

**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.

(1)	(2)
Changes to several Handbook modules	Annex A
Glossary of definitions	Annex B
Principles for Businesses (PRIN)	Annex C
Senior Management Arrangements, Systems and Controls (SYSC)	Annex D
Threshold Conditions (COND)	Annex E
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex F
The Fit and Proper Test for Approved Persons (FIT)	Annex G
General Provisions (GEN)	Annex H
Fees manual (FEES)	Annex I
Prudential sourcebook for Insurers (INSPRU)	Annex J
Interim Prudential sourcebook: Insurers (IPRU(INSPRU))	Annex K
Interim Prudential sourcebook: Investment Businesses (IPRU(INV))	Annex L
Conduct of Business sourcebook (COBS)	Annex M
Insurance: Conduct of Business sourcebook (ICOB)	Annex N

Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex O
Client Assets sourcebook (CASS)	Annex P
Market Conduct sourcebook (MAR)	Annex Q
Training and Competence sourcebook (TC)	Annex R
Supervision manual (SUP)	Annex S
Collective Investment Schemes sourcebook (COLL)	Annex T
Credit Unions sourcebook (CRED)	Annex U
Electronic Money sourcebook (ELM)	Annex V
Professional Firms sourcebook (PROF)	Annex W
Listing Rules sourcebook (LR)	Annex X
Prospectus Rules sourcebook (PR)	Annex Y
Perimeter Guidance manual (PERG)	Annex Z

Notes

- 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.

(1)	(2)	(3)
<i>alternative trading system</i>	<i>multilateral trading facility</i>	
<i>client agreement</i>	client agreement	SUP 6.4.22G SUP 6 Annex 4.2G
<i>core investment service</i>	<i>investment services and activities</i>	Glossary definition of "ISD investment firm" SYSC App 1.1.2G(2)
<i>DGD</i>	<i>Deposit Guarantee Directive</i>	
<i>distance means</i>	distance means	
<i>DMD</i>	<i>Distance Marketing Directive</i>	
<i>ICD</i>	<i>Investor Compensation Directive</i>	
<i>IMD</i>	<i>Insurance Mediation Directive</i>	
<i>intermediate customer</i>	<i>professional client</i>	Glossary definition of "market counterparty" Glossary definition of "private customer"
<i>Investment Services Directive</i>	<i>MiFID</i>	Glossary definition of "ISD" SUP 14.1.3G(1)(d) SUP 16.4.4
<i>ISD</i>	<i>MiFID</i>	Glossary definition of "ISD investment firm" SYSC App 1.1.2G(2) BIPRU TP 6.12 MAR 1 Annex 1.1.5EU(3) MAR 1 Annex 1.1.6G MAR 2.3.5EU(4)

		SUP 16.7.26R SUP 16.7.30R SUP 16.7.35R SUP 16.7.36R SUP 16.7.36AR SUP 16.7.77R (Note 3) DTR TP1 Para 10, 11
<i>ISD instrument</i>	<i>financial instrument</i>	COLL 6.9.9R
<i>ISD investment firm</i>	<i>MiFID investment firm</i>	SUP 16.7.26R SUP 16.7.27A SUP 16.7.30
<i>key facts scheme</i>	<i>key features scheme</i>	
<i>key features</i>	<i>a key features document</i>	
<i>market counterparty</i>	<i>eligible counterparty</i>	Glossary definition of "intermediate customer" Glossary definition of "private customer"
<i>means of distance communication</i>	<i>means of distance communication</i>	
<i>outgoing electronic commerce communication</i>	<i>Outgoing electronic commerce communication</i>	
<i>non-core investment service</i>	<i>ancillary service</i>	SYSC App 1.1.2G(2)
<i>providing basic advice on a stakeholder product</i>	<i>giving basic advice on a stakeholder product</i>	
<i>private customer</i>	<i>retail client</i>	Glossary definition of "intermediate customer" Glossary definition of "market counterparty"
<i>Retail customer</i>	<i>consumer</i>	
<i>Revenue allocated CTF</i>	<i>HMRC allocated CTF</i>	

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.

<i>alternative projection</i>	(in <i>COBS</i>) a <i>projection</i> calculated on the basis described in paragraph 1.5R of the <i>projection rules</i> (<i>COBS</i> 13 Annex 2R), rather than in accordance with the remainder of those <i>rules</i> .
<i>appropriate charges information</i>	(in <i>COBS</i>) information about charges which is calculated and presented in accordance with the <i>charges rules</i> in <i>COBS</i> 13.4.1R and <i>COBS</i> 13 Annex 3.
<i>contracting out comparison</i>	a description of: (a) the benefits that minimum contributions would secure if a <i>retail client</i> did not contract out of the State Second Pension; and (b) the material differences between the anticipated position if a <i>retail client</i> remains contracted into the State Second Pension and the anticipated position if that <i>client</i> contracts out; which is calculated to the <i>client's</i> state retirement age using the <i>lower</i> and <i>higher rates of return</i> and aggregate contributions for the current and the next two tax years.
<i>deductions plan</i>	(in <i>COBS</i>) a plan that describes the deductions from asset share that a <i>firm</i> expects to make for the cost of guarantees and the use of capital (<i>COBS</i> 20.2.8R).
<i>generic projection</i>	(in <i>COBS</i>) a projection which reflects the terms of a contract which is representative of the type of business normally undertaken by the <i>firm</i> , 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 <i>client</i> .
<i>higher rate of return</i>	(in <i>COBS</i>) the higher rate of return described in paragraph 2.3 of the <i>projection rules</i> (<i>COBS</i> 13 Annex 2).
<i>intermediate rate of return</i>	(in <i>COBS</i>) the intermediate rate of return described in paragraph 2.3 of the <i>projection rules</i> (<i>COBS</i> 13 Annex 2).
<i>Lloyd's complaint procedures</i>	the procedures maintained by the <i>Society</i> under <i>DISP</i> 1.7.1R.
<i>Lloyd's complaint rules</i>	<i>DISP</i> 1.7.
<i>lower rate of return</i>	(in <i>COBS</i>) the lower rate of return described in paragraph 2.3 of the <i>projection rules</i> (<i>COBS</i> 13 Annex 2).
<i>personal projection</i>	a <i>projection</i> that reflects the terms of a particular contract with, or to be offered to, a particular <i>client</i> .
<i>PPFM guidance table</i>	the table in <i>COBS</i> 20.3.8G (Guidance on with-profits principles and practices).
<i>PPFM issues table</i>	The table in <i>COBS</i> 20.3.6R (Issues to be covered in PPFM).
<i>projection period</i>	(in <i>COBS</i>) the period covered by a <i>standardised deterministic projection</i> , which begins on the date the investment is reasonably expected to be made and ends on the <i>projection date</i> described in paragraph 2.1 of <i>COBS</i> 13 Annex 2.
<i>respondent</i>	(in <i>DISP</i>) a <i>firm</i> , <i>licensee</i> or <i>VJ participant</i> covered by the <i>compulsory jurisdiction</i> , <i>consumer credit jurisdiction</i> or <i>voluntary jurisdiction</i> of the <i>Financial Ombudsman Service</i> .
<i>security-based CTF</i>	a <i>CTF</i> , other than a <i>stakeholder CTF</i> , which is not limited to <i>deposit</i> based investment.
<i>senior personnel</i>	those <i>persons</i> who effectively direct the business of the <i>firm</i> , which could include a <i>firm's governing body</i> and other <i>persons</i> who effectively direct the business of the <i>firm</i> .
<i>standardised deterministic projection</i>	a <i>projection</i> which is either a <i>generic projection</i> or a <i>personal projection</i> produced in accordance with the assumptions contained in <i>COBS</i> 13 Annex 2.
<i>statutory money purchase illustration</i>	an annual illustration of the contributions made for the benefit of, and the potential benefits due to, a member of a <i>personal pension scheme</i> , 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 *tier 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 *tier 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 gearing 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 <i>appointed representative</i> of a <i>firm</i> with or for whom the <i>appointed representative</i> acts or intends to act in the course of business for which the <i>firm</i> has accepted responsibility under section 39 of the <i>Act</i> (Exemption of appointed representatives) <u>or, where applicable, a client of a <i>tied agent</i> of a <i>firm</i>;</u>
		...
	(iv)	if a <i>person</i> ("C1"), with or for whom the <i>firm</i> is conducting or intends to conduct <i>designated investment business</i> , is acting as agent for another <i>person</i> ("C2"), either C1 or C2 in accordance with COB 4.1.5R (Agent as client) <u>the rule on agent as client COBS 2.4.3R;</u>
		...
<i>compensation scheme</i>		the Financial Services Compensation Scheme established under section 213 of the <i>Act</i> (The compensation scheme) for compensating <i>persons</i> in cases where <i>authorised persons</i> and <i>appointed representatives</i> , <u>or, where applicable, a <i>tied agent</i> of a <i>firm</i>,</u> are unable, or are likely to be unable, to satisfy <i>claims</i> against them.
<i>complaints reporting rules</i>		DISP 4.10 <u>1.6.</u>
<i>connected person</i>	...	
	(3)	
	(a)	...
	(b)	...
	(c)	he is the partner, <i>manager</i> , employee, agent, <i>appointed representative</i> , <u>or, where applicable, <i>tied agent</i>,</u> banker, auditor, actuary or solicitor of: ...
		...
<i>consumer</i>	(1)	...
	(2)	...
	(a)	who uses, has used, or is or may be contemplating using,

	any of the services provided by:
	(i) ...
	(ii) <u>a person acting as an appointed representative, or, where applicable, a tied agent; or</u>
	(b) ...
<i>control</i>	(1) (except for a common platform firm in (2)) (in relation to the acquisition, increase or reduction of control of a <i>firm</i>) the relationship between a <i>person</i> and the <i>firm</i> or other <i>undertaking</i> of which the <i>person</i> is a controller.
	(2) (for a common platform firm in SYSC 8 and SYSC 10) control as defined in Article 1 of <u>the Seventh Council Directive 83/349/EEC (The Seventh Company Law Directive)</u> .
<i>deal on own account</i>	(for the purposes of <i>GENPRU</i> and <i>BIPRU</i>) has the meaning in <i>BIPRU</i> 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 <i>BIPRU</i> 1.1.23R(2) and <i>BIPRU</i> 1.1.23R(3) (Implementation of Article 5(2) of the <i>Capital Adequacy Directive</i>).
<i>designated investment business</i>	any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business:
	...
	o. providing <u>providing basic advice on a stakeholder product</u> (article 52B).
DGD	[deleted]
DMD	[deleted]
domestic ECA provider	[deleted]
EEA ECA recipient	[deleted]
electronic commerce activity provider	[deleted]
<i>eligible counterparty</i>	(1) <u>(for the purposes other than those set out in (2))</u> (in accordance with <i>COBS</i> 3.6.1R) a <i>client</i> that is either a <i>per se eligible counterparty</i> or an <i>elective eligible counterparty</i> .

- (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);
- ...
- (c) ...
- 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

(f) a communication that is exempted by the Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001.

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]

~~electronic
commerce
communication~~

~~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~~ date when those benefits will come into payment.

<i>periodic statement</i>	a report which a <i>firm</i> is required to provide to a <i>client</i> under <i>COBS 17.3</i> <u>16.3</u> (Periodic reporting).
<i>post-sale notice</i>	[deleted]
<i>pre-sale notice</i>	[deleted]
<i>principal</i>	(1) in relation to a <i>person</i> : (a) ... (b) (if the <i>person</i> is an <i>appointed representative</i> <u>or, where applicable, a tied agent</u>) the <i>authorised person</i> who is party to a contract with the <i>appointed representative</i> , <u>or who is responsible for the acts of the tied agent</u> , resulting in him being exempt under section 39 of the <i>Act</i> (Exemption of <i>appointed representatives</i> <u>appointed representatives</u>).
	(2) ...
<i>private customer</i>	<u>(for the purposes only of COBS TP 1 (Transitional Provisions in relation to Client Categorisation)):</u> (1) (except in relation to <i>COB</i> 3, 4.2 and 6.4) subject to (h), a <i>client</i> who is not a <i>market counterparty</i> or an <i>intermediate customer</i> , including: (a) ... (e) a <i>person</i> to whom a <i>firm</i> provides basic advice on stakeholder products; <u>gives basic advice;</u>
<i>regulated activity</i>	in accordance with section 22 of the <i>Act</i> (The classes of activity and categories of investment)) any of the following activities specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities): ... (gf) <i>making arrangements with a view to a home purchase plan</i> (article 25C(2)); <u>(gg) <i>operating a multilateral trading facility</i> (article 25D);</u> ... (oa) providing <u>providing</u> <i>basic advice</i> on <u>on</u> <i>stakeholder products</i>

(article 52B);

...

