

HANDBOOK ADMINISTRATION (NO 10) 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 73A (Part 6 rules);
 - (b) section 96 (Obligations of issuers of listed securities);
 - (c) section 101 (Listing Rules: general provisions);
 - (d) section 138 (General rule-making powers);
 - (e) section 139 (Miscellaneous ancillary matters);
 - (f) section 156 (General supplementary powers);
 - (g) section 157(1) (Guidance);
 - (h) section 213 (The compensation scheme);
 - (i) section 214 (General);
 - (j) section 226 (Compulsory jurisdiction);
 - (k) section 234 (Industry funding);
 - (l) section 247 (Trust scheme rules);
 - (m) section 248 (Scheme particulars rules);
 - (n) Schedule 7 (The Authority as Competent Authority for Part VI); and
 - (o) 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); and
 - (3) 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.
- (1) Part 1 of Annex A (Glossary) and Annex C (FEES) to this instrument come into force on 25 July 2008.
 - (2) Part 3 of Annex A (Glossary) and Part 2 of Annex E (COBS) come into force on 6 September 2008.
 - (3) The remainder of this instrument comes into force on 6 August 2008.

Revocation of the Collective Investment Schemes Sourcebook (Electronic Communications) Instrument 2008

- D. The Collective Investment Schemes Sourcebook (Electronic Communications) Instrument 2008 (FSA 2008/27) is revoked in its entirety.

Amendments to the Handbook

- E. 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
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Fees manual (FEES)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Conduct of Business sourcebook (COBS)	Annex E
Insurance: Conduct of Business sourcebook (ICOBS)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G
Compensation sourcebook (COMP)	Annex H
Listing Rules sourcebook (LR)	Annex I

Notes

- F. 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

- G. This instrument may be cited as the Handbook Administration (No 10) Instrument 2008.

By order of the Board
24 July 2008

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into force on 25 July 2008

connected person ...

- (5) (in *DTR* and *LR* in relation to a *person discharging managerial responsibilities* within an *issuer*) (as defined in section 96B(2) of the *Act*):
 - (a) a “connected person” within the meaning of ~~sections 252, 253 and 254~~ section 346 of the Companies Act ~~2006~~ 1985 (reading ~~those sections~~ that section as if any reference to a director of a company were a reference to a *person discharging managerial responsibilities* within an *issuer*);

...

Part 2: Comes into force on 6 August 2008

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

home finance administration any of the *regulated activities* of:

- (a) *administering a regulated mortgage contract*;
- (b) *administering a home purchase plan*;
- (c) *administering a home reversion plan*; or
- (d) *agreeing to carry on a regulated activity* in (a) to (c).

home financing any *home finance providing activity*.

Amend the following definitions as shown.

Combined Code (in *LR* and *DTR*) in relation to an *issuer*:

- (1) in respect of a reporting period commencing on or after ~~1 November 2006~~ 29 June 2008, the Combined Code on Corporate Governance

published in June ~~2006~~ 2008 by the Financial Reporting Council; or

- (2) in respect of a reporting period commencing before ~~1 November 2006~~ 29 June 2008, the Combined Code on Corporate Governance published in ~~July 2003~~ June 2006 by the Financial Reporting Council.

consumer

- (1) (except as specified in this definition) any natural person acting for purposes outside his trade, business or profession.

[**Note:** article 2 of the *Distance Marketing Directive*, article 2 of the Unfair Terms in Consumer Contracts Directive (93/13/EEC) and article 2 of the *E-Commerce Directive*]

- (2) (in relation to the FSA's power to make general *rules* (section 138 of the *Act* (General rule-making power))) the approval requirements for *controllers* (section 186 of the *Act* (Objection to acquisition of control)), the publication of notices (section 391 of the *Act* (Publication)) and the exercise of *Treaty rights* (Schedule 4 to the *Act* (Treaty rights))) (as defined in section 138(7) of the *Act* (General rule-making power)) a *person*:

- (a) who uses, has used, or is or may be contemplating using, any of the services provided by:
- (i) an *authorised person* in carrying on *regulated activities*; or
- (ii) a *person* acting as an *appointed representative*, or where applicable, a *tied agent*; or
- (b) who has rights or interests which are derived from, or are otherwise attributable to the use of, any such services by another *person*; or
- (c) who has rights or interests which may be adversely affected by the use of any such services by a *person* acting on his behalf or in a fiduciary capacity in relation to him; or
- (d) (in relation to the FSA's power to make general *rules*) a *person* within the extended definition of consumer in article 3 of the Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) Order 2001 (SI 2001/1821) (Application of definition of "consumer" to users of regulated services before commencement);
- (e) (in relation to the FSA's power to make general *rules*) a *person* within the extended definition of consumer in article 4 of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501) (Application of definition of "consumer" to customers of credit unions before

commencement);

for the purposes of this definition:

