

HANDBOOK ADMINISTRATION (NO 11) INSTRUMENT 2008

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes the changes to the rule in Annex I to this instrument for:
- (1) licensees relating to the Consumer Credit Jurisdiction; and
 - (2) VJ participants relating to the Voluntary Jurisdiction;
- in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (a) section 226A (Consumer credit jurisdiction); and
 - (b) section 227 (Voluntary jurisdiction); and
 - (c) paragraph 18 of Schedule 17 (The Ombudsman Scheme).
- B. The making of the changes in Annex I by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

Powers exercised by the Financial Services Authority

- C. 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 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 213 (The compensation scheme);
 - (e) section 214 (General);
 - (f) section 223 (Management expenses);
 - (g) section 226 (Compulsory jurisdiction);
 - (h) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
 - (i) paragraph 13 (Authority’s procedural rules) of Schedule 17 (The Ombudsman Scheme); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- D. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.
- E. The Financial Services Authority consents to and approves the changes to the rule in Annex I to this instrument being made by the Financial Ombudsman Service Limited.

Commencement

F. This instrument comes into force on 6 November 2008.

Amendments to the Handbook and related material

G. 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)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Threshold Conditions (COND)	Annex C
General Provisions (GEN)	Annex D
Fees manual (FEES)	Annex E
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Supervision manual (SUP)	Annex H
Dispute Resolution: Complaints sourcebook (DISP)	Annex I
Compensation sourcebook (COMP)	Annex J

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

Citation

I. This instrument may be cited as the Handbook Administration (No 11) Instrument 2008.

By order of the Board of the Financial Ombudsman Service Limited
27 October 2008

By order of the Board of the Financial Services Authority
29 October 2008

Annex A

Amendments to the Glossary of definitions

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

- administrative functions* (a) (in relation to managing *investments*):
...
(iv) *ISA*, ~~*PEP*~~ or *CTF* administration;
...
...
- collective insurance* (in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph VIII of Part II of Schedule 1 to the *Regulated Activities Order* (Contracts of long-term insurance), of a kind referred to in article ~~1(2)(e)~~ 2(2)(e) of the ~~*First Life Directive*~~ *Consolidated Life Directive* (“the operations carried out by insurance companies such as those referred to in Chapter 1, Title 4 of Book IV of the French “Code des assurances””).
- credit institution* (1) (except in *REC*) (in accordance with articles 4(1) and 107 of the *BCD*);
- (a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; or
- (b) an electronic money institution within the meaning of the *E-Money Directive*;
- but so that:
- (c) (except for the purposes of *GENPRU*, *ELM*, *BIPRU* and *IPRU(INV)* (in so far as it relates to *exempt CAD firms*)) an institution within ~~(2)~~ (1)(b) that does not have the right to benefit from the mutual recognition arrangements under *BCD* is excluded; and
- (d) for the purposes of *BIPRU* 10 (Concentration risk requirements):
- (i) a credit institution as defined by (1)(a) to ~~(2)~~ (1)(b) that has been authorised in an *EEA State*; or
- (ii) any private or public undertaking which meets the definition in (1)(a) – ~~(2)~~ (1)(b) and which has

been authorised in a *non-EEA state*.

...

...

