

THIRD PARTY PROCESSORS INSTRUMENT 2005

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 146 (Money laundering rules);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 June 2005.

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).

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
Insurance: Conduct of Business sourcebook (ICOB)	Annex C
Mortgages: Conduct of Business sourcebook (MCOB)	Annex D
Money Laundering sourcebook (ML)	Annex E
Supervision manual (SUP)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G

Citation

- E. This instrument may be cited as the Third Party Processors Instrument 2005.

By order of the Board
19 May 2005

Amended by Addendum
24 May 2005

Annex A

Amendments to the Glossary of definitions

In this Annex all the text is new and is not underlined.

Insert the following new definition in the appropriate alphabetical position:

- third party processor*
- (1) A *firm* ("Firm A") which carries on *regulated mortgage activities* or *insurance mediation activities* in relation to *non-investment insurance contracts*, or both, for another *firm* (or an *appointed representative*) ("Firm B") under a properly documented *outsourcing* agreement, the terms of which provide that when Firm A carries on any of these activities ("the outsourced activities") for Firm B:
 - (a) Firm A acts only on the instructions of Firm B;
 - (b) in any communication with a *customer*, Firm A represents itself as Firm B;
 - (c) Firm A undertakes to co-operate fully with Firm B in relation to any complaints arising from Firm A's performance of the outsourced activities, even if the complaint is made after Firm A has ceased to carry on the outsourced activities for Firm B; and
 - (d) Firm B accepts full responsibility for the acts and omissions of Firm A when carrying on the outsourced activities and must pay any redress due to the *customer*.
 - (2) A *firm* ("Firm C") which carries on *regulated mortgage activities* or *insurance mediation activities* in relation to *non-investment insurance contracts*, or both, for a *third party processor* within (1) ("Firm A"), where:
 - (a) the *outsourcing* agreement between Firm A and the *firm* for which Firm A is carrying on outsourced activities ("Firm B") authorises Firm A to outsource some or all of those activities to third parties which are *firms*, and identifies Firm C by name as one of those third parties;
 - (b) under the *outsourcing* agreement between Firm A and Firm B, Firm B accepts full responsibility for the acts and omissions of Firm C when carrying on the activities which are outsourced to it by Firm A; and
 - (c) there is a properly documented *outsourcing* agreement between Firm C and Firm A the terms of which provide that when Firm C carries on any of the outsourced

activities:

- (i) Firm C acts only on the instructions of Firm A;
- (ii) in any communication with a customer, Firm C represents itself as Firm B; and
- (iii) Firm C undertakes to co-operate fully with Firm A and Firm B in relation to any complaints arising from Firm C's performance of the outsourced activities, even if the complaint is made after Firm C has ceased to carry on the outsourced activities for Firm A.

Annex B

Amendments to General Provisions

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

Annex amended by Addendum

Disclosure in letters to private customers

- 4.3.1R (1) Subject to (2), (3) and (4), a~~A~~ firm must take reasonable care to ensure that every letter (or electronic equivalent) which it or its employees send to a private customer, with a view to or in connection with the firm carrying on a regulated activity, includes the disclosure in GEN 4 Ann 1R.
- (2) Where a firm has outsourced activities to a third party processor, (1) does not apply to that third party processor when acting as such, so long as the outsourcing firm ensures that the third party processor and its employees comply with (1) as if it was the firm and they were employees of the firm.
- (3) Where an appointed representative has outsourced insurance mediation activities in relation to non-investment insurance contracts or mortgage mediation activities to a third party processor, (1) does not apply to that third party processor when acting as such, so long as the appointed representative's principal ensures that the third party processor and its employees comply with (1) as if it was the appointed representative and they were the employees of the appointed representative.
- (4) Where an appointed representative of a firm is carrying on:
- (a) insurance mediation activities in relation to non-investment insurance contracts; or
- (b) mortgage mediation activities;
- which have been outsourced to it by the firm, (1) does not apply to the firm when the appointed representative is carrying on the outsourced activities, so long as the firm ensures that the appointed representative and its employees comply with (1) as if it was the firm and they were employees of the firm.

...

Annex C

Amendments to Insurance: Conduct of Business sourcebook

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

1.2.1R (1) Except as provided for in *ICOB* 1.2.8R to ~~*ICOB* 1.2.16G~~*ICOB* 1.2.15R, *ICOB* applies to:

(~~1a~~) an *insurance intermediary*, including an *insurer*, when it carries on *insurance mediation activities* for a *customer* in relation to a *non-investment insurance contract* or enters into a *distance non-investment mediation contract* with a *retail customer*;

(~~2b~~) ...

(~~3c~~) ...

(~~4d~~) ...

(~~5e~~) ...

