consented.
- ...
- 4.1.28 R Only the *client money rules* listed in ~~COB 9.3.29~~ CASS 4.1.29R apply to a *trustee firm* in respect of *client money* held in the course of that trustee business.
- 4.1.29 R This table belongs to ~~COB 9.3.28~~ CASS 4.1.28R
- ...
- ...
- 4.4.25 R *Money* held in each *designated client fund account* with the *failed bank* must be treated as pooled with any other *designated client fund accounts* of the *firm* which contain part of the same designated fund and:
- ...
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), when performing the daily *client money* calculation in accordance with ~~COB 9.3.99 to COB 9.3.119~~ CASS 4.3.66R to CASS 4.3.85R.

Annex F

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

13A Annex 1G Application of the Handbook to Incoming EEA Firms

...		
(1) Module of Handbook	(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	(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
...
<i>GEN</i>	<p><i>GEN</i> applies (<i>GEN</i> 1.1, <i>GEN</i> 2.1, <i>GEN</i> 3.1, <i>GEN</i> 4.1, <i>GEN</i> 5.1 and <i>GEN</i> 6.1). However, (a) <i>GEN</i> 4 does not apply to the extent that the <i>firm</i> is subject to equivalent <i>rules</i> imposed by its <i>Home State</i> (<i>GEN</i> 4.1.1R(3)), and (b) <i>GEN</i> 6 only applies to business that can be regulated under section 138 of the <i>Act</i> (General rule-making power). It does not therefore apply if, or to the extent that, responsibility has been reserved to an <i>incoming firm's Home State regulator</i> by a European Community instrument.</p> <p><i>GEN</i> 4 does not apply in relation to <i>MiFID</i> or equivalent <i>third country business</i> (see <i>GEN</i> 4.1.1R).</p>	<p><i>GEN</i> 4 does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>- (see <i>GEN</i> 4.1.1R).</p> <p><u>The general licence to use or reproduce the FSA logo in <i>GEN</i> 5 Annex 1G does not apply (see 3.1(1) of <i>GEN</i> 5 Annex 1G).</u></p> <p>Otherwise, as column 2.</p>
...

Annex G

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1 Annex 1 R COMPLAINTS RETURN (DISP 1 Ann 1R)

...

NOTES ON THE COMPLETION OF THIS RETURN

...

Private individual complaint returns

...

DISP ~~2.4.3R~~ 2.7.3R provides further definition of an *eligible complainant*.

...

... Small business complaint returns

This section relates to records of *complaints* subject to *DISP* 1.6 – *DISP* 1.10 received from *eligible complainants* as defined in *DISP ~~2.4.3R~~ 2.7.3R* other than private individuals. ...

...

...

2.1.7 D Part XVI of the *Act* (The Ombudsman Scheme), particularly section 226 (Compulsory ~~Jurisdiction~~ jurisdiction), applies to *members* of the *Society of Lloyd's* ~~of Lloyd's~~ of Lloyd's in respect of the *regulated activities* of *effecting* or *carrying out contracts of insurance* written at Lloyd's.

...

2.5.4 G *DISP* 2.5.1R(2)(b) is for those that were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* immediately before *commencement*. It enables the *Financial Ombudsman ~~Scheme~~ Service* to cover *complaints* that arise out of acts or omissions occurring after *commencement* for any activities which are not covered by the *Compulsory Jurisdiction* but that would have been covered by the relevant *former scheme*.

...

4.2.3 R The following rules and guidance apply to *VJ participants* as part of the

standard terms, except where the context requires otherwise:

(1) *DISP* 1 (Treating ~~complaints~~ complainants fairly), except:

- (a) *DISP* ~~1.5~~ 1.9 (Complaints record rule);
- (b) *DISP* ~~1.6~~ 1.10 (Complaints reporting rules); and
- (c) *DISP* ~~1.7~~ 1.11 (Lloyd's);

...

(3) *DISP* 3 (~~Complaints-handling~~ Complaint handling procedures of the Financial Ombudsman Service).

...

DISP TP 1 Transitional provisions

...