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 <u>providing basic advice on</u> stakeholder products;
	...
	...
<i>scheme</i>	(1) (except in <i>COBS</i> , <i>CASS</i> and <i>SUP</i>) a <i>collective investment scheme</i> .
	(2) (in <i>COBS</i> , <i>CASS</i> and <i>SUP</i>):
	(a) a <i>regulated collective investment scheme</i> ;
	(b) an <i>investment trust</i> where the relevant <i>shares</i> have been, or are to <u>will be</u> , acquired through an <i>investment trust savings scheme</i> <u>savings scheme</u> ;
	(c) an <i>investment trust</i> , where <u>if</u> :
	(i) the relevant <i>shares</i> are to <u>will be</u> held within an ISA or PEP which promotes one or more specific investment trusts <u>in a wrapper or personal pension scheme; and</u>
	(ii) <u>the trust and the wrapper or personal pension scheme will be promoted together;</u>
	(d) (in COB 10 <u>COBS 19.5</u>) in addition to (a), (b) and (c), an <i>unregulated collective investment scheme</i> .
<i>securitised derivative</i>	an <i>option</i> or <i>contract for differences</i> which, in either case, is listed under <i>LR 19</i> of the <i>listing rules</i> (including such an <i>option</i> or <i>contract for differences</i> which is also a <i>debenture</i>). (See also COB 5.4.3AG for the treatment of a securitised derivative.)
<i>shortfall</i>	(1) (in relation to cancellation of an <i>investment agreement</i>) the amount a <i>firm</i> is entitled to charge a <i>customer</i> for the market loss in accordance with COB 6.7.54R to COB 6.7.58R (Shortfall; Exceptions to shortfall) . <u>COBS 15.4.3R.</u>
	(2) ...
<i>statement of demands and needs</i>	[deleted]
<i>surrender value</i>	...
	(b) where the contract is a pension contract <u>personal pension scheme or stakeholder pension scheme</u> , the amount payable on the transfer of the investor's accrued rights under that contract to another pension contract <u>personal pension scheme or stakeholder pension scheme</u> ;

	...
traded on	[deleted]
transaction-specific advice	<p><i>advice on investments:</i></p> <p>(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</p> <p>(i) <u>dealing in investments as principal; or</u></p> <p>(ii) <u>dealing in investments as agent; or</u></p> <p>(iii) <u>acting as an arranger; or</u></p> <p>...</p>
transfer value analysis	[deleted]
UK ECA recipient	[deleted]
venture capital contact	<p>(when a firm carries on designated investment business <u>regulated activities</u> with or for a person in the course of or as a result of carrying on <i>venture capital business</i>) that person in connection with that designated investment business <u>regulated activity</u> if:</p> <p>...</p>

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 ~~contains~~ contain *guidance* that is relevant to ~~on~~ 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 ~~*providing* *giving basic advice on a stakeholder product,*~~) and ancillary activities relating to *designated investment business*. Any *client* ~~classifications~~ categorisation 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* *gives 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]

	<u>Material to which the transitional provision applies</u>		<u>Transitional Provision</u>	<u>Transitional Provision: dates in force</u>	<u>Handbook provision: coming into force</u>
<u>1.</u>	<u>PRIN 1 Ann 1 R 1.2(2)</u>	<u>R</u>	<u>A firm need not comply with PRIN 1 Ann 1R 1.2(2) 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 COB 4.1.12R(2) (Large intermediate customer classified as market counterparty).</u>	<u>From 1 November 2007 indefinitely</u>	<u>1 November 2007</u>

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~~ contains 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 *tiered 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

	Question	Answer
...		
12	How does the requirement to allocate the functions in SYSC 2.1.3R apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> ?	<p>SYSC 1.1.1 R(2) and SYSC 1.1.7R restrict the application of SYSC 2.1.3R for such a <i>firm</i>. Accordingly:</p> <p>(1) ...</p> <p>(2) Such a <i>firm</i> 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 <i>FSA</i>, as <i>Host State regulator</i>, is entitled to regulate (there is guidance on this in SYSC App 1 <u>SUP 13A Annex 2G</u>). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the <i>firm's</i> activities carried on from its <i>UK branch</i>.</p> <p>(3) ...</p> <p>...</p>
...		

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 R 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 R A *MiFID investment firm common platform firm* must ...
- 4.3.4 G ~~*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 R (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 R When any of the *rules* of ~~*COB*~~, *COBS* or *CASS* ...
- 11.1.4 R *SYSC 11* does not apply to:
- ...
- (5) an *incoming Treaty firm*; or
- (6) an incoming ECA provider acting as such.
- 12.1.3 R This section does not apply to:
- ...
- (4) an *ICVC*; or
- (5) an incoming ECA provider acting as such.
- 13.1.4 G *SYSC 13* does not apply to an incoming ECA provider acting as such.
- 13.3.1 G 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 *tiered 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 *tiered 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 *tiered 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 *tiered 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~~ 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 1 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

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

- 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

...

4 Annex 1 G

...
Note 5 = Any <i>firm</i> listed in this table is permitted to add words to the relevant required disclosure statement but only if the <i>firm</i> has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, remain clear, fair and not misleading <u>fair, clear and not misleading</u> . For example, an <i>authorised professional firm</i> 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

Application	
1.1	The <i>FSA</i> grants this licence to <i>firms</i> , and <i>appointed representatives and tied agents</i> .
...	
Permission to use the <i>FSA</i> logo	
3.1	A <i>firm</i> , and its <i>appointed representatives and tied agents</i> are permitted to use the <i>FSA</i> logo:

...			
Permission to use the keyfacts logo			
3A.1	A firm, and its <i>appointed representatives</i> <u>and tied agents</u> are permitted to use the keyfacts logo as and when it is required or permitted to be used by the <i>rules</i> .		
3A.2	The following are examples of places where the <i>rules</i> require or permit the keyfacts logo to be used:		
	(1)	In COB <u>COBS</u> :	
		(a)	in an initial disclosure document <i>initial disclosure document</i> or combined initial disclosure document <i>combined initial disclosure document</i> (COB 4.3.9R <u>COBS 6.3</u>); and
		(b)	in a fees and commission statement <i>menu</i> (COB 4.3.11R <u>COBS 6.3</u>).
...			
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 <i>FSA</i> or keyfacts logos are displayed does not:		
	(1)	in any way imply that the <i>FSA</i> is endorsing the <i>firm</i> or its <i>appointed representatives</i> , <i>tied agents</i> or products, services or communications (see also <i>GEN</i> 1.2.2R(1)); or	
	(2)	misrepresent the <i>firm's</i> or its <i>appointed representative's</i> <u>or tied agent's</u> relationship with the <i>FSA</i> or present false information about the <i>FSA</i> ; or	
	...		
Use of the FSA logo by appointed representatives			
6.1	<i>Firms</i> and <i>appointed representatives</i> <u>or, where applicable, tied agents</u> are reminded that an <i>appointed representative</i> <u>or tied agent</u> is not a <i>firm</i> . Therefore, the permission in paragraph 3.1 does not extend to a statement made by an <i>appointed representative</i> <u>or tied agent</u> about its own status. However, the effect of paragraph 3.1 is that an <i>appointed representative</i> <u>or tied agent</u> is permitted to reproduce the <i>FSA</i> logo as part of a statement about the authorisation or regulation by the <i>FSA</i> of the <i>appointed representative's</i> <u>or tied agent's principal</u> , provided the other		

	conditions of paragraph 3.1 and those of paragraphs 4.1 and 5.1 are met.
...	

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

...	
(3)	The more specific transitional provisions relating to record keeping and <i>notification rules</i> 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 <i>Handbook</i> 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.
...	

TP 1.2 ...

(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
...					
(2)	<u>[deleted]</u>				
...					
(6)	<u>[deleted]</u>				
...					

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* ~~4.1.7R~~ 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* ~~4.1.7R~~ 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 *tier 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 an *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]

customer

market [deleted]

counterparty

private customer [deleted]

supervisory authority [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~~ control the exercise of, 10% or more of the voting power in A; or
- (f) ...

non-private - retail customer client 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 *tier 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 *tier 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 <i>appointed representative</i> <u>or where applicable, <i>tied agent</i></u> .
<i>client</i>	...	
	(a)	...
	(b)	"client" includes:
		...
	(ii)	a client of an <i>appointed representative</i> <u>or where applicable, <i>tied agent</i></u> of a <i>firm</i> with or for whom the <i>appointed representative</i> <u>or where applicable, <i>tied agent</i></u> , acts or intends to act, in the course of business for which the <i>firm</i> has accepted responsibility under section 39 of the <i>Act</i> (Exemption of appointed representatives);
		...
	(iv)	if a <i>person</i> ("C1"), with or for whom the <i>firm</i> is conducting or intends to conduct <i>designated investment business</i> , is acting as agent for another <i>person</i> ("C2"), either C1 or C2 in accordance with COB 4.1.5R <u>COBS 2.4.3R</u> (Agent as client);
		...
<i>connected person</i>		in relation to a <i>person</i> ,
	(a)	...
		...
	(d)	its employee (whether under a contract of service or a contract for services) or an employee of its <i>appointed representative</i> <u>or where applicable, <i>tied agent</i></u> ;
		...
<i>contract for differences</i>	(a)	...
	(c)	<u>a derivative instrument for the transfer of credit risk to which article 85(3) of the <i>Regulated Activities Order</i> applies</u>

<i>customer</i>	(1) (except in COB 3 <u>COBS 4</u>) a <i>client</i> who is not a <u>an</u> market counterparty <u>eligible counterparty</u> .
	(2) (in COB 3 <u>COBS 4</u>) a <i>person</i> in (1) or a <i>person</i> who would be such a <i>person</i> if he was <u>were</u> a <i>client</i> .
<i>financial adviser</i>	an individual appointed by an <i>independent intermediary</i> or by its <i>appointed representative</i> <u>or where applicable, tied agent</u> to provide any or all of the following services: ... [deleted]
<i>intermediate customer</i>	[deleted]
<i>private customer</i>	[deleted]
<i>properly secured</i>	fully secured by a first <i>charge</i> in favour of the <i>firm</i> on land and buildings, or on a <i>readily realisable investment</i> where the <i>firm</i> has in its possession or under its control <u>control</u> a document of title or a document evidencing title to that <i>investment</i> ;
<i>representative</i>	(in relation to <i>designated investment business</i>) an individual appointed by a <i>provider firm</i> or by an <i>appointed representative</i> <u>or where applicable, tied agent</u> of that <i>firm</i> , 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

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

6	<u>Use of third party processors in life insurance mediation activities</u>	
6.1	R	If a <i>firm</i> (or its <i>appointed representative</i> or, where applicable, its <i>tied agent</i>) outsources <i>insurance mediation activities</i> to a <i>third party processor</i> :
		(1) <u>the <i>firm</i> must accept responsibility for the acts and omissions of that <i>third party processor</i> conducting those outsourced activities; and</u>
		(2) <u>any <i>COBS</i> rule requiring the <i>third party processor's</i> identity to be disclosed to <i>clients</i> must be applied as a requirement to disclose the <i>firm's</i> identity;</u>
		<u>unless the <i>third party processor</i> is <i>advising on investments</i>.</u>
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	
1.1	G	The <i>general application rule</i> is modified in Parts 1 to 2A and 2 of Annex 1 and in certain chapters of the <i>Handbook</i> . The modification may be an extension of this <i>rule</i> . For example, <i>COBS</i> 4 (Communications to clients) and <i>COBS</i> 5 (Financial promotion) have extended the application of the rule.
...		
2.	The Single Market Directives and other directives	
...		
2.2	G	When considering the impact of a directive on the territorial application of a <i>rule</i> , a <i>firm</i> will first need to consider whether the relevant situation involves a non-UK element. The <i>EEA territorial scope rule</i> is unlikely to apply if a UK firm <i>firm</i> is doing business in a <i>UK establishment</i> for a <i>client</i> located in the <i>United Kingdom</i> in relation to a <i>United Kingdom</i> product. However, if there is a non-UK element, the <i>firm</i> should consider whether:
		(1) <u>it is subject to the directive; (in general, directives only apply to <i>UK firms</i> and <i>EEA firms</i>, but the implementing provisions may not treat non-<i>EEA firms</i> more favourably than <i>EEA firms</i>);</u>
		(2) whether the business it is performing is subject to the directive; and
		(3) whether the particular <i>rule</i> is within the scope of the directive.
		If the answer to all three questions is ‘yes’, the <i>EEA territorial scope rule</i> may change the effect of the <i>general application rule</i> .
...		

4	Insurance Mediation Directive: effect on territorial scope	
...		
4.2	G	In the <i>FSA's</i> view, the responsibility for these minimum requirements rests with the <i>Home State</i> , but a <i>Host State</i> is entitled to impose additional requirements <u>within the Directive's scope</u> in the 'general good'. Accordingly, the general rules on territorial scope are modified so that:
	(1)	for a <i>UK firm</i> providing <i>passported activities</i> <u>through a branch</u> in another <i>EEA State</i> under the Directive, whether through a branch or cross-border services , the <i>rules</i> implementing the Directive's minimum requirements apply but <u>the territorial scope of the additional rules</u> within the Directive's scope do not <u>is not modified</u> ;
	(2)	for an <i>EEA firm</i> providing <i>passported activities</i> under the Directive in the <i>United Kingdom</i> , the <i>rules</i> implementing the Directive's minimum requirements do not apply, but the additional <i>rules</i> within the Directive's scope do apply <u>have their unmodified territorial scope</u> unless the <i>Home State</i> imposes measures of like effect. (See recital 19 and article 12(5) of the <i>Insurance Mediation Directive</i>)
...		
6.	Distance Marketing Directive: effect on territorial scope	
...		
6.4	G	Conversely, <u>the territorial scope of</u> the relevant <i>rules</i> in this sourcebook will <u>is modified as necessary so that they do not</u> apply to a <i>firm</i> conducting business within the Directive's scope from an establishment in another <i>EEA state</i> if the <i>firm</i> is a national of the <i>United Kingdom</i> or of any other <i>EEA state</i> .
...		
7.	Electronic Commerce Directive: effect on territorial scope	
...		
7.2	G	A key element of the Directive is the ability of a <i>person</i> from one <i>EEA state</i> to carry on an <i>electronic commerce activity</i> freely into another <i>EEA state</i> . Accordingly, the territorial application of the <i>rules</i> in this sourcebook is modified so that they apply <u>at least</u> to a <i>firm</i> carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in the <i>United Kingdom</i> with or for a <i>person</i> in the <i>United Kingdom</i> or another <i>EEA state</i> . Conversely, a <i>firm</i> <u>that is a national of the UK or another EEA State</u> , carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i> , need not comply with the <i>rules</i> in this sourcebook. (See article 3(1) and (2) of the <i>Electronic Commerce Directive</i>)
7.3	G	...

