

**HANDBOOK ADMINISTRATION (NO 12) INSTRUMENT 2009****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Act:
    - (a) section 138 (General rule-making power);
    - (b) section 139 (Miscellaneous ancillary powers);
    - (c) section 145 (Financial promotion rules);
    - (d) section 156 (General supplementary powers);
    - (e) section 157(1) (Guidance);
    - (f) section 213 (The compensation scheme);
    - (g) section 214 (General); and
    - (h) section 395 (The Authority's procedures); and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 6 February 2009.

**Amendments to the Handbook and related material**

- D. The modules of the FSA Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Fit and Proper test for Approved Persons (FIT)	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Client Assets sourcebook (CASS)	Annex D
Market Conduct sourcebook (MAR)	Annex E
Supervision manual (SUP)	Annex F
Decision Procedure and Penalties manual (DEPP)	Annex G
Compensation sourcebook (COMP)	Annex H

**Notes**

- E. In the Annexes to this instrument, the Notes (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- F. This instrument may be cited as the Handbook Administration (No 12) Instrument 2009.

By order of the Board  
22 January 2009

## Annex A

### Amendments to the Fit and Proper test for Approved Persons (FIT)

In this Annex, underlining indicates new text.

#### 2.1 Honesty, integrity and reputation

- 2.1.1 G In determining a *person's* honesty, integrity and reputation, the *FSA* will have regard to all relevant matters including, but not limited to, those set out in *FIT* 2.1.3G which may have arisen in the *United Kingdom* or elsewhere.

...

...

#### 2.2 Competence and capability

- 2.2.1 G In determining a *person's* competence and capability, the *FSA* will have regard to all relevant matters including but not limited to:

...

## Annex B

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

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

#### 16.2 Occasional reporting

Execution of orders other than when managing investments

- 16.2.1 R (1) If a *firm* has carried out an order in the course of its *designated investment business* on behalf of a *client*, it must:
- (a) ...
  - (b) in the case of a *retail client*, send the *client* a notice in a *durable medium* confirming the execution of the order and such of the *trade confirmation information* (COBS 16 Annex 1R) as is applicable:
    - (i) as soon as possible and no later than the first *business day* following that execution; or
    - (ii) if the confirmation is received by the *firm* from a third party, no later than the first *business day* following receipt of the confirmation from the third party; and
  - (c) ...
- ...
- (5) If a *firm* carries out an order for a *retail client* relating to *units* or *shares* in a collective investment undertaking that is part of a series of orders that are executed periodically, it must:
- (a) ...
  - (b) provide the *client* at least once every six months with such of the *trade confirmation information* (COBS 16 Annex 1R) as is applicable in relation to each transaction in that series carried out in the relevant reporting period.

[**Note:** article 40 paragraphs (1) to (4) of the *MiFID implementing Directive*]

...

### 16.3 Periodic reporting

Provision by the firm and contents

- 16.3.1 R (1) ...
- (2) If the *client* is a *retail client*, the *periodic statement* must include such of the *periodic information* (COBS 16 Annex 2R) as is applicable.

[Note: article 41(1) and (2) of the *MiFID implementing Directive*]

...

### 16.6 Communications to clients – life insurance, long term care insurance and income withdrawals

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- 16.6.1 R (1) This section applies to a *long-term insurer*, unless, at the time of application, the *client*, other than an *EEA ECA recipient*, was *habitually resident*:

(1a) in an *EEA State* other than the *United Kingdom*; or

(1b) outside the *EEA* and he was not present in the *United Kingdom*.

(2) In addition, COBS 16.6.8R applies to an operator of a personal pension scheme or stakeholder pension scheme in relation to a retail client who elects to make 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*~~ *operator of a personal pension scheme or stakeholder pension scheme* must:

(1) provide the *retail client* with such information ~~required by COBS 13 Annex 2 2.9R as will enable~~ as is necessary for the retail client to review the election, including where relevant the information required by COBS 13 Annex 2 2.9R; and

(2) ...