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
7B	<i>DISP</i> 2.8.7R	R	In the case of a complainant falling within <i>DISP</i> 2.8.7R, (and whose time for referring a <i>complaint</i> under <i>DISP</i> 2.3.6R as it stood on 5 April 2008 <u>the rules as they stood before 1 June 2004</u> has not expired), time will expire in accordance with <i>DISP</i> 2.8.7R save that if the final date would otherwise be before 30 November 2004 an explanation of the final date will be in conformity with <i>DISP</i> 2.8.7R(2), provided it stipulates a final date which is not less than two months from the date on which the explanation is likely to be received by the complainant.	From 1 June 2004	Amended with effect from 1 June 2004

...					
-----	--	--	--	--	--

Annex H

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Table: contents of the instrument constituting the scheme

- 3.2.6 R This table belongs to *COLL* 3.2.4R (Matters which must be included in the instrument constituting the scheme)

...	
	Investment in <u>overseas</u> property through an intermediate holding vehicle
28	If investment in an <u>overseas</u> immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i> , a statement that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> will be to enable the holding of <u>overseas</u> immovables by the <i>scheme</i> .

...

Table: contents of the prospectus

- 4.2.5 R This table belongs to *COLL* 4.2.2R (Publishing the prospectus)

...	
	Investment in <u>overseas</u> property through an intermediate holding vehicle
26A	If investment in an <u>overseas</u> immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i> , a statement disclosing the existence of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> and confirming that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> is to enable the holding of <u>overseas</u> immovables by the <i>scheme</i> .
...	

...

Investment in overseas property through an intermediate holding vehicle

- 5.6.18A R (1) An overseas immovable may be held by a *scheme* through an *intermediate holding vehicle* whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are

adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an overseas immovable shall be treated for the purposes of this chapter as if it were a direct investment in ~~the~~ that immovable.

(2) ...

...

Table: contents of the instrument constituting the scheme

8.2.6 R This table belongs to *COLL 8.2.5R*

...	
10A	Investment in <u>overseas</u> property through an intermediate holding vehicle
	If investment in an <u>overseas</u> immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i> , a statement that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> will be to enable the holding of <u>overseas</u> immovables by the <i>scheme</i> .
...	

...

Table: contents of qualified investor scheme prospectus

8.3.4 R This table belongs to *COLL 8.3.2R*.

...	
18A	Investment in <u>overseas</u> property through an intermediate holding vehicle
	If investment in an <u>overseas</u> immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i> a statement disclosing the existence of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> and confirming that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> is to enable the holding of <u>overseas</u> immovables by the <i>scheme</i> .
...	

Investment in overseas property through an intermediate holding vehicle

8.4.11A R (1) An overseas immovable may be held by a *scheme* through an

intermediate holding vehicle whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an overseas immovable shall be treated for the purposes of this section as if it were a direct investment in ~~the~~ that immovable.

(2) ...

Annex I

Amendments to the Regulated Covered Bonds sourcebook (RCB)

In this Annex, underlining indicates new text.

- 2 Annex 1 D Application for the admission to the register of issuers and register of regulated covered bonds
- ...
- 2 Issuer and owner eligibility
- 2.1 Does the issuer hold the permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of ‘accepting deposits’ and have its registered office (or, if the issuer is a building society, its principal office) in the UK?
- Yes No
- ...

Annex J

Amendments to the Perimeter Guidance manual (PERG)

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

- 1.5.1 G General *guidance* on the perimeter is also contained in various *FSA* documents (mainly fact sheets and frequently asked questions) that are available on the *FSA* website at www.fsa.gov.uk. These documents, and the URL on which they may be accessed, include:
- (1) ~~*guidance about the position under the Insurance Mediation Directive and the Regulated Activities Order of group risk managers and co-participants in a joint enterprise*~~
http://www.fsa.gov.uk/Pages/Doing/small_firms/insurance/library/archive/risk.shtm; ~~[deleted]~~
 - (2) ~~*guidance about the scope of the exclusion in article 72B of the Regulated Activities Order (Activities carried on by a provider of relevant goods or services) as it applies to services related to travel*~~
http://www.fsa.gov.uk/pages/Doing/small_firms/insurance/faq/travel.shtml; ~~[deleted]~~
- ...
- ...
- 8.9.3 G An *unauthorised person* may wish to pass on a *financial promotion* made to him by an *authorised person*. In this case, the fact that the *financial promotion* was made to him by an *authorised person* will not be enough for the restriction in section 21 not to apply to him. The *authorised person* must also both have *approved* its content and have done so for the purpose of section 21 of the *Act*. If an *authorised person* wishes to ensure that an *unauthorised person* can *communicate a financial promotion* made by the *authorised person* to third parties, it may *approve* its own *financial promotion* for the purposes of section 21 of the *Act* (see ~~COB 3.12.1G(3)~~ COBS 4.10.3G(2)).
- ...
- 8.14.28A G The second exemption in article 50A disapplies the restriction in section 21 of the *Act* from ~~*non-real-time financial promotions or solicited real time*~~ any financial promotions which are made to a *person* who the communicator believes on reasonable grounds to be a self-certified sophisticated investor and which relate to one or more of the *specified investments* in *PERG* 8.14.21G(1) to (3) (Certified high net worth individuals (article 54 48)).