7.4	G	In the <i>FSA's</i> 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 <i>Distance Marketing Directive</i> ; and
		(2)	overrides that of any other Directive discussed in this section section <u>Annex</u> to the extent that it is incompatible.
...			
8.	Investor Compensation Directive		
8.1	G	...	
		(2)	In the <i>FSA's</i> view, these matters are a <i>Home State</i> responsibility although a <i>Host State</i> may continue to apply its own rules in the 'general good'. Accordingly, these <i>rules</i> apply to the establishments of a <i>UK MiFID investment firm</i> in the <i>United Kingdom</i> and another <i>EEA State</i> but also apply in accordance with the general application rule <u>their standard territorial scope</u> to an <i>EEA MiFID investment firm</i> providing services in the <i>UK</i> whether through a branch or cross-border services unless its <i>Home State</i> applies rules of like effect.
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)) continue to apply <u>without modification of this territorial scope</u> .
...			

2.3.7 G 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 R ~~In relation to MiFID or equivalent third country business, a~~ 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 an 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);

(f) a local authority or public authority.

3.5.2 R In relation to *MiFID or equivalent third country business* a local authority
A 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).

...

3.6 Eligible counterparties

3.6.1 R (1) ...

(2) ~~In relation to *MiFID or equivalent third country business*, a *A client*~~
can only be an *eligible counterparty* in relation to *eligible*
counterparty business (PRIN 1 Ann 1 is an exception to this).

3.6.4 R A *firm* may treat a *client* as an *elective eligible counterparty* if:

(1) the *client* is an undertaking and:

(a) is a *per se professional client* (except for a *client* that is only a
per se professional client because it is an institutional investor
under COBS 3.5.2R(5)) and, in relation to business other than
MiFID or equivalent third country business; or

(i) is 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); or

(ii) meets the criteria in the *rule* on meeting two
quantitative tests (COBS 3.5.2R(3)(b)); or

(b) ...

...

[**Note:** article 24(3) and the second paragraph of article 24(4) of *MiFID*
and article 50(1) of the *MiFID implementing Directive*]

4 Communicating with clients, including financial promotions

4.1 Application

Who? What?

4.1.5 G (1) ...

(2) This chapter does not apply in relation to communicating with an
eligible counterparty other than the section on compensation

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 ~~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*; ~~or~~
- (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.

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

<p>(b) who is an 'established' or 'newly accepted' <i>client</i> of the <i>firm</i> or of a <i>person</i> in the same <i>group</i> as the <i>firm</i> (see Notes 2 & 3).</p>	
<p>Category 3 person</p> <p>A <i>person</i> who is eligible to participate in a scheme constituted under:</p> <p>(1) the Church Funds Investment Measure 1958;</p> <p>(2) section 24 of the Charities Act 1993; or</p> <p>(3) section 25 of the Charities Act (Northern Ireland) 1964.</p>	<p>Any such <i>collective investment scheme</i></p>
<p>Category 4 person</p> <p>An eligible employee, that is, a <i>person</i> who is:</p> <p>(1) an officer;</p> <p>(2) an <i>employee</i>;</p> <p>(3) a former officer or <i>employee</i>; or</p> <p>(4) a member of the immediate family of any of (1) - (3),</p> <p>of an employer which is (or is in the same <i>group</i> as) the <i>firm</i>, or which has accepted responsibility for the activities of the <i>firm</i> in carrying out the <i>designated investment business</i> in question.</p>	<p>1. A <i>collective investment scheme</i> the instrument constituting which:</p> <p>A. restricts the property of the <i>scheme</i>, apart from cash and near cash, to:</p> <p>(1) (where the employer is a company) <i>shares</i> in and <i>debentures</i> of <i>company</i> or any other connected <i>company</i> (see Note 4);</p> <p>(2) (in any case), any property, provided that the <i>scheme</i> takes the form of:</p> <p>(i) a limited <i>partnership</i>, under the terms of which the employer (or connected <i>company</i>) will be the unlimited partner and the eligible employees will be some or all of the limited partners; or</p> <p>(ii) a trust which the <i>firm</i> reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments</p>

	<p>(other than <i>charges</i>) for <i>investment</i> transactions earlier entered into, which the eligible employee was not aware of at the time he entered into them; and</p> <p>B. (in a case falling within A(1) above) restricts participation in the <i>scheme</i> to eligible employees, the employer and any connected <i>company</i>.</p> <p>2. Any <i>collective investment scheme</i> provided that the participation of eligible employees is to facilitate their co-investment:</p> <p>(i) with one or more <i>companies</i> in the same <i>group</i> as their employer (which may include the employer); or</p> <p>(ii) with one or more <i>clients</i> of such a <i>company</i>.</p>
<p>Category 5 person</p> <p>A <i>person</i> admitted to membership of the Society of Lloyd's or any <i>person</i> by law entitled or bound to administer his affairs.</p>	<p>A <i>scheme</i> in the form of a limited <i>partnership</i> which is established for the sole purpose of underwriting <i>insurance business</i> at Lloyd's.</p>
<p>Category 6 person</p> <p>An exempt <i>person</i> (other than a <i>person</i> exempted only by section 39 of the <i>Act</i> (Exemption of appointed representatives)) if the <i>financial promotion</i> relates to a <i>regulated activity</i> in respect of which the <i>person</i> is exempt from the <i>general prohibition</i>.</p>	<p>Any <i>collective investment scheme</i>.</p>
<p>Category 7 person</p> <p>An <i>eligible counterparty</i> or a <i>professional client</i>.</p>	<p>Any <i>collective investment scheme</i> in relation to which the <i>client</i> is categorised as a <i>professional client</i> or <i>eligible counterparty</i> (see Note 5).</p>

<p>Category 8 person</p> <p><i>A person:</i></p> <p>(1) in relation to whom the <i>firm</i> 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 <i>person</i> is capable of making his own investment decisions and understanding the risks involved;</p> <p>(2) to whom the <i>firm</i> has given a clear written warning that this will enable the <i>firm</i> to promote <i>unregulated collective investment schemes</i> to the <i>client</i>; and</p> <p>(3) who has stated in writing, in a <i>document</i> separate from the contract, that he is aware of the fact the <i>firm</i> can promote certain <i>unregulated collective investment schemes</i> to him.</p>	<p>Any <i>collective investment scheme</i> covered by the assessment.</p>
---	---

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~~ other payment information or to products with shorter terms; and
- (ii) ...
- ...

COBS 6 Annex 1G: Initial disclosure document described in COBS 6.3.137G(1)

1. ...

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]

...

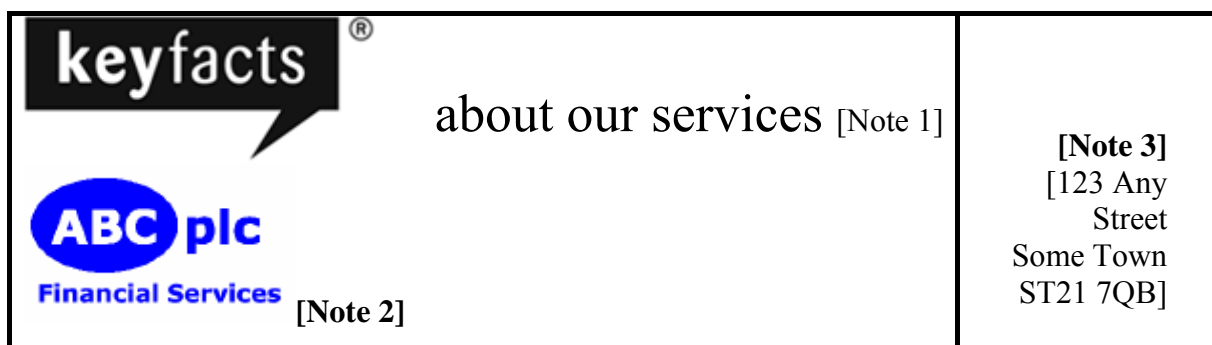
We [can] [Note 8] only offer products from a limited number of companies.

~~Ask us for a list of the companies and products we offer. [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]~~

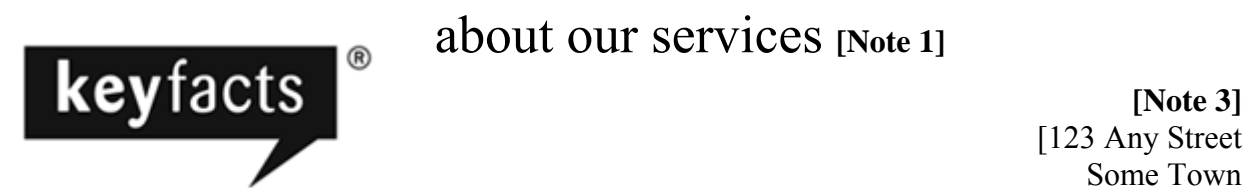
Ask us for a list of the companies and whose products we offer. [Note 11]

...

In COBS 6 Annex 2, delete this image



and replace it with this one:



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 2 - Commission if you invest a lump sum [Notes 12-17]

Products	Example term or age	Comparison of costs		Example based on £10,000 lump sum
		<i>Our maximum</i>	<i>Market average</i>	<i>This shows the maximum costs of our sales and advice for a lump sum investment of £10,000 ignoring any changes in fund value</i>

Savings and investments				
Collective investments (eg unit trusts)	Any	[Note 18]	[Note 20]	[Note 21]
Investment bond	Any	[Note 18]	[Note 20]	[Note 21]
Saving for retirement				
Personal and Stakeholder pensions	Any	[Note 18]	[Note 20]	[Note 21]
At retirement				
— Annuities	— Any	— [Note 18]	— [Note 20]	— [Note 21]
Income drawdown	— Any	— [Note 18]	— [Note 20]	— [Note 21]
Personal Pension Schemes				
<p>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.</p> <p>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.</p> <p>[Note 19]</p>				
At retirement				
Annuities	Any	[Note 18]	[Note 20]	[Note 21]
Income drawdown	Any	[Note 18]	[Note 20]	[Note 21]

...

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

...	
-----	--

Stakeholder pensions	
...	
21	[intentionally blank] <u>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 has any concerns.</u>
...	

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)(b~~a~~)) ...

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~~ 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~~ *firm* which produces or disseminates ~~non-independent research~~ *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~~ those documents have 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

reference”.

13.2.3 G The *Consolidated Life Directive* information can be included in a *key features document*, a *key features illustration* or any other *document*.

13.3.1 R 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

13.4.1 R 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

13.4.2 R 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*.

13.4.3 G 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.

13.4.4 R 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:

	Product	Projection date
(1)	A contract which is a <i>whole life assurance</i> the <i>premiums</i> under which are regular <i>premiums</i>	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

		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 <i>projection date</i> 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 <i>personal pension scheme</i> or <i>stakeholder pension scheme</i>	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	Lower rate	Inter-mediate rate	Higher rate
tax-exempt business held in a <i>wrapper</i> or by a <i>friendly society</i> <i>personal pension schemes, stakeholder pension schemes</i> and investment-linked annuities	5%	7%	9%
all other products	4%	6%	8%

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:

	Lower rate	Intermediate rate	Higher rate
Price inflation	0.50%	2.50%	4.50%
Earnings inflation	≥ 2%	≥ 4%	≥ 6%

Assumptions: charges

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

- (1) must properly reflect:
 - (a) all of the charges, expenses and deductions a *client* will, or may be expected to, pay;
 - (b) 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
 - (c) 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

portfolio.

- 2.7 G
- (1) 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.
 - (2) 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.
 - (3) Expenses should be apportioned appropriately between products so that scales of expenses can be calculated and applied.
 - (4) 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.
 - (5) 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).
 - (6) 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

- 2.8 R
- (1) 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*.
 - (2) 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

- 2.9 R
- (1) 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.
 - (2) 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 R 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:

	Lower rate	Intermediate rate	Higher rate
Level or fixed rate of increase annuities	Y+1.5%	Y+3.5%	Y+5.5%
RPI or LPI linked annuities	Y-1%	Y	Y+1%

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.

Lower rate	Higher rate
1%	3%

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.

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

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:

Note 1A	Note 2	Note 3	Note 4	Note 5	Note 6
At end of year	Total paid in to date	With-drawals	Total actual deductions to date	Effect of deductions to date	What you might get back
	£	£	£	£	£
1					
...					
5					
10					
...					

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

Note 1B	Note 2	Note 3	Note 5	Note 6
At end of year	Investment to date	Income	Effect of deductions to date	What you might get back
	£	£	£	£
1				

5				
10				
...				

(3) 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 ~~*share-CTFs*~~*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:

...

- (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*;

...

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*.

COBS	Description
1	Application
2.1.1	Acting honestly, fairly and professionally
2.4	Agent as client and reliance on others
3	Client categorisation
4	Communication to clients including financial promotions, but only in relation to <i>communicating</i> or <i>approving a financial promotion</i>
5.2	E-commerce

12	Investment research
16.2	Occasional reporting

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.).

COBS	Description
1	Application
2.4	Agent as client and reliance on others
4.12	Unregulated collective investment schemes
5.2	E-commerce

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 <i>COBS</i> applies, except <i>COBS</i> 18.2.6R to <i>COBS</i> 18.2.9E applies instead of <i>COBS</i> 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 R 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*.