16 Annex 1R Trade confirmation and periodic information

This annex forms part of *COBS* 16.2.1R

	The information below must be provided, where relevant for the purposes of reporting to a <i>retail client</i> , in accordance with <i>SUP</i> 17 Annex 1	(1) Trade confirmation information	(2) Periodic information (where trade confirmation information is not provided on a transaction by transaction basis, to be provided for each transaction carried out during the reporting period)
	General		
...			
13.	a total sum of the commissions and expenses charged ( <u>for a <i>CIS operator</i>, initial charges may be disclosed in cash or percentage terms</u> ) and, where the <i>retail client</i> so requests, an itemised breakdown, including, where relevant, the amount of any <i>mark-up or mark-down</i> imposed by the <i>firm</i> or its <i>associate</i> where the <i>firm</i> or <i>associate</i> acted as <i>principal</i> in <i>executing</i> the transaction, and the <i>firm</i> owes a duty of best execution to the <i>client</i> ;	Y	Y
...			
...			

## Annex C

### 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.

Risk warning

...

- 5.6.65 R The following text must be included at the end of Section 7 ‘Are you comfortable with the risks?’: ‘The FSA’s information sheet “You can afford your mortgage now, but what if...?” will help you consider the risks. You can get a free copy from ~~www.fsa.gov.uk/consumer~~ www.moneymadeclear.fsa.gov.uk, or by calling 0845 ~~456 1555~~ 606 1234.’

...

Risk warning

...

- 5.6.145 R The following text must be included at the end of Section 7 ‘Are you comfortable with the risks?’: ‘The FSA’s information sheet “You can afford your mortgage now, but what if...?” will help you consider the risks. You can get a free copy from ~~www.fsa.gov.uk/consumer~~ www.moneymadeclear.fsa.gov.uk, or by calling 0845 ~~456 1555~~ 606 1234.’

...

- 5 Annex 1R The mortgage illustration: table of contents, prescribed text and prescribed section headings and subheadings.

...

#### **[...]. Where can you get more information about mortgages?**

The FSA publishes useful guides on choosing a mortgage. These are available free through its website: ~~www.fsa.gov.uk/consumer~~ www.moneymadeclear.fsa.gov.uk, or by calling 0845 ~~456 1555~~ 606 1234. The website also provides Comparative Tables to help you shop around.

...

9 Annex 1R The illustration: table of contents, prescribed text and prescribed section headings and subheadings (R).

...

1. About this information
<p>...</p> <p>The FSA provides useful information on lifetime mortgages and of other ways of releasing equity from your home in a booklet called 'Raising money from your home'. You can get this free through the FSA website <del>www.fsa.gov.uk/consumer</del> <a href="http://www.moneymadeclear.fsa.gov.uk">www.moneymadeclear.fsa.gov.uk</a>, or by calling 0845 <del>456 1555</del> <u>606 1234</u>.</p>

...

9 Annex 2R The illustration: table of contents, prescribed text and prescribed section headings and subheadings (R).

...

1. About this information
<p>...</p> <p>The FSA provides useful information on ways of releasing equity from your home in a booklet called 'Raising money from your home'. You can get this free through the FSA website <del>www.fsa.gov.uk/consumer</del> <a href="http://www.moneymadeclear.fsa.gov.uk">www.moneymadeclear.fsa.gov.uk</a>, or by calling 0845 <del>456 1555</del> <u>606 1234</u>.</p>

...

TP 1.1 Transitional Provisions

(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
...					
<u>12</u>	<u>MCOB 5.6.2R, MCOB 5.6.5R, MCOB 5.6.65R, MCOB 5.6.121R, MCOB 5.6.145R and MCOB 5 Annex 1R</u>	<u>R</u>	<u>A firm may continue to use an illustration that has been prepared in accordance with the rules in MCOB 5.6 in effect at 5 February 2009.</u>	<u>From 6 February 2009 to 6 February 2010.</u>	<u>6 February 2009</u>

...

TP 2.1 Transitional Provisions for home purchase plans and home reversion plans

(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
...					
<u>5</u>	<u>MCOB 9.4.2R, MCOB 9.4.5R, MCOB 9.4.18R and MCOB 9 Annex 1R</u>	<u>R</u>	<u>A firm may continue to use an illustration that has been prepared in accordance with the rules in MCOB 9.4 in effect at 5 February 2009.</u>	<u>From 6 February 2009 to 6 February 2010.</u>	<u>6 February 2009</u>
<u>6</u>	<u>MCOB 9.4.2R, MCOB 9.4.5R, MCOB 9.4.133R and MCOB 9 Annex 2R</u>	<u>R</u>	<u>A firm may continue to use an illustration that has been prepared in accordance with the rules in MCOB 9.4 in effect at 5 February 2009.</u>	<u>From 6 February 2009 to 6 February 2010.</u>	<u>6 February 2009</u>

## Annex D

### Amendments to the Client Assets sourcebook (CASS)

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

#### 6.4 Use of safe custody assets

6.4.1 R ...

(4) A firm which does not undertake MiFID business does not need to comply with (1), (2) and (3) until 1 May 2009.

