

**HANDBOOK ADMINISTRATION (NO 25) INSTRUMENT 2012****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the 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 as follows:
- (1) Part 1 of Annex D (SUP) comes into force on 22 March 2012;
  - (2) Part 2 of Annex A (Glossary) and Annex C (COBS) come into force on 1 October 2012;
  - (3) Annex E (DISP) comes into force on 31 December 2012; and
  - (4) the remainder of this instrument comes into force on 1 April 2012.

**Amendments to the Handbook**

- D. The modules 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
Conduct of Business sourcebook (COBS)	Annex C
Supervision manual (SUP)	Annex D
Dispute Resolution: Complaints sourcebook (DISP)	Annex E
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex F
Listing Rules sourcebook (LR)	Annex G

**Amendments to material outside the Handbook**

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex H to this instrument.

**Amendment to instrument**

- F. Annex A and Annex B to the Conduct of Business Sourcebook (Automatic Enrolment into Qualifying Pension Schemes) Instrument 2011 (FSA 2011/30) are amended in accordance with Annex A (Glossary) and Annex C (COBS) to this instrument respectively.

**Citation**

- G. This instrument may be cited as the Handbook Administration (No 25) Instrument 2012.

By order of the Board  
21 March 2012

## Annex A

## Amendments to the Glossary of definitions

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

**Part 1: Comes into force on 1 April 2012**

<i>financial promotion rules</i>	... (4) <u>(in relation to <i>BCOBS</i>) all or any of the <i>rules</i> in <i>BCOBS 2</i> that impose requirements in relation to a <i>financial promotion</i> but only to the extent that they apply to a <i>financial promotion</i>.</u>
<i>percentage ratio</i>	(in <i>LR</i> ) (in relation to a transaction) the figure, expressed as a percentage, that results from applying a calculation under a <del>class test</del> <u><i>class test</i></u> to the transaction.

**Part 2: Comes into force on 1 October 2012**

The amendment to the definition of “pension opt-out” shown below replaces that made by Annex A to the Conduct of Business Sourcebook (Automatic Enrolment into Qualifying Pension Schemes) Instrument 2011 (FSA 2011/30).

<u><i>group stakeholder pension scheme</i></u>	<u>a <i>stakeholder pension scheme</i> which is available to employees of the same employer or of employers within a <i>group</i>.</u>
<i>pension opt-out</i>	a transaction, resulting from the decision of a <i>retail client</i> who is an individual, to: <ul style="list-style-type: none"> <li>(a) <u>opt out of an <i>occupational pension scheme</i>, <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> to which his employer contributes and</u> of which he is a member; or</li> <li>(b) <u>decline to become a member of an <i>occupational pension scheme</i>, <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> to which his employer contributes and of which he is eligible to join, or will be eligible to join at the end of a waiting period;</u></li> </ul> <p>in favour of a <i>stakeholder pension scheme</i> or <i>personal pension scheme</i>.</p>

*Editor’s Note: The introduction here of the definition of “group stakeholder pension scheme” in effect brings forward the making of this definition. This definition was originally made by the Retail Distribution Review (Corporate Pensions) Instrument 2010 (FSA 2010/21) with a commencement date of 31 December 2012.*

**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.

12.1.11 R Where this section applies with respect to a *financial conglomerate*, the risk management processes referred to in SYSC 12.1.8R(2) must include:

...

(3) ...; ~~and~~

(4) ...

(5) arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans; a *firm* must update ~~those~~ these arrangements regularly.

...

## Annex C

### Amendments to the Conduct of Business sourcebook (COBS)

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

The amendment to COBS 19.2.2R shown below replaces that made by Annex B to the Conduct of Business Sourcebook (Automatic Enrolment into Qualifying Pension Schemes) Instrument 2011 (FSA 2011/30).

#### Comes into force on 1 October 2012

#### Suitability

19.2.2 R Where a *firm* prepares a *suitability report* it must:

...

- (2) (in the case of a personal pension scheme, stakeholder pension scheme or an FSAVC), explain why it considers the personal pension scheme, stakeholder pension scheme or FSAVC to be at least as suitable as any ~~stakeholder pension scheme, AVC or facility~~ to make additional contributions to an occupational pension scheme, group personal pension scheme or group stakeholder pension scheme which is available to the *retail client*.

## Annex D

### Amendments to the Supervision manual (SUP)

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

#### **Part 1: Comes into force on 22 March 2012**

#### **16 Annex 14(1)R Quarterly return (CQ) for credit unions**

...