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

- 18.3.4 G *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.

...

18.5 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

Application of conduct of business rules

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

18.5	Operators of collective investment schemes	
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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

potential *participant*.

- 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:	
(1)	Regulator The <i>firm</i> statutory status in accordance with <i>GEN</i> 4 Annex 1 (Statutory status disclosure);
(2)	Services the nature of the services that the <i>operator</i> will provide in relation to the <i>scheme</i> ;
(3)	Payments for services details of any payment for services payable by the <i>scheme</i> or from the property of the <i>scheme</i> or <i>participants</i> in the <i>scheme</i> to the <i>operator</i> , 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 <i>operator</i> (or to its knowledge by any of its <i>associates</i>) in connection with any transactions effected by the <i>operator</i> with or for the <i>scheme</i> , in addition to or in lieu of any fees;
(4)	Commencement when and how the <i>operator</i> is appointed;
(5)	Accounting the arrangements for accounting to the <i>scheme</i> or <i>participants</i> in the <i>scheme</i> for any transaction effected;
(6)	Termination method how the appointment of the <i>operator</i> may be terminated;
(7)	Complaints procedure how to complain to the <i>operator</i> and a statement that the <i>participants</i> in the <i>scheme</i> may subsequently complain direct to the <i>Financial Ombudsman Service</i> ;
(8)	Compensation whether or not compensation may be available from the <i>compensation scheme</i> should the <i>operator</i> 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 <i>scheme</i> ;	
(10)	Restrictions	
	(a)	any restrictions on:
	(i)	the types of <i>investments</i> or property which may be included in the portfolio of the <i>scheme</i> ;
	(ii)	the markets on which <i>investments</i> or property may be acquired for the portfolio of the <i>scheme</i> ;
	(iii)	the amount or value of any one <i>investment</i> or asset, or on the proportion of the portfolio of the <i>scheme</i> which any one <i>investment</i> or asset or any particular kind of <i>investment</i> or asset may constitute; or
	(b)	that there are no such restrictions;
(11)	Holding scheme assets	
	(a)	if it is the case, that the <i>operator</i> will:
	(i)	hold <i>money</i> on behalf of the <i>scheme</i> or be the <i>custodian</i> of <i>investments</i> or other property of the <i>scheme</i> ; or
	(ii)	arrange for some other <i>person</i> to act in either capacity and, if so, whether that <i>person</i> is an <i>associate</i> of the <i>operator</i> identifying that <i>person</i> and describing the nature of any association; and
	(b)	in either case:
	(i)	how any <i>money</i> is to be deposited;
	(ii)	the arrangements for recording and separately identifying registrable <i>investments</i> of the <i>scheme</i> and, where the registered holder is the <i>operator's</i> own nominee, that the <i>operator</i> will be responsible for the acts and omissions of that <i>person</i> ;
	(iii)	the extent to which the <i>operator</i> accepts liability for any loss of the <i>investment</i> of the <i>scheme</i> ;
	(iv)	the extent to which the <i>operator</i> or any other <i>person</i> mentioned in (11)(a)(ii), may hold a lien or security interest over <i>investments</i> of the <i>scheme</i> ;
	(v)	where <i>investments</i> of the <i>scheme</i> will be registered collectively in the same name, a statement that the entitlements of the <i>scheme</i> may not be identifiable by separate certificates or other physical documents of title, and that, should the <i>operator</i> default, any shortfall in

			<i>investments</i> of the <i>scheme</i> registered in that name may be shared proportionately among all <i>schemes</i> and any other <i>customers</i> of the <i>operator</i> whose <i>investments</i> are so registered;
		(vi)	whether or not <i>investments</i> or other property of the <i>scheme</i> can be lent to, or deposited by way of collateral with, a third party and whether or not <i>money</i> can be borrowed on behalf of the <i>scheme</i> against the security of those <i>investments</i> or property and, if so, the terms upon which they may be lent or deposited;
		(vii)	the arrangements for accounting to the <i>scheme</i> for <i>investments</i> of the <i>scheme</i> , for income received (including any interest on <i>money</i> and any income earned by lending <i>investments</i> or other property) of the <i>scheme</i> , and for rights conferred in respect of <i>investments</i> or other property of the <i>scheme</i> ;
		(viii)	the arrangements for determining the exercise of any voting rights conferred by <i>investments</i> of the <i>scheme</i> ; and
		(ix)	where <i>investments</i> of the <i>scheme</i> may be held by an eligible <i>custodian</i> outside the <i>United Kingdom</i> , a general statement that different settlement, legal and regulatory requirements, and different practices relating to the segregation of those <i>investments</i> , may apply;
(12)	Clients' money outside the United Kingdom if it is the case, that the <i>operator</i> may hold the <i>money</i> of the <i>scheme</i> in a <i>client bank account</i> outside the <i>United Kingdom</i> ;		
(13)	Exchange rates if a liability of the <i>scheme</i> in one currency is to be matched by an asset in a different currency, or if the services to be provided to the <i>operator</i> for the <i>scheme</i> may relate to an <i>investment</i> denominated in a currency other than the currency in which the <i>investments</i> of the <i>scheme</i> 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 <i>investments</i> of the <i>scheme</i> ;		
(14)	Stabilised investments if it is the case, that the <i>operator</i> is to have the right under the <i>scheme documents</i> to effect transactions in <i>investments</i> the prices of which may be the subject of stabilisation;		
(15)	Conflict of interest and material interest if it is the case, that the <i>operator</i> is to have the right under the agreement or <i>instrument constituting the scheme</i> to effect transactions on behalf of the <i>scheme</i> in which the <i>operator</i> has directly or		

	indirectly a material interest (except for an interest arising solely from the participation of the <i>operator</i> as agent for the <i>scheme</i>), or a relationship of any description with another party which may involve a conflict with the <i>operator's</i> duty to the <i>scheme</i> , together with a disclosure of the nature of the interest or relationship;
(16)	Use of dealing commission if the <i>operator</i> receives goods or services in addition to the <i>execution</i> of its <i>customer orders</i> in accordance with the section on the use of dealing commission, the prior disclosure required by the <i>rule</i> on prior disclosure (see <i>COBS 11.6.2R</i>);
(17)	Acting as principal if it is the case, that the <i>operator</i> may act as <i>principal</i> in a transaction with the <i>scheme</i> ;
(18)	Stock lending if it is the case, that the <i>operator</i> may undertake <i>stock lending activity</i> with or for the <i>scheme</i> specifying the type of assets of the <i>scheme</i> to be lent, the type and value of <i>relevant collateral</i> from the borrower and the method and amount of payment due to the <i>scheme</i> in respect of the lending;
(19)	Transactions involving contingent liability investments
	(a) if it is the case, that the agreement or <i>instrument constituting the scheme</i> allows the <i>operator</i> to effect transactions involving <i>contingent liability investments</i> for the account of the portfolio of the <i>scheme</i> ;
	(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 <i>operator</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;
(20)	Periodic statements
	(a) the frequency of any <i>periodic statement</i> (this should not be less than once every 12 months) except where a <i>periodic statement</i> is not required (see <i>COBS 18.5.13R</i>); 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 <i>scheme</i> are to be valued;
(22)	Borrowings if it is the case, that the <i>operator</i> may supplement the funds in the portfolio of the <i>scheme</i> and, if it may do so:
	(a) the circumstances in which the <i>operator</i> may do so;
	(b) whether there are any limits on the extent to which the <i>operator</i> 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 <i>operator</i> may for the account of the portfolio of the <i>scheme</i> underwrite or sub-underwrite any issue or offer for sale of <i>securities</i> , and:
	(a) whether there are any restrictions on the categories of <i>securities</i> 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 <i>units</i> in a <i>collective investment scheme</i> either operated or advised by the <i>operator</i> or by an <i>associate</i> of the <i>operator</i> or in a <i>collective investment scheme</i> which is not a <i>regulated collective investment scheme</i> ;
(25)	Investments in securities underwritten by the operator whether or not the portfolio may contain <i>securities</i> of which any issue or offer for sale was underwritten, managed or arranged by the <i>operator</i> or by an <i>associate</i> of the <i>operator</i> 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*.

Periodic statements			
Suitable intervals	(1)	A <i>periodic statement</i> should be provided at least:	
	(a)	six-monthly; or	
	(b)	once in any other period, not exceeding 12 months, which has been mutually agreed	

			between the <i>operator</i> and the <i>participant</i> in the <i>scheme</i> .		
Adequate information	(2)	(a)	A <i>periodic statement</i> should contain:		
			(i)	(A)	The information set out in the table of general contents of a <i>periodic statement</i> ;
				(B)	where the portfolio of the <i>scheme</i> includes uncovered open positions in <i>contingent liability investments</i> , the additional information in the table listing the contents of a <i>periodic statement</i> (see <i>COBS 18.5.18E</i>) in respect of contingent liability investments; or
			(ii)		such information as a <i>participant</i> who is a <i>retail client</i> ordinarily resident outside the <i>United Kingdom</i> , or a <i>professional client</i> , has on his own initiative agreed with the <i>operator</i> as adequate.
		(b)	For a <i>firm</i> acting as an <i>outgoing ECA provider</i> , the words ' <i>United Kingdom</i> ' is replaced by ' <i>EEA</i> '		

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*.

General contents of periodic statements			
1	Contents and value		
	(a)	As at the beginning of the account period, the total value of the portfolio of the <i>scheme</i> , being either:	
		(i)	the value of the assets comprised in the portfolio on the date as at which the statement provided for the immediately

			preceding period of account is made up; or
		(ii)	in the case of the first <i>periodic statement</i> , the value of the assets comprised in the portfolio on the date on which the <i>operator</i> 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 <i>investment</i> held on behalf of the <i>scheme</i> ;
		(ii)	the amount of cash held on behalf of the <i>scheme</i> ; and
		(iii)	the total value of the portfolio of the <i>scheme</i> .
2	<p>Basis of valuation</p> <p>A statement of the basis on which the value of each <i>investment</i> has been calculated and, if applicable, a statement that the basis for valuing a particular <i>investment</i> has changed since the previous <i>periodic statement</i>. Where any <i>investments</i> are shown in a currency other than the usual one used for valuation of the portfolio of the <i>scheme</i>, the relevant currency exchange rates must be shown.</p>		
3	Details of any assets loaned or charged		
	(a)	A summary of those <i>investments</i> (if any) which were, at the closing date, loaned to any third party and those <i>investments</i> (if any) that were at that date charged to secure borrowings made on behalf of the portfolio of the <i>scheme</i> ; 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	<p>Transactions and changes in composition</p> <p>Except in the case of a portfolio which aims to track the performance of an external index:</p>		
	(a)	a statement that summarises the transactions entered into for the portfolio of the <i>scheme</i> during the period; and	
	(b)	the aggregate of <i>money</i> and a summary of all investments transferred into and out of the portfolio of the <i>scheme</i> during the period; and	
	(c)	the aggregate of any interest payments, dividends and other benefits received by the <i>operator</i> for the portfolio of the <i>scheme</i> 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 <i>operator</i> and its <i>associates</i> ; and
	(b)	of any <i>remuneration</i> received by the <i>operator</i> or its <i>associates</i> or both from a third party in respect of the transactions entered into, or any other services provided, for the portfolio of the <i>scheme</i> .
6	<p>Movement in value of portfolio</p> <p>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:</p>	
	(a)	the aggregate of assets received from <i>participants</i> of the <i>scheme</i> and added to the portfolio of the <i>scheme</i> ;
	(b)	the aggregate of the value of assets transferred, or of amounts paid, to the <i>scheme</i> ;
	(c)	the aggregate income received on behalf of the <i>scheme</i> 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 <i>scheme</i> .
<p>Notes:</p> <p>For the purposes of Item 1, where the <i>scheme</i> is a <i>property enterprise trust</i>, it will be sufficient for the <i>periodic statement</i> to disclose the number of properties held in successive valuation bands where this is appropriate to the size and composition of the <i>scheme</i>, 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 <i>operator</i> could show that different bands were justifiable in the circumstances.</p> <p>The statement to be provided under Item 6 is not intended to be an indicator of the performance of the portfolio of the <i>scheme</i>.</p> <p>An <i>operator</i> 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.</p>		

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	
(1)	<p>Changes in value</p> <p>The aggregate of <i>money</i> transferred into and out of the portfolio of the <i>scheme</i> during the account period.</p>

(2)	<p>Open positions</p> <p>In relation to each open position in the portfolio of the <i>scheme</i> at the end of the account period, the unrealised profit or loss to the portfolio of the <i>scheme</i> (before deducting or adding any <i>commission</i> which would be payable on closing out).</p>
(3)	<p>Closed positions</p> <p>In relation to each transaction effected during the account period to close out a position of the <i>scheme</i>, the resulting profit or loss to the portfolio of the <i>scheme</i> after deducting or adding any <i>commission</i>.</p> <p>(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 <i>scheme</i> in each contract)</p>
(4)	<p>Aggregate of contents</p> <p>The aggregate of each of the following in, or relating to, the portfolio of the <i>scheme</i> at the close of business on the valuation date:</p>
	(a) cash;
	(b) <i>collateral</i> value;
	(c) management fees; and
	(d) <i>commissions</i> 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 <i>participant</i> .
(5)	<p>Option account valuations</p> <p>In respect of each open <i>option</i> comprising the portfolio of the <i>scheme</i> on the valuation date:</p>
	(a) the <i>share, future</i> , index or other <i>investment</i> or asset involved;
	(b) (unless the valuation statement follows the statement for the period in which the <i>option</i> 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.
	<i>Options</i> account valuations may show an average trade price and market price in respect of an <i>option</i> series where a number of contracts within the same series have been purchased on behalf of the <i>scheme</i> .