(~~6f~~)

(2) Where a firm (or its appointed representative) has outsourced insurance mediation activities to a third party processor, any rule in *ICOB* which requires the third party processor, when acting as such, to disclose its identity to a customer must be read as requiring disclosure of the identity of the firm (or appointed representative, as appropriate) which is taking responsibility for the acts and omissions of the third party processor when carrying on the outsourced activities.

1.2.2G ...

(3) Firms which outsource regulated activities are reminded of the guidance on outsourcing in SYSC 3.2.4G.

...

4.2.8R Table: Information to be provided before conclusion of the contract or immediately after conclusion of the contract

This table belongs to *ICOB* 4.2.2R.

(1)	...
	...
(4)	Unless the <i>insurance intermediary</i> is an <i>insurer</i> , <u>or a third party processor acting as such on behalf of an insurer</u> , details of any holding...
(5)	Unless the <i>insurance intermediary</i> is an <i>insurer</i> , <u>or a third party processor acting as such on behalf of an insurer</u> , details of any holding...

...

...

4.2.19R (1) Unless (3) applies, An insurance intermediary...

(2) ...

(3) (1) does not apply to an insurance intermediary when acting as a third party processor.

Annex D

Amendments to Mortgages: Conduct of Business sourcebook

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

1.2.1R (1) *MCOB* applies to every *firm* that:

~~(1)~~(a) carries on *regulated mortgage activities* (subject to *MCOB* 1.2.3R(1)); or

~~(2)~~(b) *communicates* or *approves* a *qualifying credit promotion*.

(2) Where a *firm* has outsourced activities to a *third party processor*, any rule in *MCOB* which requires the *third party processor*, when acting as such, to disclose its identity to a *customer* must be read as requiring disclosure of the identity of the *firm* (or *appointed representative*, as appropriate) which is taking responsibility for the acts and omissions of the *third party processor* when carrying on the outsourced activities.

1.2.1AG *Firms* which outsource *regulated activities* are reminded of the *guidance on outsourcing* in SYSC 3.2.4G.

...

Annex E

Amendments to Money Laundering sourcebook

In this Annex, underlining indicates new text.

1.1.4R In this sourcebook, “*relevant regulated activities*” means any *regulated activity* apart from:

(1) ...

...

(5) *mortgage mediation activity* and administering a regulated mortgage contract.

...

Annex F

Amendments to Supervision manual

In this Annex, underlining indicates new text.

16.7.77R

...

Note 4 = A *firm* which submits an *MLAR* is not required to submit sections A and B of the *RMAR*. A *firm* which submits an *MLAR* and which carries on the activities of a *third party processor* is not required to submit an *RMAR* in respect of those activities.

...

Annex G

Amendments to Dispute Resolution: Complaints sourcebook

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

1.1.1R Subject to *DISP 1.1.1AR*,tThis chapter applies to every *firm*...

1.1.1AR Where a *firm* has outsourced activities to a *third party processor*, *DISP 1.1.1R* does not apply to the *third party processor* when acting as such, but applies to the *firm* which is taking responsibility for the acts and omissions of the *third party processor* in respect of the outsourced activities.

...

ADDENDUM

THIRD PARTY PROCESSORS INSTRUMENT 2005

In this Addendum, the entire text is new and replaces the existing text in Annex B (Amendments to General Provisions). The effect of this is that GEN 4.3.1R remains unamended and the exception to it is contained in a new provision, namely GEN 4.3.6R.

Insert the following new provision:

Exception: use of third party processors in mortgage and non-investment insurance business

- 4.3.6R (1) Where a *firm* has outsourced activities to a *third party processor*, GEN 4.3.1R does not apply to that *third party processor* when acting as such, so long as the outsourcing *firm* ensures that the *third party processor* and its *employees* comply with that *rule* as if it was the *firm* and they were *employees* of the *firm*.
- (2) Where an *appointed representative* has outsourced *insurance mediation activities* in relation to *non-investment insurance contracts* or *mortgage mediation activities* to a *third party processor*, GEN 4.3.1R does not apply to that *third party processor* when acting as such, so long as the *appointed representative's principal* ensures that the *third party processor* and its *employees* comply with that *rule* as if it was the *appointed representative* and they were the *employees* of the *appointed representative*.
- (3) Where an *appointed representative* of a *firm* is carrying on:
- (a) *insurance mediation activities* in relation to *non-investment insurance contracts*; or
 - (b) *mortgage mediation activities*;

which have been outsourced to it by the *firm*, GEN 4.3.1R does not apply to the *firm* when the *appointed representative* is carrying on the outsourced activities, so long as the *firm* ensures that the *appointed representative* and its *employees* comply with that *rule* as if it was the *firm* and they were *employees* of the *firm*.

Addendum
24 May 2005