#### **SUPPLEMENTARY ANALYSIS OF THE QUARTERLY RETURN**

The Supplementary Analysis of the Quarterly Return should be completed as part of the Quarterly Return by credit unions in Great Britain where they meet one or more of the following conditions at the end of the quarter:

- the credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the credit union has issued deferred shares in accordance with section 31A of the Act; or
- the credit union has admitted corporate members under section 5A of the Act.

#### **Interest-bearing shares**

...

In 16 Annex 14(2)R (Annual return (CY) for credit unions) the “Supplementary Analysis of the Annual Return”, which is currently located after the “Auditor’s statement”, is moved so that it appears after the chart headed “Committee of management and other officers of the credit union”.

Amend the following as showing.

#### **16 Annex 14(2)R Annual return (CY) for credit unions**

...

#### **SUPPLEMENTARY ANALYSIS OF THE ANNUAL RETURN**

The Supplementary Analysis of the Annual Return should be completed as part of the Annual Return by credit unions in Great Britain where they meet one or more of the following conditions at the end of the financial year:

- the credit union has issued interest-bearing shares under section 7A of the Credit Unions Act 1979 (the Act);
- the credit union has issued deferred shares in accordance with section 31A of the Act;
- the credit union has admitted corporate members under section 5A of the Act; or
- the credit union’s rules limit the number of non-qualifying members of the credit union, in

accordance with section 5(5) of the Act

## Interest-bearing shares

...

### 16 Annex 25G      Guidance notes for data items in SUP 16 Annex 24R

...

#### FSA004 – Credit risk

...

#### Column B

For firms on the standardised approach, this should be calculated as set out in *BIPRU 3* and *BIPRU 5*. It equates to the fully adjusted exposures values (E\*) after adjustment to off-balance sheet items under *BIPRU 3.6.1R* ~~3.6.1R~~ 3.7.1R.

...

### Part 2:            Comes into force on 1 April 2012

### 16 Annex 19BG      NOTES FOR COMPLETION OF THE MORTGAGE LENDING & ADMINISTRATION RETURN ('MLAR')

...

#### INTRODUCTION: GENERAL NOTES ON THE RETURN

...

#### 4b.            Sale and rent back business

...

#### Guidance to sale and rent back (SRB) firms on the completion of the MLAR

...

~~It is recognised that SRB products are not loans. However, in order to use the MLAR as a vehicle for capturing data on these products, they are to be treated in some sections of the MLAR as if they were loan products. Therefore SRB providers should note the following in relation to their reporting of SRB agreements and SRB assets:~~

**In section A**

- Do **not** enter any information on SRB agreements in A1.6 ‘Loans to customers’ or A3.5 ‘Other loans’.
- Report SRB assets in A1.11.
- Report any liabilities incurred in acquiring SRB assets in A2.7.
- ~~Details of SRB agreements should be entered in A3.5 ‘Other loans’, in the ‘Unsecuritised balances’ section.~~

**In section B**

- Where applicable, information on SRB agreements should be entered in B2.5 ‘Other loans’.

...

**16 Annex 29AG      Guidance notes for the data item in SUP 16 Annex 29R**

...

Validation number	Data element	Sign	Formula
...			
9	20A	=	<del>14A-19A</del> <u>19A-14A</u>
...			



**Annex E**

**Amendments to the Dispute Resolution: Complaints sourcebook (DISP)**

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

**Comes into force on 31 December 2012**

**1 Annex 1CR Illustration of the online reporting requirements, referred to in DISP 1.10.2AR**

...

1 Does the data reported in this return cover *complaints* about matters relating to the *retail investment activities* carried out by one or more ~~than one~~ *retail investment adviser(s) (RIA)*? ~~If ‘Yes’, then list the individual reference numbers (IRNs) of all the *retail investment advisers* included in this return.~~ Please list the individual reference numbers of all the RIAs included in this return.

Yes/No
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...

## Annex F

## Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text.

### 2A.3 Guidance on RAP recognition requirements

...

- 2A.3.2 G The *guidance* in relation to the *recognition requirements* in the sections of *REC 2* listed in Column A of the table below applies to an *RAP* in relation to the equivalent *RAP recognition requirements* listed in Column C and (if shown) with the modifications in Column B.