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 Depositories

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

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

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:

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

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.

Information to be included in a periodic statement provided by an OPS firm conducting OPS activity	
(1)	Investment objectives
	A statement of any investment objectives governing the mandate of the portfolio of the <i>occupational pension scheme</i> as at the

	closing and starting date of the <i>periodic statement</i> .
(2)	Details of any asset loaned or charged
	<p>(a) a summary of any <i>investments</i> that were, at the closing date, lent to a third party and any <i>investments</i> that were at that date charged to secure borrowings made on behalf of the portfolio; and</p> <p>(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.</p>
(3)	<i>Transactions</i> and changes in composition
	<p>(a) a summary of the <i>transactions</i> entered into for the portfolio during the period and a comparison with the previous period;</p> <p>(b) the aggregate of <i>money</i> and a summary of all <i>investments</i> transferred into and out of the portfolio during the period; and</p> <p>(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.</p>
(4)	<i>Charges</i> and <i>remuneration</i>
	<p>If not previously advised in writing, a statement for the period of account:</p> <p>(a) of the aggregate <i>charges</i> of the <i>firm</i> and its <i>associates</i>; and</p> <p>(b) of any <i>remuneration</i> received by the <i>firm</i> or its <i>associates</i> or both from a third party in respect of the <i>transactions</i> entered into, or any other services provided, for the portfolio.</p>
(5)	Movement in value of portfolio
	<p>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:</p> <p>(a) the aggregate of assets received from the <i>occupational pension scheme</i> and added to the portfolio;</p> <p>(b) the aggregate of the value of assets transferred, or of amounts paid, to the <i>client</i>;</p> <p>(c) the aggregate income received on behalf of the <i>client</i> in respect of the portfolio; and</p> <p>(d) the aggregate of realised and unrealised profits or gains and losses attributable to the assets comprised in the portfolio.</p>

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*:

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

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 <i>COBS 13 Annex 2 3.1R(6)</i>) 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 <i>COBS 13 Annex 2 3.1R(6)</i> 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~~ the payment of an AVC contribution by a member of an occupational pension scheme to be secured by a packaged product purchased by the scheme trustees, 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

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
1.1	COBS 3	G	... <u>(6) COBS TP 3.9 contains transitional categorisation provisions in relation to</u>	From 1 November 2007 indefinitely	1 November 2007

			<u>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.</u>		
...
<u>1.9</u>	<u>COBS 3</u>	<u>R</u>	<p><u>(1) A new client that could have been correctly categorised as an intermediate customer under the rules in force on 31 October 2007:</u></p> <p><u>(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</u></p> <p><u>(b) otherwise may be treated as a per se professional client, subject to (3) below.</u></p> <p><u>(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 an 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.</u></p> <p><u>(3) Clients categorised under COBS TP 3.9 must be dealt with in</u></p>	<u>From 1 November 2007 to 30 June 2008</u>	<u>1 November 2007</u>

			<u>accordance with the relevant procedures and notifications in COBS 3.</u>		
--	--	--	---	--	--

COBS TP 2: Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
<u>2.-1</u>	<u>COBS 4</u>	<u>R</u>	<u>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:</u> <u>(1) is in writing and was designed to be communicated for longer than three months in similar form;</u> <u>(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</u> <u>(3) continues to be fair, clear and not misleading.</u>	<u>1 November 2007 to 31 October 2008</u>	<u>1 November 2007</u>
...					
<u>2.4 A</u>	<u>COBS 11.2</u>	<u>R</u>	<u>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</u>	<u>From 1 November 2007 to 31 October 2008</u>	<u>1 November 2007</u>

			<i>scheme from or to the operator of that scheme.</i>		
<u>2.4B</u>	<u>COBS 11.2</u>	<u>R</u>	<u>COBS 11.2 (Best execution) 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.</u>	<u>From 1 November 2007 to 31 October 2008</u>	<u>1 November 2007</u>
<u>2.4C</u>	<u>COBS 12.2 and COBS 12.3</u>	<u>R</u>	<u>COB 7.16, 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.</u>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>
<u>2.4 D</u>	<u>COBS 12.2 and COBS 12.3</u>	<u>G</u>	<u>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.</u>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>
<u>2.4E</u>	<u>COBS 12.2 and COBS 12.3</u>	<u>R</u>	<u>If a firm carrying out the activities set out in TP 2.4CR decides to comply</u>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>

			<p><u>with COBS 12.2 and 12.3 sooner than 1 May 2008:</u></p> <p><u>(1) it must make a record of the date of the decision and the date from which it is to be effective; and</u></p> <p><u>(2) from the effective date it must comply with COBS 12.2 and 12.3</u></p>		
2.5	COBS 13	R	<p><u>(1) A firm is not required to prepare a <i>key features document</i>, a <i>key features illustration</i> or the <i>Consolidated Life Directive information document</i> for a product if:</u></p> <p><u>(1a) the rules would have required the <i>firm</i> to prepare <i>key features</i> for the product if they were still in force; and</u></p> <p><u>(2b) the <i>firm</i> prepares <i>key features</i> in accordance with the rules as if they were still in force.</u></p> <p><u>(2) A firm is not required to prepare a <i>standardised deterministic projection</i> or an <i>alternative projection</i> for a product in accordance with COBS 13.5.1R or 13.5.2R if the <i>firm</i> prepares its <i>projections for life policies, key features schemes, simplified prospectus schemes</i> and <i>stakeholder pension schemes</i> in accordance with the rules as if they were still in force.</u></p> <p><u>(3) For these purposes of this rule, ‘the rules’ are the <i>rules</i> on product disclosure and the customer’s right to cancel or withdraw (COB 6) that were in force on 31</u></p>	From 1 November 2007 until 31 October 2008	1 November 2007

			October 2007.		
2.6	<i>COBS</i> 14.1 and <i>COB</i> 14.2	R	<p>A <i>firm</i> is not required to provide a <i>key features document</i>, a <i>key features illustration</i> or the <i>Consolidated Life Directive information document</i> for a product if:</p> <p>(1) ...</p> <p>...</p>	From 1 November 2007 until 31 October 2008	1 November 2007
2.8 A	<i>COBS</i> 18	R	<p><i>COB</i>, as it was in force on 31 October 2007, continues to apply to the following activities and <i>firms</i> in relation to business which is not <i>MiFID</i> or equivalent third country business and <i>COBS</i> does not apply during the transitional period unless the <i>firm</i> decides to comply with <i>COBS</i> sooner than 1 May 2008:</p> <p>(1) <i>Energy market activity</i> and <i>oil market activity</i>;</p> <p>(2) activities referred to in the <i>general application rule</i> related to:</p> <p>(a) <i>commodity futures</i>;</p> <p>(b) <i>commodity options</i>;</p> <p>(c) <i>contracts for differences</i> related to an underlying <i>commodity</i>; or</p> <p>(d) other <i>futures</i> or <i>contracts for differences</i> which are not related to <i>commodities</i>, <i>financial instruments</i> or <i>cash</i>.</p>	From 1 November 2007 to 30 April 2008	1 November 2007

			<p><u>which is not energy market activity or oil market activity;</u></p> <p><u>(3) corporate finance business;</u></p> <p><u>(4) a firm which is an operator of a collective investment scheme;</u></p> <p><u>(5) Lloyd's market activities;</u></p> <p><u>(6) depositaries;</u></p> <p><u>(7) OPS firms</u></p>		
<u>2.8B</u>	<u>COBS 18</u>	<u>G</u>	<p><u>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.</u></p>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>
<u>2.8C</u>	<u>COBS 18</u>	<u>R</u>	<p><u>If a firm carrying out the activities set out in TP 2.8AR decides to comply with COBS sooner than 1 May 2008:</u></p> <p><u>(1) it must make a record of the date of the decision and the date from which it is to be effective; and</u></p> <p><u>(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.</u></p>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>
<u>2.8D</u>	<u>COBS 18</u>	<u>G</u>	<p><u>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</u></p>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>

			<p><u>TP 2.8AR that decides to comply with COBS before 1 May 2008:</u></p> <p><u>(1) COB 2.4 (Chinese walls);</u></p> <p><u>(2) COB 5.10 (Corporate finance business issues);</u> and</p> <p><u>(3) COB 7.1 (Conflicts of interest and material interest)</u></p>		
<u>2.8E</u>	<u>COBS 18</u>	<u>R</u>	<p><u>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'.</u></p>	<u>From 1 November 2007 to 30 April 2008</u>	<u>1 November 2007</u>
...					
<u>2.12</u>	<u>COBS</u>	<u>R</u>	<p><u>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.</u></p>	<u>From 1 November 2007 indefinitely</u>	<u>1 November 2007</u>
<u>2.13</u>	<u>COBS</u>	<u>R</u>	<p><u>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.</u></p>	<u>From 1 November 2007 indefinitely</u>	<u>1 November 2007</u>

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

...

	Module	Application
...		
Business Standards	...	
	Market conduct, <i>MAR</i>	<p>Does not apply to a <i>firm</i> when doing either (1) or (2). However, certain chapters of <i>MAR</i> will apply if:</p> <p>(a) the <i>insurance intermediary</i> also engages in <i>behaviour</i> in relation to <i>qualifying investments</i> traded on prescribed markets - then <i>MAR 1</i> applies;</p> <p>(b) the <i>insurance intermediary</i> undertakes or is concerned with offers of securities that may involve price stabilising activity - then <i>MAR 2</i> applies;</p> <p>(c) the <i>insurance intermediary</i> carries on <i>inter professional business</i> - then <i>MAR 3</i> applies; (d) the <i>insurance intermediary</i> carries on <i>designated investment business</i> - then <i>MAR 4</i> applies.</p>
	Conduct of Business sourcebook, <i>COB</i> <u><i>COBS</i></u>	<p>Does not apply to an <i>insurance intermediary</i> when doing (1) or (2) unless it opts to provide <i>key features</i> a <i>key features document</i> instead of a policy summary (see <i>ICOB 5.5.4R</i>). However, <i>COB</i> <u><i>COBS</i></u> may apply to an <i>insurance intermediary</i> if it also carries on any other <i>regulated activity</i> or <i>communicates</i> or <i>approves a financial promotion</i> not relating to <i>non-investment insurance contracts</i> or <i>qualifying credit</i>.</p>

	...	
...		
Specialist Sourcebooks	...	
	Electronic Commerce Directive, <i>ECO</i>	Applies to an <i>insurance intermediary</i> doing (1) or (2).
	...	
...		

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*]

...

- 3.4.1 R This chapter applies to a *firm* ~~only~~ in relation to the communication, or approval, of a non-investment financial promotion to:

- (1) ~~the communication of a non-investment financial promotion to a person inside in the United Kingdom;~~ and
- (2) ~~the approval of a non-investment financial promotion for~~

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 2 **~~Annex 5 COBS 6 Annex 2G]~~**

...

- 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")

...

4 Annex 2 **Combined initial disclosure document (~~'CIDD'~~) [deleted - see ~~COB 4 Annex 5R~~ COBS 6 Annex 2G]**

5.6.52 R Where all or part of the *regulated mortgage contract* to which the *illustration* relates is an *interest-only mortgage*:

...

(3) if the *illustration* includes a quotation for the payments that would need to be made into the *repayment vehicle* by the *customer*:

... ...

(d) the *illustration* must refer the *customer* to the individual product disclosure documentation required by the Conduct of Business sourcebook (COBS).

8 Annex 1 **Initial disclosure document (~~'IDD'~~)**

...

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 R 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 G *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 a provisions enabling these ~~firms~~ *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 R 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 R 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 R 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 *depositories* 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 a 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~~ MiFID or equivalent third country 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*:
 - (1) (a) when it holds *financial instruments* belonging to a *client* in the course of its *MiFID business*; or
 - (2) (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~~ 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*:

...

- (3) need not include *client money* in the form of *client* entitlements which are not required to be segregated (see CASS 7.4.27G) nor include *client money* forwarded to the

firm by its appointed representatives, tiered 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

(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	CASS 2 to CASS 4	R	COB TP 1 to COB TP 4 apply to provisions in CASS in the same way as they did to the equivalent provisions included in COB 9 before 1 January 2004. [deleted]	Indefinite	1 January 2004
...					
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

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
CASS	Record of	Record of	Date of the	5 years (from

7.1.3R(23)	election to comply with the <i>MiFID client money chapter</i>	election to comply with the <i>MiFID client money chapter</i> , including the date from which the election is to be effective	election	the date the <i>firm</i> ceases to use the election)
...				

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 3*~~, 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, *tiered 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 *tiered 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 76.1.7R* (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~~ 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 76.1.7R* (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~~ waiver 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 *tiered 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

<u>the relevant Form A</u>	SUP 10 Ann 4D	Application to perform controlled functions under the approved persons regime
...		

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 ~~the~~ 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 ~~the~~ 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

G	Question	Answer
	Requirements of the regime	
...		
8	...	The <i>firm</i> should contact the Individuals, CIS and Mutuals <u>and Policy</u> Department. See <i>SUP</i> 10.11.6G.
...		
10	...	Before the <i>firm</i> submits <u>the relevant</u> Form A, it must verify the information contained in it. As part of this verification, the Form provides for the <i>candidate</i> to confirm the accuracy of the information given by the <i>firm</i> so far as it relates to him.
...		
11A(see <u>section Question 5.01a</u> of <u>the relevant</u> Form A (Application to perform controlled functions under the approved persons regime)). ...
...		
16	...	These can either be ordered through the Individuals, CIS and Mutuals <u>and Policy</u> Department or obtained from the <i>FSA</i> website at www.fsa.gov.uk . There is no charge for an application form.
...		