<i>full BCD credit institution</i>	a <i>BCD credit institution</i> that falls within paragraph (1)(a) of the definition of <i>credit institution</i> .
<i>full credit institution</i>	a <i>credit institution</i> that falls within paragraph (1)(a) of the definition of <i>credit institution</i> .
<i>group personal equity plan</i>	(as defined in regulation 2 of the Personal Equity Plan Regulations 1989) a general plan: <ul style="list-style-type: none">(a) of which the <i>plan manager</i> is the <i>authorised fund manager</i>, or in the same group as the <i>authorised fund manager</i>, of the <i>authorised fund</i> by reference to <i>units</i> in which the <i>plan register</i> is being, or is proposed to be, maintained; and(b) for the account of which there is no holding of <i>units</i> in a <i>collective investment scheme</i> other than a holding of <i>units</i> in one or more <i>authorised funds</i> managed by (or, in the case of an <i>ICVC</i>, whose <i>ACD</i> is) the <i>plan manager</i> or a <i>body corporate</i> in the same group as the <i>plan manager</i>.
<i>group plan</i>	a group personal equity plan , a <i>group ISA</i> or a <i>group savings plan</i> .
<i>Insurance Directives</i>	the First Life Directive, Second Life Directive, Third Life Directive and Consolidated Life Directive and the <i>First Non-Life Directive, Second Non-Life Directive and Third Non-Life Directive</i> .
<i>money laundering reporting officer</i>	the individual appointed by a <i>firm</i> in accordance with SYSC 3.2.6IR or SYSC 6.3.9R.
<i>packaged product</i>	<ul style="list-style-type: none">(a) a <i>life policy</i>;(b) a <i>unit</i> in a <i>regulated collective investment scheme</i>;(c) an interest in an <i>investment trust savings scheme</i>;(d) a <i>stakeholder pension scheme</i>;(e) a <i>personal pension scheme</i>; whether or not (in the case of (a), (b) or (c)) held within a PEP , an <i>ISA</i> or a <i>CTF</i> and whether or not the packaged product <i>packaged product</i> is also a <i>stakeholder product</i> .
<i>participation</i>	(for the purposes of <i>ELM</i> , <i>UPRU</i> and <i>GENPRU</i> and for the purposes of <i>BIPRU</i> and <i>INSPRU</i> as they apply on a consolidated basis): <ul style="list-style-type: none">(a) a participating interest may be defined according to:

...

(iii) paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409) where applicable; or

(iv) paragraph 8 of Schedule 4 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913) where applicable; or

(v) paragraph 8 of Schedule 5 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912) where applicable; or

(b) (otherwise) the direct or indirect ownership of 20% or more of the voting rights or capital of an *undertaking*;

but excluding the interest of a *parent undertaking* in its *subsidiary undertaking*.

OPS firm

(a) (except in *IPRU(INV)*) a *firm* which:

...

(ii) is one of more of the following:

...

(C) a *company* which is:

...

(III) an administering authority subject to the Local Government Superannuation Regulations 1986 Local Government Pension Scheme (Administration) Regulations 2008; or

...

PEP

~~a *personal equity plan*.~~

PEP manager

~~the *plan manager* of a *PEP* in accordance with the Personal Equity Plan Regulations 1989.~~

PEP transfer

~~a transaction resulting from a decision, made with or without advice from a *firm*, by a *customer* who is an individual, to transfer the *investments* (or their value) held in his existing *PEP* in favour of another *PEP* which may or may not be managed by the same *PEP manager*.~~

<i>personal equity plan</i>	a scheme of investment satisfying the conditions prescribed in regulations made by the Treasury under section 333 of the Income and Corporation Taxes Act 1988 (the Personal Equity Plan Regulations 1989).
<i>plan manager</i>	<p>in relation to:</p> <ul style="list-style-type: none"> (a) a group personal equity plan, the PEP manager, [deleted] (b) a group ISA, the ISA manager; (c) a group savings plan, the person primarily responsible for that group savings plan.
<i>regulated collective investment scheme</i>	<ul style="list-style-type: none"> (a) an ICVC; (b) an AUT; or (c) a recognised scheme; <p>whether or not the <i>units</i> are held within a <u>an PEP, ISA, or personal pension scheme</u>.</p>
<i>social insurance</i>	(in relation to a <i>class of contract of insurance</i>) the <i>class of contract of insurance</i> , specified in paragraph IX of Part II of Schedule 1 to the <i>Regulated Activities Order</i> (Contracts of long-term insurance), of a kind referred to in article 1(3) 2(3) of the <i>First Life Directive Consolidated Life Directive</i> (“operations relating to the length of human life which are prescribed by or provided for in <i>social insurance</i> legislation, when they are effected or managed at their own risk by assurance undertakings in accordance with the laws of an <i>EEA State</i> ”).
<i>State of the commitment</i>	<p>(in accordance with paragraph 6(1) of Schedule 12 to the <i>Act</i> (Transfer schemes: certificates)) (in relation to a commitment entered into at any date):</p> <ul style="list-style-type: none"> (a) if the <i>policyholder</i> is an individual, the State in which he had his habitual residence at that date; (b) if the <i>policyholder</i> is not an individual, the State in which the establishment of the <i>policyholder</i> to which the commitment relates was established at that date; <p>in this definition, “commitment” means (in accordance with article 2 of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625)) any contract of insurance of a kind referred to in article 1 2 of the <i>First Life Directive Consolidated Life Directive</i>.</p>