...

8.36.6 G Table Application of Exemptions to Forms of Promotions

Financial Promotion Order		Applies to		
Article No	Title and <i>PERG</i> 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
...				
50A	Self-certified sophisticated investors (8.14.28AG)	*	*	*
...				

...

13 Guidance on the scope of the Markets in Financial Instruments Directive and the recast Capital Adequacy Directive

Insert the following text after PERG 13.5. The text is all new and is not underlined

13.5A Child trust funds and MiFID

Q53A. Is a child trust fund (a CTF) a financial instrument?

No. A *CTF* account itself is not a *financial instrument*. The funds contributed to a CTF may be invested in financial instruments. However, in the FSA’s view, the link between the underlying investment and the rights and interests acquired by the CTF account holder is too remote for the account holder to be considered as having acquired the underlying investment itself. So, the provision of services to a CTF account holder (such as in relation to the establishment of the account and the making of further contributions) will not be an *investment service*.

Q53B. Will the operator of a CTF be carrying on investment services or activities?

Possibly, but it is likely that he will be exempt from the scope of MiFID. Where the CTF is invested wholly or partly in *financial instruments*, the operator may be providing an *investment service* when he executes the transaction or arranges to transfer funds to a new financial instrument (such as a security or collective investment scheme unit). However, in the FSA’s opinion, the exemption in article 2(1) (c) of MiFID (see Q39) should be available to CTF operators such that these activities will effectively be outside the scope of MiFID.

The key question in applying this exemption is whether the investment services are incidental to the other activities involved in operating a CTF when viewed on a global basis. In the FSA’s view, this is likely to be the case as most CTFs do

not involve active trading, such as day trading, by the account holder and, as a result, involve little or no ongoing investment service within the scope of MiFID.

An issue arises as to whether a focus on deal-based charges as the main source of remuneration (instead of charges related to the administration of the CTF itself) might indicate that trading is not incidental. In this respect, the FSA would expect firms designing an account in this way to follow the principle of treating their customers fairly. For example, firms may want to explain to potential account holders the possible impact of frequent switching if this incurs costs and erodes capital. More generally, where active trading is likely to have a detrimental effect on capital value, it may well be that this would be viewed as more than an incidental activity such that the exemption would not apply.

It is necessary to balance investment services against all the activities that are not investment services that have taken place or will take place in the CTF accounts that the firm operates over their full term. The FSA would not expect firms to have to investigate each CTF on a trade-by-trade basis. The exemption may still apply even if particular accounts experience higher levels of dealing activity.

Q53C. Is a person who provides services relating to investments that underlie the CTF within the scope of MiFID?

Possibly. Firms which provide *investment services* to the CTF operator in relation to financial instruments held within the CTF account (such as executing trades) will be within the scope of MiFID unless an exemption applies to them.

Q53D. Does the same analysis apply to other types of schemes where financial instruments may be held for the benefit of investors such as an ISA or a pension scheme?

This depends on the nature of the scheme in question. CTFs have very particular product features. Other types of schemes such as ISA accounts may simply be tax efficient ways to hold the beneficial interest in financial instruments which may, at the behest of the account holder, be transferred into his direct ownership. So, the beneficial interest that an investor acquires in a share, bond or collective investment scheme unit held under an ISA will be a financial instrument for the purposes of MiFID. And the operation of an ISA will essentially be an investment service such that the exemption in article 2.1(c) of MiFID will not be relevant. Pension schemes, on the other hand, bear a closer similarity to CTFs in that they will have particular product features and the underlying investments are held for the purpose of providing or determining the value of the member's cash benefits. Generally speaking, a member of a pension scheme can only transfer the value of his benefits and not transfer the underlying investments into his direct ownership. For this reason, as explained in *PERG 10.4A*, the FSA does not consider that a member of a pension scheme acquires a financial instrument purely as a result of having a financial instrument held for his benefit under the trusts of an occupational or personal pension scheme.