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~~ 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~~ provides basic advice ~~on~~ 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 ~~4000~~ 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~~ 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 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

d Individual reference number (IRN), if applicable

New Appointed Representative Details

Section B

...

8 Legal status of the appointed representative *

- | | | | |
|---|--------------------------|--|--------------------------|
| Private L imited C ompany | <input type="checkbox"/> | Public L imited C ompany | <input type="checkbox"/> |
| Partnership | <input type="checkbox"/> | Limited P artnership | <input type="checkbox"/> |
| Limited L iability P artnership | <input type="checkbox"/> | Unincorporated A ssociation | <input type="checkbox"/> |
| Sole T rader | <input type="checkbox"/> | Other, please specify below | <input type="checkbox"/> |

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) <u>an appointed representative who will carry on insurance mediation activities; or</u> | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) <u>a tied agent?</u> | <input type="checkbox"/> | <input type="checkbox"/> |

Declaration and signature

Section C

Warning

Knowingly or recklessly giving the FSA information, which is false or misleading in a material particular, may 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.

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

SUP 12 Annex 4 Appointed representative notification form



Appointed Representative or tied agent - Exchange Details
Notification under SUP 12.7.7R (i.e. the form in SUP 12 Ann 4)

...

Firm name (i.e. the principal firm)

(~~The Firm~~)

...

...

NOTES

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

1 Contact 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 ~~D~~aytime telephone number

*

c ~~E~~-mail address

d ~~I~~ndividual reference number (IRN), if applicable

Change Details of an Existing Appointed Representative

Section B

...

~~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)~~

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)

...

1 a. ...

...

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?

- | | | | |
|---|--------------------------|--|--------------------------|
| Private L imited C ompany | <input type="checkbox"/> | Public L imited C ompany | <input type="checkbox"/> |
| Partnership | <input type="checkbox"/> | Limited P artnership | <input type="checkbox"/> |
| Limited L iability P artnership | <input type="checkbox"/> | Unincorporated A ssociation | <input type="checkbox"/> |
| Sole T rader | <input type="checkbox"/> | Other, please specify below | <input type="checkbox"/> |

...

Yes No N/A

3e b. Has the name change been approved by Companies House?

~~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.

...

5 ...

...

If 'Yes', please provide details below. If you wish to amend a trading name please ~~delete this 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:

--	--

...

11 ~~Does the appointed representative undertake insurance mediation?~~

~~Do you wish to change this? Please provide details below:~~

--

Yes No

Do you wish to change the details of the Main ...

12 ...

--

...

Yes No

15 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:

16 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 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.

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 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.
- 13A.6.1 G (1) SUP 13A Annex 1G summarises how the *Handbook* applies to *incoming EEA firms*.
- (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

	Articles of MiFID or the MiFID implementing directive
1	Articles 13(3) and (6), 18 to 22 and 24 and Annex II of <i>MiFID</i>
2	Articles 12, 14, 26, 29 and 30 of <i>MiFID</i>
3	Articles 27 and 28 of <i>MiFID</i>
4	All related Articles of <i>MiFID</i> and the <i>MiFID implementing Directive</i>

- 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*.

- (5) 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 1 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. ...

(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>PRIN</i>
...		
SYSC	<p>SYSC 1 contains ...</p> <p><u>The common platform requirements in SYSC 4 - 10 apply as set out in SYSC 1.3.1R and SYSC 1.3.1BG.</u></p> <p><u>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.</u></p> <p><u>SYSC 9 applies to activities carried on from an establishment in the United Kingdom,</u></p>	<p><u>The common platform requirements in SYSC 4 - 10 apply as set out in SYSC 1.3.1R and SYSC 1.3.1BG.</u></p> <p><u>SYSC 9 does not apply.</u></p>

	<p><u>unless another applicable rule which is relevant to the activity has a wider territorial scope, in which case the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that rule (SYSC 1.3.10AR).</u></p> <p><u>SYSC 11 applies to an incoming EEA firm which:</u></p> <p>(1) <u>is a full BCD credit institution; and</u></p> <p>(2) <u>has a branch in the United Kingdom (SYSC 11.1.1R(3)).</u></p> <p><u>SYSC 12 does not apply (SYSC 12.1.3R).</u></p> <p><u>SYSC 13 does not apply (SYSC 13.1.1G).</u></p> <p><u>SYSC 14 does not apply (SYSC 14.1.1R).</u></p> <p><u>SYSC 15 does not apply (SYSC 15.1.1G).</u></p> <p><u>SYSC 16 does not apply (SYSC 16.1.1G).</u></p> <p><u>SYSC 17 does not apply (SYSC 17.1.1G).</u></p> <p><u>SYSC 18 applies.</u></p>	<p><u>SYSC 11 – 17 do not apply.</u></p> <p><u>SYSC 18 applies.</u></p>
...		
<i>FIT</i>	<p><i>FIT</i> 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 (<i>FIT</i> 1.1). See under <i>SUP</i> 10 below as to whether such approval is required.</p> <p><u><i>FIT</i> applies in a limited way in relation to an incoming MiFID investment firm (see <i>FIT</i> 1.2.4AG).</u></p>	Does not apply.
<i>GEN</i>	<p><i>GEN</i> applies ...</p> <p><u><i>GEN</i> 4 does not apply in relation to MiFID or equivalent third country business (see <i>GEN</i> 4.1.1R).</u></p>	<p><i>GEN</i> 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 <i>GEN</i> 4.1.1R).</p> <p>Otherwise, as column (2).</p>
...		
<i>COB</i>	[deleted]	[deleted]
<u><i>COBS</i></u>	<u>Guidance on the territorial application of <i>COBS</i> is contained in <i>COBS</i> 1 Ann 1 Part 3.</u>	<u>Guidance on the territorial application of <i>COBS</i> is contained</u>

		in <u>COBS 1 Ann 1 Part 3.</u>
<i>ICOB</i>	As column (3) plus, in the case of a <i>distance contract</i> with a retail customer <i>consumer</i> , unless the <i>firm's Home State</i> imposes measures which implement or correspond to obligations of the DMD <u><i>Distance Marketing Directive</i></u> : (1)	Only the following provisions of <i>ICOB</i> apply: ... (4) <i>ICOB 5.5.20R(4) to (15) and (22)</i> , but only in respect of <i>non-investment insurance contracts</i> which are <i>pure protection contracts</i> where the <i>habitual residence</i> of the <i>customer</i> , other than an EEA ECA recipient <u>present in an <i>EEA State</i> other than the <i>United Kingdom</i></u> , is in the <i>United Kingdom</i> ; (5) <i>ICOB 6 (Cancellation)</i> , but only in respect of <i>non-investment insurance contracts</i> which are <i>pure protection contracts</i> where the <i>habitual residence</i> of the <i>customer</i> , other than an EEA ECA recipient <u>present in an <i>EEA State</i> other than the <i>United Kingdom</i></u> , is in the <i>United Kingdom</i> ; (6) unless the <i>firm's Home State regulator</i> has implemented articles 12 and 13 of the IMD <u><i>Insurance Mediation Directive</i></u> for those activities: (a)
...		
<i>MAR</i>	<i>MAR 1 ...</i>	<i>MAR 1 ...</i>

	<i>MAR 3 (Inter-professional conduct)</i> Applies (<i>MAR 3.1.4R</i>).	<i>MAR 3 (Inter-professional conduct)</i> Does not apply <i>MAR 3.1.4R</i> .

...		

<i>SUP</i>	<i>SUP 1</i>	<i>SUP 1</i>
	[Delete the entry for SUP 17 and replace it with the following] <u><i>SUP 17 (Transaction reporting)</i></u> <u><i>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)</i></u>	<i>SUP 17 (Transaction reporting)</i> Does not apply (<i>SUP 17.1.1R(2)(a)</i>) . <u><i>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)</i></u> .
...		
<i>DISP</i>	Applies (<i>DISP 1.1.1G</i>) <u>and applies in a limited way in relation to <i>MiFID business</i></u> .	Does not apply (<i>DISP 1.1.1G</i>).
...		
<i>ECO</i> [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).

7. 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

8. 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

9. 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.
10. 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*.

(2) ...

15.3.11A G SUP 15.3.11R(1)(e) relates to the standard requirement in the *permission of those firms which fall outside MiFID because of the Treasury's implementation of Article 3 of MiFID. Guidance on how the Treasury has exercised the Article 3 exemption for the United Kingdom is given in Q48 and the following questions and answers in PERG 13.5 (Exemptions from MiFID).*

15.6.2 G SUP 15.6.1R applies also in relation to *rules* outside this chapter, and even if they are not *notification rules*. Examples of *rules* and chapters to which SUP 15.6.1R is relevant, are:

(1) ...

...

(5) any *notification rule* (see Schedule 2 which contains a consolidated summary of such *rules*); ~~and,~~

(6) ~~DISP 1.5 (Record keeping and reporting)~~ 1.9 (Complaints record rule); and

(7) DISP 1.10 (Complaints reporting rule).



Application number
 (for FSA use only)

...

Form F

Changes in notified persons

FSA Handbook Reference: SUP 15 Annex 2R

...

Employment history for past 5 years Section 4

Note: ALL gaps must be accounted for

4.01 Employment details (1)

a Period (mm/yyyy) From / To /

...

h Is / was employer an *appointed representative/tied agent* Yes No If yes, of which *firm*?

...

4.02 Employment details (2)

a Period (mm/yyyy) From / To /

...

h Is / was employer an *appointed representative/tied agent* Yes No If yes, of which *firm*?

...

4.03 Employment details (3)

a Period (mm/yyyy) From / To /

...

h Is / was employer an *appointed representative/tied agent* Yes No If yes, of which *firm*?

...

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 2.1.3 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 Mapping of MiFID, Banking Consolidation Directive, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order

App 3.9.4 G Activities set out in Annex I of the BCD

Table 1: BCD activities		Part II RAO Activities	Part III RAO Investments
...			
Note 1. The <i>BCD</i> 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 1: 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".

App
3.9.5

G Services set out in Annex I to MiFID

Table 2: MiFID investment services and activities		Part II RAO Investments	Part III RAO Investments
...			
1.	Reception and transmission of orders in relation to one or more financial instruments	Article 25 (see Note 1)	Article 76-81, 83-85, 89
...			
4.	Portfolio management	Article 37 (14, 21, 25 – see Note 1 2)	Article 76-81, 83-85, 89
...			
<p>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.</p>			
<p>Note 1. A firm may also carry on these other activities when it is <i>managing investments</i>.</p>			

Sch 2.2 G ...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP</i> 10.12.2D	...	<i>Approved persons</i> <u>the relevant Form A</u> Application to perform <i>controlled functions</i> under the <i>approved persons</i> regime (see <i>SUP</i> 10 Annex 4)
...				
<i>SUP</i> 15.3.11R	Notifications - breaches of <i>rules</i> and other requirements in or under the <i>Act</i>	(1) information about any circumstances relevant to the breach or offence; (2) identification of the <i>rule</i> or <i>requirement</i> or offence; and (3) information about any steps which a <i>firm</i> or other <i>person</i> has taken or intends to take to rectify or remedy the breach or prevent any future <u>future</u> potential occurrence.	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 <i>firm</i> , any of its <i>directors</i> , officers, <i>employees</i> , <i>approved persons</i> , or <i>appointed representatives</i> , <u>or tied agents</u> : (a)...	Immediately
<i>SUP</i> 16.8	Reporting - persistency reports from <i>insurers</i>	Persistency report. The report must report on every <i>life policy</i> which was promoted subject to <i>rules</i> in <i>COB</i> or <i>COBS</i> , or conduct of business rules made by a <i>previous regulator</i> , is not a <i>life policy</i> of a type listed in <i>SUP</i>	Annually	By 30 April each year

		16.8.13R or <i>SUP</i> 16.8.14R, and which: (1) ...		
--	--	---	--	--

Part 2: Comes into force on 5 November 2007

17 Transaction Reporting

17.1.3 G A 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~~ Approved reporting mechanisms, regulated markets or MTFs

17.2.3 R A firm is relieved of its obligation to make a ~~transaction report~~ 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 A 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_market/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~~ reports to the FSA on behalf of a *firm*, must:

(1) (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 G ~~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 G ~~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:~~

<http://www.fsa.gov.uk/pages/Doing/Regulated>Returns/mtr/arms/index.shtml>.

...

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* ~~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*.

