

DESIGNATED INVESTMENT EXCHANGES (NO 2) INSTRUMENT 2014**Powers exercised**

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 137P (Control of information rules);
 - (d) section 137R (Financial promotion rules);
 - (e) section 138C (Evidential provisions);
 - (f) section 139A (Power of the FCA to give guidance);
 - (g) section 178 (Obligation to notify the appropriate regulator: acquisitions of control);
 - (h) section 191D (Obligation to notify the appropriate regulator: dispositions of control); and
 - (i) section 238 (Restrictions on promotion); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 March 2014.

Amendments to the FCA Handbook

- D. The modules of the FCA’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.

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Client Assets sourcebook (CASS)	Annex D
Supervision manual (SUP)	Annex E

Citation

- E. This instrument may be cited as the Designated Investment Exchanges (No 2) Instrument 2014.

By order of the Board of the Financial Conduct Authority
27 February 2014

Annex A

Amendments to the Glossary of definitions

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

<i>custodian</i>	<ul style="list-style-type: none"> (a) an <i>approved bank</i>; (b) an <i>approved depositary</i>; (c) a member of a <i>recognised investment exchange</i> or designated investment exchange; (d) a <i>firm</i> whose <i>permitted activities</i> include <i>safeguarding and administering investments</i>; (e) a regulated <i>clearing firm</i>; (f) where it is not feasible to use a <i>custodian</i> in (a) to (e), and there are reasonable grounds to show that a <i>person</i> outside the <i>United Kingdom</i>, whose business includes the provision of custodial services, is able to provide such services which are appropriate to the <i>client</i> and in the <i>client's</i> best interest to use, that <i>person</i>.
<i>exchange traded fund</i>	<p>a fund:</p> <ul style="list-style-type: none"> (a) which is an open ended investment company; and (b) the units of which are traded on a regulated market or designated investment exchange. [deleted]
<i>intermediate customer</i>	<p>(for the purposes only of <i>COBS TP 1</i> (Transitional Provisions in relation to Client Categorisation)): <u>any person classified as an 'intermediate customer' under <i>COB</i> on 31 October 2007, in accordance with the applicable conditions in force at the time.</u></p> <ul style="list-style-type: none"> (1) (except in <i>COB 3</i>) a client who is not a market counterparty and who is: <ul style="list-style-type: none"> (a) a local authority or public authority; (b) a body corporate whose shares have been listed or admitted to trading on any <i>EEA</i> exchange; (c) a body corporate whose shares have been listed or admitted to trading on the primary board of any <i>IOSCO</i> member country official exchange;

- (d) ~~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 £5 million (or its equivalent in any other currency at the relevant time);~~
- (e) ~~a *special purpose vehicle*;~~
- (f) ~~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*;~~
- (g) ~~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;~~
- (h) ~~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);~~
- (i) ~~another *firm*, or an *overseas financial services institution*, when, in relation to *designated investment business*, or related *ancillary activities*, conducted with or for that *firm* or institution, that *firm* or institution is an *intermediate customer* in accordance with *COB 4.1.7R* (Classification of another firm or an overseas financial services institution);~~
- (j) ~~*collective investment scheme*;~~
- (k) ~~a *client* when he is classified as an *intermediate customer* in accordance with *COB 4.1.9R* (Expert private customer classified as intermediate customer);~~
- (l) ~~a *recognised investment exchange*, *designated*~~

~~investment exchange, regulated market or clearing house, except when it is classified as a market counterparty in accordance with COB 4.1.8AR (Classification of an exchange or clearing house);~~

but excluding:

- (i) ~~[deleted]~~
- (ii) ~~a client who would otherwise be an intermediate customer, when he is classified in accordance with:~~
 - (A) ~~COB 4.1.12R (Large intermediate customer classified as market counterparty); or~~
 - (B) ~~(except for the purposes of DISP) COB 4.1.14R (Client classified as private customer).~~
- (2) ~~(in COB 3) a person in (1) or a person who would be such a person if he were a client.~~

inter-professional business

~~the business of a firm: (for the purposes only of COBS TP 1 (Transitional Provisions in relation to Client Categorisation)) business which comes within the meaning of 'inter-professional business' as defined in COB on 31 October 2007.~~

- (a) ~~when it carries on:~~
 - (i) ~~regulated activities; or~~
 - (ii) ~~related ancillary activities;~~

~~to the extent that the regulated activity that the firm is carrying on is:~~

 - (A) ~~dealing in investments as principal; or~~
 - (B) ~~dealing in investments as agent; or~~
 - (C) ~~acting as an arranger; or~~
 - (D) ~~giving transaction-specific advice or agreeing to do so;~~

~~but only if that activity is:~~

 - (i) ~~in or in respect of an inter professional investment;~~
 - (ii) ~~undertaken with or for a eligible counterparty; and~~
 - (iii) ~~carried on from an establishment maintained by the firm in the United Kingdom;~~

- (b) ~~but excluding the carrying on of the following activities:~~
- (i) ~~the approval by a firm of a financial promotion;~~
 - (ii) ~~activities carried on between operators, or between operators and depositaries, of the same collective investment scheme (when acting in that capacity);~~
 - (iii) ~~corporate finance business;~~
 - (iv) ~~safeguarding and administering investments and agreeing to carry on that regulated activity;~~
 - (v) ~~concluding a distance contract with a consumer;~~
 - (vi) ~~activities relating to life policies;~~

~~in this definition, the exclusion in article 15 of the Regulated Activities Order (Absence of holding out etc) is to be disregarded in determining whether dealing in investments as principal or agreeing to do so) is a regulated activity.~~

inter-professional investment

~~any of the following investments specified in Part III of the Regulated Activities Order (Specified Investments) or, in the case of units in an exchange traded fund, defined in the Glossary:~~