...

...

~~Exchange~~ Exchanges, ~~clearing house~~ houses, intermediary ~~broker~~ brokers or OTC ~~counterparty~~ counterparties

7.8.2 R (1) A firm which undertakes any *contingent liability investment* for clients through an ~~exchange, clearing house, intermediate broker or OTC~~ counterparty must, before the *client transaction account* is opened with the ~~exchange, clearing house, intermediate broker or OTC~~ counterparty:

...

(c) require the person with whom the account is to be opened to acknowledge in writing that the *firm's client transaction account* is not to be combined with any other account, nor is any right of set-off to be exercised by that *person* against *money* credited to the *client transaction account* in respect of any sum owed to that person on any other account.

(2) If the ~~exchange, clearing house, intermediate broker or OTC~~ counterparty does not provide the required acknowledgement within 20 *business days* of the dispatch of the notice and instruction, the *firm* must cease using the *client transaction account* with that *broker* or counterparty and arrange as soon as possible for the transfer or liquidation of any open positions and the repayment of any *money*.

## Annex E

### Amendments to the Market Conduct sourcebook (MAR)

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

#### 4 ~~Endorsement of the Takeover Code~~ Support of the Takeover Panel's Functions

...

#### 6 Systematic Internalisers

...

6.10.1 R A *systematic internaliser* must, while complying with the obligation to execute orders on terms most favourable to the *client* set out in ~~COBS 12.2~~ 11.2, execute an order up to standard market size received from a *retail client* in relation to shares for which it is a *systematic internaliser*:

...

...

6.12.2 R Where a *systematic internaliser* quotes in different sizes and it receives a *client* order between those sizes, the order may be executed:

- (1) at one of the quoted prices in compliance with the client order handling rules set out in ~~COBS 12.3~~ 11.3, ~~COBS 12.4.1R~~ 11.4.1R and ~~COBS 12.4.5R~~ 11.4.5R; or
- (2) if it is a *professional client* order, as permitted under the execution price provisions in MAR 6.11.1R.

...

...

6.14.2 R A *systematic internaliser* may limit the total number of transactions from different *clients* at the same time that it undertakes to enter at the published quote, provided it does so:

- (1) in a non-discriminatory way within the categories of *retail* and *professional clients*;
- (2) in accordance with the provisions of the *client* order handling rules set out in ~~COBS 12.3~~ 11.3, ~~COBS 12.4.1R~~ 11.4.1R and ~~COBS 12.4.5R~~ 11.4.5R; and

...

## Annex F

### Amendments to the Supervision manual (SUP)

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

#### 16.12 Integrated Regulatory Reporting

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16.12.2 G ...

- (3) The requirements in this section differ according to a *firm's regulated activity group (RAG)*, as different information is required to reflect different types of business. Standard formats are used for reporting, to ~~assist~~ assist compatibility between *firms* which carry on similar types of business. Timely submission is important to ensure the *FSA* has up-to-date information.

## Annex G

### Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Annex 1      Warning notices and decision notices under the Act and certain other enactments

...

Section of the Act	Description	Handbook reference	Decision maker
...	...	...	...
87M(2)/(3)	...	...	...
<u>88(4)/(6)</u>	<u>when the FSA is proposing or deciding to (1) refuse a <i>person's</i> application for approval as a <i>sponsor</i>; or (2) on its own initiative, cancel a <i>person's</i> approval as a sponsor</u>	<u>LR 8</u>	<u>RDC</u>
89(2)/(3)	...	...	...
...			

## Annex H

### Amendments to the Compensation sourcebook (COMP)

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

Sch 1 Record-keeping requirements

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>FEES</i> 6.3.14R	...	...	...	...
<u>COMP</u> 10.2.10R(3)	<u>Potential claimants for whom the separate limit under COMP 10.2.10R(2) applies</u>	<u>Sufficient details to enable the identification of claimants for whom the separate limit under COMP 10.2.10R(2) applies</u>	<u>As implicit from the rules in COMP</u>	<u>As implicit from the rules in COMP</u>