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

retail (investment) customer (in relation to a *firm's permission* and the *FSA Register*) a *retail client*.

retail (non-investment insurance) customer (in relation to a *firm's permission* and the *FSA Register*) a *consumer* or a *customer* acting in the capacity of both a *consumer* and a *commercial customer* (see *ICOBS 2.1.3G*).

Annex B

Amendments to the Principles for Businesses (PRIN)

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

Where?

- 4.1.2 G Under *PRIN* 3.3.1R, the territorial application of a number of *Principles* to a *UK MiFID investment firm* is extended to the extent that another applicable rule which is relevant to an activity has a wider territorial scope. Under *PRIN* 3.1.1R, the territorial application of a number of *Principles* to an *EEA MiFID investment firm*, is narrowed to the extent that responsibility for the matter in question is reserved to the *firm's Home State regulator*. These modifications are relevant to *Principles* 1, 2, 3, 6, 7, 8, 9 and 10. We have added further guidance in *PERG* on the ability of a *Host State* to impose conduct of business requirements (see Q67).

Annex C

Amendments to the Threshold Conditions (COND)

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

- 2.1.2 G Section 40(1) of the *Act* (Application for permission) allows an application to be made to the *FSA* for *Part IV permission* by an individual, a *body corporate*, a *partnership* or an unincorporated association. However, in the case of the *regulated activities* of *accepting deposits* and *effecting or carrying out contracts of insurance*, ~~article 1 of the *Banking Consolidation Directive*, and article 8(1) of the *First Non-Life Directive* and of the *First Life Directive*~~ *Consolidated Life Directive* place further limits on the legal forms a *firm* may take. The *Act* implements the provisions of the directives and extends some of these limits to *firms* that are outside the scope of the directives.

Annex D

Amendments to the General Provisions (GEN)

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

GEN TP 1.2 Table 2: Transitional Provisions applying across the Handbook

(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
...					
25	References in the <i>Handbook</i> (except those in <i>LR</i> , <i>PR</i> and <i>DTR</i>) to Companies Act 1985 provisions which have been repealed, in whole or in part, by the Companies Act 2006.	R	Each reference is to be read as a reference to the corresponding provision of the Companies Act 2006 and related provisions taking into account any relevant commencement, transitional or savings provisions made under that Act or related provisions.	From 6 April 2008 until 4 <u>1</u> November 2008 <u>2009</u>	various
26	Paragraph 25	G	(1) The purpose of the transitional provision in paragraph 25 is to ensure the effectiveness of provisions which have been, or will be, repealed by the Companies Act 2006 until each cross reference or dependency in the <i>Handbook</i> is reviewed and updated as appropriate.	From 6 April 2008 until 4 <u>1</u> November 2008 <u>2009</u>	various

		(2) The references to provisions which have been repealed, in whole or in part, are primarily to the Companies Act 1985, the Companies Act 1989 and the various Companies (Northern Ireland) Orders.		
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Annex E

Amendments to the Fees manual (FEES)

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

4 Annex 1R Activity groups, tariff bases and valuation dates applicable

Part 2 ...

Activity group	Tariff-base
...	
A.9	GROSS INCOME ...
	PLUS <ul style="list-style-type: none"> • any additional initial or management charges levied through a product wrapper such as a PEP or an ISA; BUT EXCLUDING box management profits. ...
...	

4 Annex 2R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April 2008 to 31 March 2009

...

Part 4	
This table shows the calculation of the Solvency 2 fee for <i>firms</i> falling into fee block A3 or A4	
...	

(6)	For the purpose of (3) <i>firms</i> falling into (2) that are in the same group at the start of the financial year 2008/9 must be treated as a single <i>firm</i> , so that the total number of <i>firms</i> liable to pay the Solvency 2 fee may be greater than 40 <u>20</u> .
...	