Field Identifier	Description
EU	1. Reporting Firm Identification
G	<p>A unique code to identify the <i>firm</i> which executed the <i>transaction</i>. This code should be the FSA reference number of the firm or the Swiss Bank Identifier Code (BIC).</p> <p><u>This code should be the <i>FSA</i> reference number of the <i>firm</i> or the Swift Bank Identifier Code (BIC).</u></p>
EU	2. Trading Day
EU	3. Trading Time
G	<p>The time at which the <i>transaction</i> 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 <u>London local time</u>. 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.</p> <p><u>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.</u></p>
EU	4. Buy/Sell Indicator
EU	5. Trading Capacity

	-	on its own account (either on its own behalf or on behalf of a <i>client</i>) (that is as principal);
	-	for the account and on behalf of a <i>client</i> (that is as agent);
	-	in an agency cross capacity; (that is where the <i>firm</i> has acted as agent for both the selling and the buying counterparties) <u>where the <i>firm</i> has and chosen to submit a the single report made to the FSA represents <u>representing</u> both of these <i>transactions</i></u>);
<u>G</u>		<u>Where a <i>firm</i> has executed a <i>transaction</i> in an agency cross capacity, it may submit two reports rather than a single report, in which case this field should indicate that the <i>firm</i> is acting on behalf of a <i>client</i>.</u>
<u>EU</u>	-	in a principal cross capacity (that is where the <i>firm</i> has acted simultaneously for two counterparties as principal in a single product at the same price and quantity) <u>where the <i>firm</i> and the has chosen to submit a single report made to the FSA represents <u>representing</u> both of these <i>transactions</i></u>).
<u>G</u>		<u>Where a <i>firm</i> has executed a transaction in a principal cross capacity, and prefers to submit two reports rather than a single report, this field should indicate that the <i>firm</i> is acting on its own account.</u>

<u>EU</u>	6. Instrument Identification	This shall consist in of:
		- an ISO 6166 ISIN a unique code, decided by the <i>FSA</i> , <u>identifying the <i>financial instrument</i> which is the subject of the <i>transaction</i></u> ;
<u>G</u>		<u>The unique code should be an ISO 6166 ISIN. This code must always be used for, but is not limited to, reporting transactions in warrants.</u>
<u>EU</u>		- or, where if a the <u><i>financial instrument</i> 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 a derivative contract is the subject of the <i>transaction</i>, the name of the underlying <i>financial instrument</i> and, the characteristics of the <i>financial instrument</i> in a separate description field <u>derivative</u>.</u>
<u>G</u>		<u>The FSA considers that where the financial instrument in question (which includes derivatives) is admitted to trading on a market where the ISO 6166 ISIN is not the industry method of identification, it will be sufficient to</u>

		<u>insert in this field the code assigned to the instrument by that market.</u>
<u>EU</u>	-	<u>or, in the case of an <i>OTC derivative</i>, the characteristics of the <i>OTC derivative</i>.</u>
<u>G</u>		<u>Where an <i>OTC derivative</i> is the subject of the <i>transaction</i> a full description of the <i>OTC derivative</i> should be provided.</u>
<u>EU</u>	<u>7. Instrument code type</u>	<u>The code type used to report the instrument.</u>
<u>G</u>		<u>Where the subject of the <i>transaction</i> is a <i>financial instrument admitted to trading</i> on a market this field should indicate whether that <i>financial instrument</i> has been identified using an <u>ISO 6166 ISIN</u> or, where the ISIN is not the industry method of identification for that market, a code assigned to that <i>financial instrument</i> by that market.</u>
<u>EU</u>	<u>78. Underlying Instrument Identification</u>	<u>The instrument identification applicable to the security that is the underlying asset in a derivative contract as well as the transferable security included within article 4(1)(18(c)) of <i>MiFID</i>. An ISO 6166 ISIN should be used.</u> <u>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. Where the <i>financial instrument</i> is an <i>over the counter derivative</i> this field will only be mandatory where the underlying is single equity or single debt.</u>
<u>G</u>		<u>This field is only mandatory when the <i>transaction</i> involves an <i>OTC derivative</i> and the underlying is a <u>single equity or single debt <i>financial instrument admitted to trading</i> on a regulated market or prescribed market.</u></u>
<u>EU</u>	<u>9. Underlying instrument identification code type</u>	<u>The code type used to report the underlying instrument.</u>
<u>G</u>		<u><i>Firms</i> do not need to complete this field since the <i>FSA</i> already has access to this information.</u>
<u>EU</u>	<u>810. Instrument Type</u>	<u>The harmonised classification of the financial instrument that is the subject of the transaction. This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided.</u> <u>This field will be mandatory where the <i>financial instrument</i></u>

G	<p>is an <i>over the counter derivative</i> and must be used to indicate the instrument type of the underlying <i>financial instrument</i>, e.g. equity, bond, index, or other.</p> <p>This field is only mandatory when the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification. This field must be used to indicate the instrument type of the underlying <i>financial instrument</i>, e.g. equity, bond, index, or other.</p>
EU	<p>911. Maturity Date</p> <p>The maturity date of a bond or other form of securitized debt, or the exercise date / maturity date of a derivative contract.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument</i> is an <i>over the counter derivative</i> where applicable.</p>
G	<p>This field is only mandatory when the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification.</p>
EU	<p>4012. Derivative Type</p> <p>The harmonised description of the derivative type. This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided.</p> <p>This field will be mandatory where the <i>financial instrument</i> is an <i>over the counter derivative</i>, where applicable, and must indicate the derivative type, e.g. option, future, contract for difference, warrant, spreadbet, credit default swap or other swap.</p>
G	<p>This field is only mandatory when the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> 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.</p>
EU	<p>4413. Put/Call</p> <p>Specification whether an option or any other <i>financial instrument</i> is a put or call.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument</i> is an <i>over the counter derivative</i>.</p>
G	<p>This field is only mandatory when (i) the <i>transaction</i></p>

		<u>involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification; and (ii) the <i>derivative type</i> is option or warrant.</u>
<u>EU</u>	<u>4214. Strike Price</u>	The strike price of an option or other <i>financial instrument</i> . This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument</i> is an <i>over the counter derivative</i>.
<u>G</u>		<u>This field is only mandatory when (i) the <i>transaction</i> involves an <i>OTC derivative</i> or a <i>financial instrument admitted to trading</i> on a market where the ISIN is not the industry method of identification; and (ii) the <i>derivative type</i> is option or warrant.</u>
<u>EU</u>	<u>4315. Price Multiplier</u>	The number of units of the <i>financial instrument</i> 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 <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument</i> is an <i>over the counter derivative</i>.
<u>G</u>		<u>This field is only mandatory where the transaction involves an <i>OTC derivative</i>.</u>
<u>EU</u>	<u>4416. Unit Price</u>	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.
<u>EU</u>	<u>4517. Price Notation</u>	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.
<u>G</u>		<u>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</u>

		ISO 4217 currency code of the nominal value must be used.
EU	4618. Quantity	The number of units of the <i>financial instruments</i> , the nominal value of bonds, or the number of derivative contracts included in the <i>transaction</i> .
EU	<u>19. Quantity notation</u>	<u>An indication as to whether the quantity is the number of units of <i>financial instruments</i>, the nominal value of bonds, or the number of derivative contracts.</u>
G		<u>Firms do not need to complete this field since the FSA already has access to this information.</u>
EU	4720. Counterparty	<p>Identification of the counterparty to the <i>transaction</i>. That identification shall consist in of:</p> <p>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.;</p>
		- where the counterparty is a <i>MiFID investment firm</i> , a unique code for that firm, to be determined by the FSA; or
		- where the counterparty is a <i>regulated market</i> or <i>MTF</i> or an entity acting as its central counterparty, the unique harmonised identification code for that market, <i>MTF</i> or entity acting as central counterparty, as specified in the list published by the competent authority of the <i>home Member State</i> of that entity in accordance with Article 13(2).
G		The FSA has determined that where an <i>FSA reference number</i> or a <i>Swift Bank Identification Code (BIC)</i> exists for the counterparty, one of these codes must be used, or in the case that a counterparty has neither an <i>FSA reference number</i> or a <i>BIC</i> , a unique internal code allocated by the reporting <i>firm</i> must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.
EU	4821. Venue Identification	<p>Identification of the venue where the <i>transaction</i> was executed. That identification shall consist in:</p>
		- where the venue is a trading venue or an MTF the four

<u>G</u>		character <u>Swift Market Identifier Code ISO 10383 must be used. : its unique harmonised identification code,</u>
		<u>Where the venue is a regulated market, prescribed market 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.</u>
	<u>EU</u>	If <u>where the transaction is made off market or over the counter the subject of the transaction is an OTC derivative then this must should be made clear.</u>

<u>EU</u>	1922. <u>Transaction Reference Number</u>	A unique identification number for the <i>transaction</i> provided by the <i>MiFID investment firm</i> or a third party reporting on its behalf.
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<u>EU</u>	2023. <u>Cancellation Flag</u>	An indication as to whether the <i>transaction</i> was cancelled.
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<u>EU</u>	2124. <u>Customer/Client Identification</u>	<p>This field contains the identification of the <i>client</i> or customer on whose behalf the reporting <i>firm</i> was acting. and should be completed as follows:</p> <p>For agency transactions a customer/client identifier is required to identify the client on whose behalf the transaction has been conducted.</p> <p>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.</p>
<u>G</u>		<u>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.</u>

EU

2225. Any other fields	Any other mandatory fields required by the reporting system.
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...

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).

...	
Investment objectives and policy	
3	The following particulars of the investment objectives and policy of the <i>authorised fund</i> :
	...
(o)	information concerning the historical performance of the <i>scheme</i> presented in accordance with <i>COB</i> 3.8.11R (Specific non-real time financial promotions: past performance) <u><i>COBS</i> 4.6.2R (the rules on past performance)</u> ;
	...
...	

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)

Contents of simplified prospectus

...	
(14)	details of any entry and exit commissions relating to the <i>scheme</i> and details of the <i>scheme's</i> other possible expenses or fees, distinguishing between those to be paid by the <i>unitholder</i> and

	those to be paid from the <i>scheme's</i> or the <i>sub-fund's</i> assets, including:		
Notes:	...		
	5.	[Intentionally blank] <u>Details of entry and exit commissions relating to the <i>scheme</i> and details of the <i>scheme's</i> other possible expenses or fees, must be presented in the <i>simplified prospectus</i> in the form required by <i>COLL</i> 4.6.9R (Charges and reduction in yield).</u>	
...			

~~[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) ~~shall~~ 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

in COLL 8 Annex 1R (Qualified Investor Scheme: eligible investors).

(2) ...

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:

	Issue or transfer of units to:	Issue or transfer of units (see Note 1) in a qualified investor scheme which is:
	<p>Category 1 person</p> <p><i>A person:</i></p> <p>(1) who is already a <i>participant</i> in an <i>unregulated collective investment scheme</i> or a <i>qualified investor scheme</i>; or</p> <p>(2) who has been, in the last 30 months, a <i>participant</i> in an <i>unregulated collective investment scheme</i> or a <i>qualified investor scheme</i>.</p>	<p>(1) that <i>collective investment scheme</i>; or</p> <p>(2) any other <i>collective investment scheme</i> whose underlying property and risk profile are both 'substantially similar' (see Note 2) to those of that <i>collective investment scheme</i>; or</p> <p>(3) a <i>collective investment scheme</i> which is intended to absorb or take over the assets of that <i>collective investment scheme</i>; or</p> <p>(4) a <i>collective investment scheme</i>, <i>units</i> in which are being offered by its <i>operator</i> as an alternative to cash on the liquidation of that <i>collective</i></p>

		<i>investment scheme.</i>
Category 2 person	that <i>collective investment scheme.</i>	
<p><i>A person:</i></p> <p>(1) for whom the <i>authorised fund manager</i> or an <i>associate</i> has taken reasonable steps to ensure that <i>investment</i> in the <i>collective investment scheme</i> is suitable; and</p> <p>(2) who is an 'established' or 'newly accepted' <i>client</i> of the <i>authorised fund manager</i> or of an <i>associate</i> (see Notes 3 & 4).</p>		
Category 3 person	any such <i>collective investment scheme</i>	
<p><i>A person</i> who is eligible to participate in a scheme constituted under:</p> <p>(1) the Church Funds Investment Measure 1958;</p> <p>(2) section 24 of the Charities Act 1993; or</p> <p>(3) section 25 of the Charities Act (Northern Ireland) 1964.</p>		
Category 4 person	(1) <i>A collective investment scheme</i> of which the <i>instrument constituting the scheme:</i>	
<p>An eligible employee, that is, a <i>person</i> who is:</p> <p>(1) an officer;</p> <p>(2) an <i>employee</i>;</p> <p>(3) a former officer or <i>employee</i>; or</p> <p>(4) a member of the immediate family of any of (1)-(3);</p> <p>of an employer which is (or is in the same <i>group</i> as) the <i>firm</i>, or which has accepted responsibility</p>	<p>(a) restricts the <i>scheme property</i>, apart from cash and near cash, to:</p> <p>(i) (where the employer is a company) <i>shares</i> in and <i>debentures</i> of the <i>company</i> or any other connected <i>company</i> (see Note 5);</p> <p>(ii) (in any case), any property, provided that the <i>scheme</i> takes the form of a trust which the <i>firm</i> reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments (other than <i>charges</i>) for <i>investment</i> transactions earlier entered into, which the eligible employee was not aware of at the time</p>	

	<p>for the activities of the <i>firm</i> in carrying out the <i>designated investment business</i> in question.</p>	<p>he entered into them; and</p> <p>(b) (in a case falling within A(1) above) restricts participation in the <i>scheme</i> to eligible employees, the employer and any connected <i>company</i>.</p> <p>(2) Any <i>collective investment scheme</i> provided that the participation of eligible employees is to facilitate their co-investment:</p> <p>(a) with one or more <i>companies</i> in the same <i>group</i> as their employer (which may include the employer); and/or</p> <p>(b) with one or more <i>clients</i> of such a <i>company</i>.</p>
	<p>Category 5 person</p> <p>An exempt <i>person</i> (other than a <i>person</i> exempted only by section 39 of the <i>Act</i> (Exemption of appointed representatives)) if the <i>issue</i> or transfer of <i>units</i> relates to a <i>regulated activity</i> in respect of which the <i>person</i> is exempt from the <i>general prohibition</i>.</p>	<p>Any <i>collective investment scheme</i>.</p>
	<p>Category 6 person</p> <p>An <i>eligible counterparty</i> or a <i>professional client</i>.</p>	<p>Any <i>collective investment scheme</i> in relation to which the <i>client</i> is categorised as a <i>professional client</i> or <i>eligible counterparty</i>.</p>
	<p>Category 7 person</p> <p>A <i>person</i>:</p> <p>(1) in relation to whom the <i>authorised fund manager</i> or an <i>associate</i> 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 <i>person</i> is capable of making his own investment decisions and understanding the risks involved;</p>	<p>Any <i>collective investment scheme</i> covered by the assessment.</p>

	(2) to whom the <i>authorised fund manager</i> or an <i>associate</i> has given a clear written warning of the protections he may lose; and (3) who has stated in writing, in a separate <i>document</i> 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.		
Note 1	Issue or transfer of <i>units</i> to a category of <i>person</i> includes any <i>nominee company</i> acting for such a <i>person</i> .	
Note 2	The risk profile of a <i>scheme</i> will be substantially similar to that of another <i>scheme</i> only if there is such similarity in relation to both liquidity and volatility.	
Note 3	A <i>person</i> is an 'established client' of another <i>person</i> if he has been and remains an actual <i>client</i> of that <i>person</i> in relation to <i>designated investment business</i> done with or through that other <i>person</i> .	
Note 4	A <i>person</i> is a 'newly accepted' <i>client</i> of a <i>firm</i> if:	
	(1)	a written agreement relating to <i>designated investment business</i> exists between the <i>client</i> and the <i>firm</i> (or, if the <i>client</i> is normally resident outside the <i>United Kingdom</i> , an oral or written agreement); and
	(2)	that agreement has been obtained without any contravention of any <i>rule</i> in <i>COBS</i> applying to the <i>firm</i> or (as far as the <i>firm</i> is reasonably aware) any other <i>authorised person</i> .
Note 5	A <i>company</i> is 'connected' with another <i>company</i> if:	
	(1)	they are in the same <i>group</i> ; or
	(2)	one <i>company</i> is entitled either alone or with another <i>company</i> in the same <i>group</i> , 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 <i>company</i> or of its holding <i>company</i> .