- (A) if an *authorised person* is carrying on a *regulated activity* in his capacity as a trustee, the *persons* who are, have been or may be beneficiaries of the trust are to be treated as *persons* who use, have used or are or may be contemplating using services provided by the *authorised person* in his carrying on of that activity;
 - (B) a *person* who deals with an *authorised person* in the course of the *authorised person's* carrying on of a *regulated activity* is to be treated as using services provided by the *authorised person* in carrying on those activities.
- (3) (in relation to the protection of consumers objective (section 5 of the *Act* (The protection of consumers)) and independent inquiries (section 14 of the *Act* (Cases in which the Treasury may arrange independent inquiries))) (as defined in sections 5(3) and 14(5) of the *Act*) a *person*:
- (a) within (~~1~~2); or
 - (b) who, in relation to *regulated activities* carried on otherwise than by an *authorised person*, would be a consumer within (~~1~~2) if the activities were carried on by an *authorised person*.
- (4) (in relation to the establishment and maintenance of the *Consumer Panel* (section 10 of the *Act* (The Consumer Panel))) (as defined in section 10(7) of the *Act*) a *person* within (~~2~~3) other than an *authorised person*.

investment research

research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several *financial instruments* or the issuers of *financial instruments*, including any opinion as to the present or ~~future~~ future value or price of such instruments, intended for *distribution channels* or for the public, and in relation to which the following conditions are met:

...

Part 3: Comes into force on 6 September 2008

Amend the following definition as shown.

distance contract any contract concerning financial services concluded between a ~~firm~~ supplier and a *consumer* under an organised distance sales or service

provision scheme run by the ~~firm~~ supplier which, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more means of distance communication (that is, any means which, without the simultaneous physical presence of the ~~firm~~ supplier or intermediary and the *consumer*, may be used for the distance marketing of a service between those parties) up to and including the time at which the contract is concluded.

A contract is not a distance contract if:

- (a) making, ~~or~~ performing or marketing it does not constitute or form part of a *regulated activity*;
- (b) it is entered into on a strictly occasional basis outside a commercial structure dedicated to the conclusion of distance contracts; or
- (c) a *consumer*, and an intermediary acting for a product provider, are simultaneously physically present at some stage before the conclusion of the contract.

...

Annex B

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

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

2.1.6 G Table Frequently asked questions about allocation of functions in SYSC 2.1.3R

This table belongs to SYSC 2.1.5G

	Question	Answer
...		
15	What about incoming <u>electronic commerce activities carried on from an establishment in another EEA State with or for a person in the United Kingdom?</u>	ECO 1.1.6R has the effect that SYSC does not apply to an <i>incoming ECA provider</i> acting as such.

Annex C

Amendments to the Fees manual (FEES)

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

FEES 5 Annex 1R Annual Fees Payable in Relation to 2008/09

...

Industry block	Tariff base	General levy payable by firm
...
2-Insurers – general (excluding <i>firms</i> in blocks 13 & 15)	Relevant annual gross premium income	£0.0126 <u>£0.126</u> per £1,000 of relevant annual gross premium income, subject to a minimum levy of £100
...

Annex D

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

In this Annex, striking through indicates deleted text.

4.1 Application and Purpose

Application

4.1.1 R This chapter applies to a *firm* with *Part IV permission* to carry on any of the following activities, unless an exemption in this section applies:

...

(3) ~~*entering into a home finance transaction (that is, home financing);*~~

(4) ~~*administering a home finance transaction (that is, home finance administration).*~~

Annex E

Amendments to the Conduct of Business sourcebook (COBS)

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

Part 1: Comes into force on 6 August 2008

1 Annex 1 Application

...		
Part 3: Guidance		
...		
9.	UCITS Directive: effect on territorial scope	
...		
9.2	G	Accordingly, the territorial scope of this sourcebook is modified so that:
	(1)	the <i>rules</i> relating to the distribution of a <i>simplified prospectus</i> apply to the management company (<i>operator</i>) of a UCITS whose <i>Home State</i> is the <i>United Kingdom</i> when marketing in other <i>EEA States</i> ;
	(2)	those <i>rules</i> do not apply to a management company of a UCITS whose <i>Home State</i> is another <i>EEA State</i> when marketing in the <i>United Kingdom</i> ; other <i>rules</i> , such as the <i>financial promotion rules</i> and the information gathering and suitability rules (see <i>COBS 9 Suitability</i> (including basic advice)) apply without modification of this territorial scope, <u>but subject to section 266 of the Act.</u>
...		

...

- 3.2.2 G (1) A corporate finance contact or a venture capital contact is not a client under the first limb of the general definition. This is because a firm does not provide a service to such a contact. However, it will be a client under the third limb of the general definition for the purposes of the financial promotion rules if the firm communicates or approves a financial promotion that is or is likely to be communicated to such a contact.
- (2) Communicating or approving a financial promotion that is or is likely to be communicated to such a contact is not MiFID or

equivalent third country business. In such circumstances, the “non-MiFID” client categorisations are relevant and, in categorising elective professional clients, the “quantitative test” will not need to be satisfied.

...

4.1.6 G *Approving a financial promotion without communicating it (which includes causing it to be communicated) is not MiFID or equivalent third country business. Communicating a financial promotion to a person other than a client or potential client, such as a corporate finance contact or a venture capital contact, who is not a client within the meaning of COBS 3.2.1R(1), (2) or (4) in respect of the MiFID or equivalent third country business to which the financial promotion relates, is also not MiFID or equivalent third country business. Further guidance on what amounts to MiFID business may be found in PERG 13.*

...