4 Annex 3R Transaction reporting fees

Transaction reporting fees for the period from 1 April ~~2007~~ 2008 to 31 March ~~2008~~ 2009

This table shows the fees payable for *firms* using the FSA's Transaction Reporting System.

...

...

4 Annex 4 R Periodic fees in relation to collective investment schemes payable for the period 1 April 2008 to 31 March 2009

Part 1 – Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	Fee (£)
<i>ICVC, AUT, Section 264 of the Act or Section 270 of the Act</i>	640 <u>670</u>	1-2	1	670
		3-6	2.5	1,675
		7-15	5	3,350
		16-50	11	7,370
		>50	22	14,740
Section 272 of the <i>Act</i>	2,620 <u>2,730</u>	1-2	1	2,730
		3-6	2.5	6,825
		7-15	5	13,650
		16-50	11	30,030
		>50	22	60,060

...

...

Annex F

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) 5 APPENDIX 1 (INTERPRETATION)

plan investment means an *investment* included in a ~~PEP~~ or in any ISA component.

...

- 13.1 R (1) This chapter applies to a *firm* which is a *personal investment firm*.
- (2) For a *personal investment firm* which is an *exempt CAD firm* the following apply:
- (a) sections 13.1 and 13.1A; and
- (b) if it is not an *opted-in exempt CAD firm*, sections 13.2 to 13.8 or (if prior to 1 November 2007 the firm was subject to sections 13.9 to 13.12) 13.9 to 13.12 (see 13.1A.2); or
- (c) if it is an *opted-in exempt CAD firm*, sections 13.9 to 13.12 (but reading references to *Category B firm* as references to the *firm*).
- (3) Section 13.1 and sections 13.9 to 13.12 apply to a *personal investment firm* which is a *Category B firm*.
- (4) The definitions in the Glossary at Appendix 13(1) apply to this chapter.

...

- 13.1A.2 R The financial resources requirements for a *personal investment firm* which is an *exempt CAD firm* is the higher of:
- (1) the requirement that is applied by section 13.1A; and
- (2) (a) the requirement that is applied by sections 13.2 to 13.8; or
- (b) if it is an *opted-in exempt CAD firm*, (if prior to 1 November 2007 the firm was subject to sections 13.9 to 13.12) the requirement that is applied by those sections 13.9 to 13.12 (but reading references to *Category B firm* as references to the *firm*).

...

APPENDIX 13 (1): Defined terms for Chapter 13

opted-in exempt CAD firm an *exempt CAD firm* which complies with the requirements in regulation 4C (or any successor provision) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (SI 2007/126).

Annex G

Amendments to the Conduct of Business sourcebook (COBS)

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

9.4.1 R A firm must provide a *suitability report* to a *retail client* if the firm makes a *personal recommendation* to the *client* and the *client*:

(1) acquires a holding in, or *sells* all or part of a holding in:

...

(c) an *investment trust* where the relevant *shares* are to be held within an *ISA* ~~or *PEP*~~ which has been promoted as the means for investing in one or more specific *investment trusts*; or

...

...

15.2.1 R A consumer has a right to cancel any of the following contracts with a *firm*:

Cancellable contract	Cancellation period	Supplementary provisions
...
Non-life/pensions (advised but not at a distance): a non- <i>distance contract</i> ...		
<ul style="list-style-type: none"> ▪ to buy a <i>unit</i> in a <i>regulated collective investment scheme</i> (including within a <i>wrapper</i> or <i>pension wrapper</i>) ▪ to open or transfer a child trust fund (<i>CTF</i>) ▪ to open or transfer an <i>ISA</i> or <i>PEP</i> ▪ for an <i>Enterprise Investment Scheme</i> 	14 calendar days	<p>These rights arise only following a <i>personal recommendation</i> of the contract (by the <i>firm</i> or any other <i>person</i>).₂</p> <p>For a <i>unit</i> bought when opening or transferring a <i>wrapper</i> or <i>pension wrapper</i>, the 14 calendar day right to cancel applies to the entire arrangement.₂</p> <p>Exemptions may apply (see <i>COBS 15 Annex 1</i>).₂</p>
...		

...