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 1.2.3GR. 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:

(1) [delete and replace with the following]

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.

(2) [deleted]

11.4.1 G Those parts of *COBS* that relate to *distance contracts for accepting deposits* will have limited application to a *credit union*. This is because the ~~DMD~~ *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.

11.4.2 G 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 5), pre-contract information (*COBS* 6.4.256, 13 and 14), cancellation rights (*COBS* 6.7 15) 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.

Pre-contract disclosure requirements

11.4.3 G ~~*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, ...

11.4.4 G The required information is the contractual terms and conditions and the other information set out in ~~*COBS* App 1 5 Ann 1R~~, ...

Exemptions

11.4.5 G The exemptions referred to in *CRED* 11.4.3G are set out in ~~*COB* 6.4.27R to *COB* 6.4.31R~~ *COBS* 5.1. They are relevant:

- (1) 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 4.9.2 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

	Sourcebook or manual	Reference code
...		
Business standards
	Conduct of business	<i>COBS</i>
	...	
Specialist Sourcebooks	...	
	<u>E-commerce Directive</u>	<i>ECO</i>
	...	

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~~ 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* ~~4.11.3R~~ 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);₂ 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 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.

1.4A.5 R 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).

1.5.2 G Table Application of other parts of the Handbook to ELMIs

Block	Module	Application
...		
Business standards	Conduct of Business sourcebook (COBS)	<p>The effect of :</p> <p>(1) <i>ELM</i> 6.8.2AR is that COBS 2.6 5 (General provisions in relation to <u>Distance contracts</u>) applies to <u>a firm issuing e-money</u>;</p> <p>(2) <i>ELM</i> 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</p> <p>(3) <u>[deleted]</u></p> <p>Otherwise, <i>COBS</i> does not apply to an <i>ELMI</i> when <i>issuing e-money</i> and. As explained in <i>PERG 3</i>, the rules in <i>COBS</i> about <i>financial promotions</i> do not usually apply to <i>e-money</i>, but may do so in certain situations.</p>
...		
Specialist sourcebooks other than <i>ELM</i>	...	
	E-Commerce Directive sourcebook (ECO)	<u>Applies to every <i>ELMI</i> that carries on electronic commerce activities. Also applies to every <i>ELMI</i> in relation to a financial promotion which is an outgoing electronic commerce communication.</u>
...		

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~~ apply 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)-(e) 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 disappplied 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 4.3.19(1)(a)-(e) 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~~ 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 ~~S~~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.

	PR Appendix 1	Relevant definitions
1.1	...	
...		
Investment Services Directive		[deleted]
ISD		[deleted]
<u>MiFID</u>		<u>The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC).</u>
		<u>See also MiFID Regulation and MiFID implementing Directive.</u>
<i>regulated market</i>		[delete existing definition and replace with the following] <u>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.</u>
<i>transferable security</i>		(as defined in section 102A of the Act) anything which is a transferable security for the purposes of the investment services directive <u>MiFID</u> , 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;

...

- 13.6 **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.

	Subject matter	Location
1	Conduct of business obligations to clients	<i>COBS</i> generally but see Notes 1 and 2
2	Best execution	<i>COBS</i> 11.2 (Best execution)
3	Client order handling	<i>COBS</i> 11 (Dealing and managing)
4	Market integrity, transaction reporting and maintaining records	<i>SUP</i> 17 (Transaction reporting)
5	Making public firm quotes (transparency)	<i>MAR</i> 6 (Systematic internalisers)
6	Post-trade disclosure	<i>MAR</i> 7 (Disclosure of information on certain trades undertaken outside a regulated market or MTF)

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)

- (f) COBS 9.2 (Assessing suitability)
- (g) COBS 10.2 (Assessing appropriateness: the obligations)
- (h) COBS 10.3 (Warning the client)
- (i) COBS 10.4 (Assessing appropriateness: when it need not be done) ,
and
- (j) COBS 16 (Reporting information to clients).

Q70. How are the high level standards, like the Principles, affected by MiFID?

The position is summarised in the table below.

	Subject matter	References	Summary
1	The Principles	PRIN 3.1.6R (Who?)	A firm is not subject to the Principles to the extent that it would be contrary to MiFID (and the other Single Market Directives).
2		PRIN 4.1.2G (Where?)	The territorial scope of some Principles has been extended and others narrowed according to the type of firm.
3	Systems and controls	<p>SYSC 1.1.1R(6) and SYSC 1.3.9R to SYSC 1.3.11R</p> <p>SYSC 1.1.1R(1)(a), SYSC 1.1.7R and SYSC 1.3.10AR</p>	<p>A UK MiFID investment firm is a common platform firm. It is subject to the common platform requirements in SYSC 4 to SYSC 10 and is not subject to the requirements in SYSC 2 and 3. The common platform requirements generally apply in relation to activities conducted from an establishment in the United Kingdom or another EEA State. However, this is subject to some modification, for example in relation to requirements on record keeping and financial crime. Most of the common platform requirements also apply in a prudential context to the activities of a UK MiFID investment firm from an establishment outside the EEA.</p> <p>An EEA MiFID investment firm is not a common platform firm and is therefore not subject to the common platform requirements. However, it is subject to the common platform record keeping requirements. Some provisions in SYSC 2 and 3 will apply to the UK establishment of an EEA MiFID investment firm but only in respect of matters that are not reserved to the Home State</p>

			regulator. This is particularly relevant to the provisions on systems and controls concerning financial crime and money laundering in SYSC 3.
4	Approved persons	SUP 10.1, APER 1.1.4G and APER 2.1.1AP	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.
5	The threshold conditions	COND 1.1.4G (Where?)	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.

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).

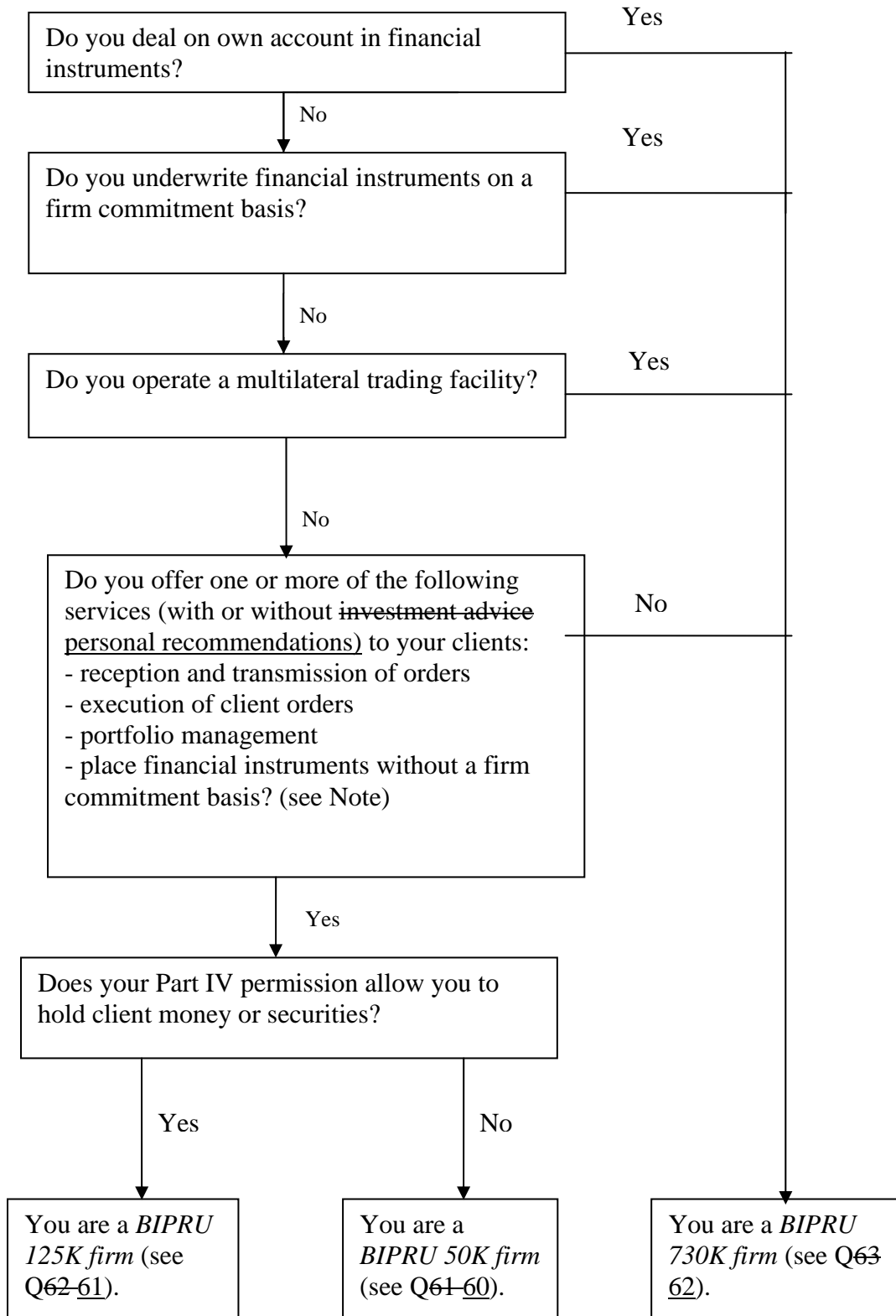
Q72. Will a branch need to report to the competent authority of the Member State where it is located?

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?



ADDENDUM

MIFID (DEFERRED MATTERS AND CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2007

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In Annex O to this instrument amend Chapter 2 of MCOB as follows:

2.1.2 R Table

This table belongs to *MCOB 2.1.1R*

(1) Category of firm	(2) Applicable section
...	...
<i>home purchase provider</i>	... , <i>MCOB 2.7A</i> and <i>MCOB 2.8.6G</i>
...	...
<i>a firm that communicates or approves a financial promotion of qualifying credit or of a home reversion plan</i>	... , <i>MCOB 2.7A</i> and <i>MCOB 2.8</i> (except <i>MCOB 2.8.6G</i>)
<i>a firm that communicates or approves a financial promotion of a home purchase plan</i>	... , <i>MCOB 2.7A</i> and <i>MCOB 2.8.6G</i>

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

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
1.1	COBS 3	G	... (6) COBS TP 31.9 contains...	From 1 November 2007 indefinitely	1 November 2007
...
			<u>Categorisation of new clients before 30 June (business that is not MiFID or equivalent third country business)</u>		
1.9	COBS 3	R	(1) A new <i>client</i> that could have been correctly categorised as an <i>intermediate customer</i> under the <i>rules</i> in force on 31 October 2007: (a) may be treated as an <i>elective professional client</i> if it could have been categorised as an expert <i>private customer</i> that had been categorised as an <i>intermediate customer in accordance with COB 4.1.9R</i> on the basis of its experience and understanding; or (b) otherwise may be treated as a <i>per se</i>	From 1 November 2007 to 30 June 2008	1 November 2007

		<p><i>professional client</i>, subject to (3) below.</p> <p>(2) A <i>firm</i> may categorise as an <i>eligible counterparty</i> or a <i>per se professional client</i> any new <i>client</i> that could have been correctly categorised as a an <i>market counterparty</i> under the <i>rules</i> in force on 31 October 2007, provided that the <i>firm</i> may only treat the <i>client</i> as an <i>eligible counterparty</i> for the purposes of <i>eligible counterparty business</i>.</p> <p>(3) <i>Clients</i> categorised under <i>COBS TP 3.9</i> must be dealt with in accordance with the relevant procedures and notifications in <i>COBS 3</i>.</p> <p><u>(4) This rule only applies in relation to business that is not <i>MiFID</i> or equivalent third country business.</u></p>		
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1 November 2007