13 Annex 3 Charges

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

...

2.2 The effect of charges table:

...

(3) must be completed in accordance with the following notes:

R	
...	
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 <i>intermediate rate of return</i> for the relevant product to the figure in the ‘effect of deductions to date’ column for the previous year;
	(b) subtract from this figure <u>from</u> 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).
...	

...

- 14.2.17 R Where the *rules* in this section require a *document* or information to be provided, in the case of a voice telephony communication, a *firm* must:
- (1) if the *client* gives explicit consent to receiving only limited information, provide the abbreviated distance marketing disclosure information (*COBS 6 5 Annex 2R*) orally to the *client*;
 - (2) if the client does not give explicit consent to only receiving limited information, and the parties wish to proceed by voice telephony communication, provide the distance marketing information (*COBS 6 5 Annex 1G R G*) orally to the client;
 - (3) in the case of (1) or (2), send the *documents* or information to the *client* in a *durable medium* immediately after the contract is concluded.

...

16.6 ~~Life insurance contracts – communications~~ Communications to clients – life insurance, long term care insurance and income withdrawals

...

Part 2: Comes into force on 6 September 2008

5.1 The distance marketing disclosure rules

Application

- 5.1.-1 R (1) This section applies to a *firm* that carries on any distance marketing activity from an establishment in the ~~UK~~ United Kingdom, with or for a *consumer* in the *United Kingdom* or another *EEA State*.
- (2) If a *firm* is an intermediary rather than the supplier under the *distance contract*, references to ‘*firm*’ in *COBS 5 Annex 1R* and *Annex 2R* are to be interpreted as referring to the supplier except for references to ‘*firm*’ in *COBS 5 Annex 1R (2)*, (4) and (18).

The distance marketing disclosure rules

5.1.1 R ...

...

18.5.2 R ...

Table: Application of the conduct of business rules

Application of the conduct of business rules

Chapter, section or rule	Description	Modifications
...		
<u>5.1</u>	<u>Distance communications</u>	
...		

Annex F

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

TP 1 Transitional Provisions

...

~~Sourcebook implementation period~~

3 R ~~A *firm* need not comply with any provision of this sourcebook to the extent that it complies with the corresponding provision of *ICOB* (if any) as it applied on 5 January 2008. This *rule* applies until 5 July 2008. [Expired]~~

4 G ~~*Firms* should consider what kind of records should be made of their reliance on the sourcebook implementation period transitional provision, in particular where they rely on the transitional provision for only some of their *insurance mediation activities*, or the extent of reliance changes during the implementation period. [Expired]~~

~~Pure protection contracts: record of election~~

5 R ~~A *firm* is not required to make, and retain a record of, an election to comply with the Conduct of Business sourcebook (see *ICOBS* 1 Ann 1, Part 2, 3.1R(3)). This *rule* applies until 5 June 2008. [Expired]~~

Annex G

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text.

Schedule 4 G Powers exercised

...

DISP Sch
4.2

G

Table: The powers to make rules relating to the new ombudsman scheme are shared between the *FSA* and the Financial Ombudsman Service (FOS Ltd). FOS Ltd's rules are subject to *FSA* consent or approval. The rules made exclusively by *FOS Ltd* are:

...	
FEES 5 <u>Annex 1</u>	part 3
	part 4

...

Annex H

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

- 14.1.6 G If there is no cover provided by the *incoming EEA firm's Home State* or the scope and/or level of cover is less than that provided by the *compensation scheme*, this chapter enables the *firm* to obtain cover or 'top-up' cover from the *compensation scheme* for its *passport activities* carried on from a *UK branch*, up to the *compensation scheme's* limits (set out in *COMP 10*). This reflects section 214(5) of the *Act (General)* and regulation 3 of the *Electing Participants Regulations* (Persons who may elect to participate). If the *firm* 'tops up' and then becomes insolvent, the *Home State* compensation scheme will pay compensation up to the limit and scope of the *Home State* compensation scheme, with the *FSCS* paying compensation for the additional amount in accordance with the provisions in this sourcebook (*COMP 12.4.1R* and *COMP 12.4.4R*).
- 14.2.3 G A notice under *COMP 14.2.1R* should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:
- ...
- (3) the scope and/or level of cover provided by the *firm's Home State* compensation scheme must be less than that provided by the *compensation scheme*.

Annex I

Amendments to the Listing Rules sourcebook (LR)

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

The reproduced definition in LR Appendix 1 is amended as follows:

Combined Code in relation to an *issuer*:

- (1) in respect of a reporting period commencing on or after ~~1 November 2006~~ 29 June 2008, the Combined Code on Corporate Governance published in June ~~2006~~ 2008 by the Financial Reporting Council; or
- (2) in respect of a reporting period commencing before ~~1 November 2006~~ 29 June 2008, the Combined Code on Corporate Governance published in ~~July 2003~~ June 2006 by the Financial Reporting Council.