- (a) ~~share (article 76);~~
- (b) ~~debenture (article 77);~~
- (ba) ~~alternative debenture (article 77A);~~
- (c) ~~government and public security (article 78);~~
- (d) ~~warrant (article 79);~~
- (e) ~~certificate representing certain securities (article 80);~~
- (f) ~~option (article 83); for the purposes of the permission regime, this is sub-divided into:~~
 - (i) ~~option (excluding a commodity option and an option on a commodity future);~~
 - (ii) ~~(commodity option and option on a commodity future);~~
- (g) ~~future (article 84); for the purposes of the permission regime, this is sub-divided into:~~
 - (i) ~~future (excluding a commodity future and a rolling spot forex contract);~~

- (ii) ~~commodity future;~~
 - (iii) ~~rolling spot forex contract;~~
 - (h) ~~contract for differences (article 85); for the purposes of the permission regime, this is sub-divided into:~~
 - (i) ~~contract for differences (excluding a spread bet and a rolling spot forex contract);~~
 - (ii) ~~spread bet;~~
 - (iii) ~~rolling spot forex contract;~~
 - (i) ~~rights to or interests in investments in (a) to (h) (article 89)~~
 - (j) ~~units in an exchange traded fund. [deleted]~~
- listed*
- (1) (except in LR, SUP 11, INSPRU and IPRU(INS)) included in an *official list*.
 - (2) (in SUP 11, INSPRU and IPRU(INS)):
 - (a) included in an *official list*; or
 - (b) in respect of which facilities for *dealing* on a *regulated market* have been granted.
 - (3) ...
- market
counterparty*
- (for the purposes only of COBS TP 1 (Transitional Provisions in relation to Client Categorisation)); any person classified as a 'market counterparty' under COB on 31 October 2007, in accordance with the applicable conditions in force at the time.
- (1) (except in COB 3) a *client* who is:
 - (a) a properly constituted government (including a quasi-governmental body or a government agency) of any country or territory;
 - (b) a central bank or other national monetary authority of any country or territory;
 - (c) a supranational whose members are either countries or central banks or national monetary authorities;
 - (d) a State investment body, or a body charged with, or intervening in, the management of the public debt;
 - (e) another *firm*, or an *overseas financial services institution*, except in relation to *designated investment*

~~business, and related ancillary activities, conducted with or for that firm or institution, when that firm or institution is an intermediate customer in accordance with COB 4.1.7 R (Classification of another firm or an overseas financial services institution);~~

- ~~(f) any associate of a firm (except an OPS firm), or of an overseas financial services institution, if the firm or institution consents;~~
- ~~(g) a client when he is classified as a market counterparty in accordance with COB 4.1.12R (Large intermediate customer classified as a market counterparty);~~
- ~~(h) a recognised investment exchange, designated investment exchange, regulated market or clearing house when it is classified as a market counterparty in accordance with COB 4.1.8AR (Classification of an exchange or clearing house);~~

~~but excluding:~~

- ~~(A) a regulated collective investment scheme; and~~
 - ~~(B) (except for the purposes of DISP) a client, who would otherwise be a market counterparty, when he is classified as a private customer in accordance with COB 4.1.14R (Client classified as private customer).~~
- ~~(2) (in COB 3) a person in (1) or a person who would be such a person if he were a client.~~

Annex B

Amendments to the Principles for Businesses (PRIN)

In this Annex, striking through indicates deleted text.

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

1.1	A <i>firm</i> may categorise the following types of <i>client</i> as an <i>eligible counterparty</i> for the purposes of <i>PRIN</i> :	
	...	
	(8)	a <i>recognised investment exchange</i> , <i>designated investment exchange</i> , <i>regulated market</i> or <i>clearing house</i> .
	...	

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, striking through indicates deleted text.

18.5 Residual CIS operators, UCITS management companies and AIFMs

...

Adequate information

18.5.10 E ...

(3) ...

Table: Content of fund documents

Content of fund documents

The <i>fund</i> documents should include provision about:		
...		
(19)		Transactions involving contingent liability investments
	...	
	(c)	if applicable, that the <i>firm</i> has the authority to effect transactions involving <i>contingent liability investments</i> otherwise than under the rules of a <i>recognised investment exchange</i> or <i>designated investment exchange</i> and in a contract traded thereon;
...		

Annex D

Amendments to the Client Assets sourcebook (CASS)

In this Annex, striking through indicates deleted text.

6.2 Holding of client assets

...

Registration and recording of legal title

6.2.3 R To the extent practicable, a *firm* must effect appropriate registration or recording of legal title to a *safe custody asset* in the name of:

...

(2) a *nominee company* which is controlled by:

...

(c) a *recognised investment exchange* ~~or a *designated investment exchange*~~; or

...

...

Annex E

Amendments to the Supervision manual (SUP)

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

11.3 Requirements on controllers or proposed controllers under the Act

...

Pre-notification and approval for fund managers

...

11.3.5B D The *appropriate regulator* may treat as notice given in accordance with sections 178 and 191D of the *Act* a written notification from a *firm* which contains the following statements:

- (1) that the *firm* proposes to acquire and/or dispose of *control*, on one or more occasions, of any *UK domestic firm* whose *shares* or those of its ultimate *parent undertaking* are, at the time of the acquisition or disposal of *control*, *listed*, or which are traded or admitted to listing trading on a ~~*designated investment exchange*~~ MTF or a market operated by a ROIE;

...

...