15 Annex 1 Exemptions from the right to cancel

...

Exemptions for ISAs, ~~PEPs~~, CTFs and EISs (non-distance)

1.9 R There is no right to cancel a non-*distance contract*:

...

(3) ~~to transfer a PEP; or~~ [deleted]

(4) ...

provided that:

(5) (for an *EIS*, or *ISA* ~~or PEP~~) the right to cancel is replaced with a seven calendar day, pre-contract right to withdraw the *consumer's* offer; or

(6) the contract relates to an *EIS* or a non-*packaged product ISA*, ~~PEP~~ or *CTF* and is entered into following an explanation that neither a right to cancel nor a right to withdraw will apply given in accordance with the relevant rules on pre-contractual disclosure; or

...

...

Annex H

Amendments to the Supervision manual (SUP)

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

Purpose

- 16.4.4 G A *firm* and its *controllers* are required to notify certain changes in *control* (~~See see~~ *SUP* 11 (Controllers and close links)). The purpose of the *rules* and *guidance* in this section is:
- (1) to ensure that, in addition to such notifications, the *FSA* receives regular and comprehensive information about the identities of all of the *controllers* of a *firm*, which is relevant to a *firm's* continuing to satisfy the *threshold conditions* (see *COND* 2.3) and to the protection of *consumers*;
 - (2) to implement certain requirements relating to annual reporting of *controllers* which must be imposed on *firms* under the *Investment Services Directive*, the *Banking Consolidation Directive*, the ~~*Third Life Directive*~~ *Consolidated Life Directive* and the *Third Non-Life Directive*; and
 - (3) to support the *FSA's* functions under Part XII of the *Act* (Control over authorised persons) (see *SUP* 11 (Controllers and close links)).

Annex I

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

- 2.8.2 R The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:
- ...
- unless:
- (3) in the view of the *Ombudsman*, the failure to comply with the time limits in *DISP 2.8.2R* or *DISP 2.8.7R* was as a result of exceptional circumstances; or
- ...
- (5) the *respondent* has not objected, on the grounds that the time limits in *DISP 2.8.2R* or *DISP 2.8.7R* have been exceeded, to the *Ombudsman* considering the complaint.

Annex J

Amendments to the Compensation sourcebook (COMP)

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

- 3.2.3 G Examples of the circumstances covered by *COMP* 3.2.2R are:
- (1) when personal representatives make a *claim* on behalf of the deceased;
 - (2) when trustees make a *claim* on behalf of beneficiaries (for further provisions relating to *claims* by trustees, see *COMP* 12.6.1R to *COMP* 12.6.7R);
 - (3) when the donee of an enduring power of attorney or a lasting power of attorney makes a *claim* on behalf of the donor of the power;
 - (4) when the ~~Master of the~~ Court of Protection makes a *claim* on behalf of a *person* incapable by reason of mental disorder of managing and administering his property and affairs;
 - (5) when an *eligible claimant* makes a *claim* for compensation but dies before his *claim* is determined.

...

7.2.3 R ...

- (3) [deleted]

...

12.2.7 R ...

- (1) in calculating the claimant's overall net *claim*; and
- (2) ...

Annex K

Amendments to the Perimeter Guidance manual (PERG)

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

13.7 The territorial application of MiFID

Q67. What is the territorial application of MiFID?

...

~~We have added further guidance in PERG on the ability of a Host State to impose conduct of business requirements (see Q67).~~

...

Incoming electronic commerce communications (article 20B)

8.12.38 G Article 20B gives effect to the provisions of the *E-Commerce Directive* by exempting *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:

- (1) an advertisement by the *operator* of a UCITS of *units* in that *scheme*; or
- (2) an invitation or inducement to enter into a *contract of insurance* where:
 - (a) it is made by an undertaking which has received official authorisation in line with article ~~6~~ 4 of the ~~*First Life Directive*~~ *Consolidated Life Directive* or article 6 of the *First Non-life Directive*; and
 - (b) the insurance falls within the scope of any of the *Insurance Directives*; or
- (3) an unsolicited communication made by electronic mail.

For the purposes of (3), a communication is unsolicited unless it is made in response to an express request from its recipient.