Table: Guidance on RAP recognition requirements

Column A <i>REC 2</i> guidance which applies to an <i>RAP</i>	Column B Modification to <i>REC 2</i> guidance for an <i>RAP</i>	Column C Relevant <i>RAP</i> recognition requirement
...	...	...
<i>REC 2.5.3G</i> to <i>REC 2.5.20G</i> (Systems and controls and conflicts) and <i>REC 2.5A</i> (Guidance on Public Interest Disclosure Act: Whistleblowing)		Reg <u>16</u> and <u>17(2)(f)</u>
...	...	...
<i>REC 2.7.3G</i> to <i>REC 2.7.4G</i> (Access to facilities)	The <i>FSA</i> shall have regard to whether an <i>RAP</i> provides access to bid at auctions only to those <i>persons</i> eligible to bid under article 18 of the <i>auction regulations</i> .	Reg <u>17(2)(a)</u> and <u>20</u>
...	...	...

## Annex G

### Amendments to the Listing Rules sourcebook (LR)

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

#### Appendix 1      Relevant definitions

...

*percentage ratio*      (in relation to a transaction) the figure, expressed as a percentage, that results from applying a calculation under a *class test* *test* to the transaction.

## Annex H

### Amendments to the Perimeter Guidance manual (PERG)

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

#### 2.6 Specified investments: a broad outline

...

Alternative finance investment bonds

...

2.6.11C G The arrangements which grant rights under an *alternative debenture* arise where:

...

(4) the bond-issuer undertakes under the arrangements:

(a) to make a repayment in respect of the capital (“the redemption payment”) to the bond-holder during or at the end of the bond term (whether or not in instalments); and

(b) ...

(5) the amount of the additional payments does not exceed an amount which would, at the time at which the bond is issued, be a reasonable commercial return on a loan of the capital; and

...

#### 4.4 What is a regulated mortgage contract?

...

Type of lending

4.4.11 G The definition of *regulated mortgage contract* also covers a variety of types of product. Apart from the normal mortgage loan for the purchase of property, the definition also includes other types of secured loan, such as secured overdraft facility, a secured bridging loan, a secured credit card facility, and ~~so-called ‘equity release loans’ (defined as regulated lifetime mortgage contracts in this guidance)~~ under which the borrower (usually an older person) takes out a loan where repayment of the capital (and in some cases the interest) is not required until the property is sold, usually on the death of the borrower.

- 4.4.12 G A number of products, however, are excluded from the definition, such as:
- (1) loans secured by a second or subsequent charge (as the lender does not have a first charge); and
  - (2) loans secured on commercial premises (as the borrower will not be using the land as or in connection with a dwelling); and
  - (3) ~~so-called ‘home reversion schemes’, under which a property owner (usually an older person) sells some or all of his interest in the property in return for a lump sum (usually a proportion of the value of the property sold) and a right to reside at the property for the rest of his life. (It should be noted, however, that the Government announced in May 2005 that ‘home reversion schemes’ and ‘flexible tenure products’ are to be regulated by the FSA and that it would be introducing legislation to this effect.)~~ [deleted]

...

## 14.2 General issues

### Q2. What is the purpose of the Regulation of Financial Services (Land Transactions) Act 2005?

This Act makes clear that the potential regulatory scope of the Financial Services and Markets Act 2000 enables the FSA to regulate activities that are similar to those that are already regulated when carried on in relation to traditional mortgages but which involve the provider acquiring land rather than simply providing finance for its purchase by the homeowner. This typically includes:

- schemes (~~often termed ‘equity release schemes’~~) where a provider buys an interest in a homeowner’s property and allows the homeowner to continue to reside in the property (‘home reversion plans’); and
- certain types of Islamic financing arrangements designed to enable the purchase of a home in a way that is acceptable under Islamic law, such as Ijara or diminishing Musharaka (‘home purchase plans’); and
- schemes where a provider buys an interest in a homeowner’s property and allows the homeowner to continue to reside in the property in return for payment of rent (‘sale and rent back agreement’).

...

## 14.3 Activities relating to home reversion plans

...

### Q6. Will a ~~mortgage-to-rent scheme~~ sale and rent back agreement be a home reversion plan?

~~No. This is most unlikely as mortgage-to-rent schemes do not usually provide for the homeowner (having sold his property to the scheme provider), or a related person as the case~~

~~may be, to occupy the property until he dies or enters a care home or for a fixed period of at least twenty years. Where an arrangement meets the requirements for both a *regulated sale and rent back agreement* and a *home reversion plan*, it will be treated as a *home reversion plan* only and will not be a *regulated sale and rent back agreement*. Guidance on the meaning of a *regulated sale and rent back agreement* is in PERG 14.4A (Activities relating to regulated sale and rent back agreements).~~

...