

**Addendum to CP 07/9 *Conduct of Business regime: non-MiFID deferred matters.***

This addendum provides supplementary draft Handbook text to the material published in Appendix 1 of CP 07/9 *Conduct of Business regime: non-MiFID deferred matters* relating to:

- COBS 13.1.1G (Purpose of Investment research)
- COBS 3 (Client categorisation) Transitional Provisions

This material was not included in the original version of Appendix 1.

COBS 3 (Client categorisation) 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 |
|     |  |     | Overview of transitional provisions for client categorisation   |  |  |
| 3.1 | COBS 3   | G   | <p>(1) COBS TP 3.2 contains default transitional categorisation provisions in relation to the existing <i>clients</i> of a <i>firm</i> on 1 November 2007. In many cases, they allow a <i>client</i> to be automatically provided with the nearest equivalent categorisation under COBS 3 to their previous categorisation.</p> <p>(2) COBS TP 3.3 explains how the transitional provisions for <i>client</i> categorisation relate to the requirement for a <i>firm</i> to act if it becomes aware that an <i>elective professional client</i> no longer satisfies the initial conditions for its categorisation.</p> <p>(3) The default provisions do not prevent a <i>firm</i> categorising such a <i>client</i> differently in accordance with COBS 3. COBS TP 3.4 provides guidance on how some of the procedural requirements in COBS 3 apply in some such cases.</p> <p>(4) COBS TP 3.4 contains transitional notification obligations, which apply if the default provisions do not allow</p> | From 1 November 2007 indefinitely      | 1 November 2007                        |

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|     |               |   | <p>that <i>client</i> to be provided with the nearest equivalent categorisation or a <i>firm</i> chooses not to take advantage of those provisions in relation to a <i>client</i>.</p> <p>(5) <i>COBS</i> TP 3.5 contains a transitional notification obligation that applies to a <i>firm</i> that, in relation to <i>MiFID</i> or <i>equivalent third country business</i>, takes advantage of the default transitional categorisation provisions to classify a <i>client</i> as a <i>per se</i> professional <i>client</i>.</p> <p><u>(6) <i>COBS</i> TP 3.9 contains transitional categorisation provisions in relation to <i>clients</i> of a <i>firm</i> that are taken on between 1 November 2007 and 30 June 2008 in relation to business that is neither <i>MiFID</i> or <i>equivalent third country business</i>.</u></p> |                                   |                 |
|     |               |   | Categorisation of existing clients  |                                   |                 |
| 3.2 | <i>COBS</i> 3 | R | <p>(1) An existing <i>client</i> that was correctly categorised as a <i>private customer</i> immediately before 1 November 2007 is a <i>retail client</i> unless and to the extent it is given a different categorisation by the <i>firm</i> under <i>COBS</i> 3.</p> <p>(2) An existing <i>client</i> that was correctly categorised as an <i>intermediate customer</i> immediately before 1 November 2007:</p> <p>(a) is an <i>elective professional client</i> if it was an expert <i>private customer</i> that had been re-classified as an <i>intermediate</i></p>   | From 1 November 2007 indefinitely | 1 November 2007 |

|     |        |   |   |  |  |
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|     |        |   | <p><i>customer</i> on the basis of its experience and understanding; or</p> <p>(b) is otherwise a <i>per se professional client</i>, unless and to the extent it is given a different categorisation by the <i>firm</i> under COBS 3.</p> <p>(3) An existing <i>client</i> that was correctly categorised as a <i>market counterparty</i> immediately before 1 November 2007 is:</p> <p>(a) for <i>eligible counterparty business</i> that is neither <i>MiFID</i> nor <i>equivalent third country business</i>, an <i>eligible counterparty</i>; and</p> <p>(b) otherwise, a <i>per se professional client</i>, unless and to the extent it is given a different categorisation by the <i>firm</i> under COBS 3.</p> |  |  |
|     |        |   | [Note: Article 71(6) of, and third paragraph of section II.2 of Annex II to <i>MiFID</i> ]  |  |  |
| 3.3 | COBS 3 | G | Under COBS 3.5.9, if a <i>firm</i> becomes aware that a <i>client</i> no longer fulfils the initial conditions that made it eligible for categorisation as an <i>elective professional client</i> , the <i>investment firm</i> must take the appropriate action. In the case of a <i>client</i> that has been classified as an <i>elective professional client</i> under COBS TP 3.2R(2)(a), the initial conditions are those that applied to the <i>client's</i> initial categorisation as an <i>intermediate</i>  |  |  |

|     |        |   |   |                                   |                 |
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|     |        |   | <i>customer.</i>  |                                   |                 |
|     |        |   | Former inter-professional business  |                                   |                 |
| 3.4 | COBS 3 | G | The requirement to provide notices under COBS 3.3.1 only applies in relation to new <i>clients</i> . The requirement to obtain confirmation under COBS 3.6.3R(2) only applies in relation to prospective counterparties. These obligations are therefore not relevant to the extent that an existing <i>client</i> with whom a <i>firm</i> conducted <i>inter-professional business</i> before 1 November 2007 is categorised as an <i>eligible counterparty</i> under COBS 3.  | From 1 November 2007 indefinitely | 1 November 2007 |
|     |        |   | Transitional notification obligations   |                                   |                 |
| 3.5 | COBS 3 | R | <p>(1) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>private customer</i> immediately before 1 November 2007 as a <i>retail client</i>, it must notify that <i>client</i> of its categorisation as a <i>professional client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> <p>(2) If a <i>firm</i> does not categorise a <i>client</i> that was an <i>intermediate customer</i> immediately before 1 November 2007 as a <i>professional client</i>, it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>eligible counterparty</i>, as appropriate, on or before that date, or if later, before conducting any further business to which COBS applies for that <i>client</i>.</p> | From 1 November 2007 indefinitely | 1 November 2007 |

|     |               |   |   |                                   |                 |
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|     |               |   | (3) If a <i>firm</i> does not categorise a <i>client</i> that was a <i>market counterparty</i> immediately before 1 November 2007 as an <i>eligible counterparty</i> , it must notify that <i>client</i> of its categorisation as a <i>retail client</i> or <i>professional client</i> on or before that date, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i> .  |                                   |                 |
|     |               |   | [Note: article 28(1) of the <i>MiFID implementing Directive</i> ]   |                                   |                 |
| 3.6 | <i>COBS</i> 3 | R | If a <i>firm</i> , in relation to <i>MiFID</i> or <i>equivalent third country business</i> , categorises a <i>client</i> who would not otherwise have been a <i>professional client</i> as a <i>professional client</i> under <i>COBS</i> TP 3.2(2)(b) or (3)(a), it must inform that <i>client</i> about the relevant conditions for the categorisation of <i>clients</i> . This notification must be made on or before 1 November 2007, or if later, before conducting any further business to which <i>COBS</i> applies for that <i>client</i> .<br><br>[Note: article 71(6) of <i>MiFID</i> ] | From 1 November 2007 indefinitely | 1 November 2007 |
| 3.7 |               | G | A notice to a <i>professional client</i> under <i>COBS</i> TP 3.6 should inform that <i>client</i> :<br><br>(a) that they have been categorised as a <i>professional client</i> ; and<br><br>(b) of the main differences between the treatment of a <i>retail client</i> and a <i>professional client</i> .   |                                   |                 |
| 3.8 |               | R | The record keeping requirements under <i>COBS</i> 3.8.2R apply in relation to any <i>client</i> categorisations or re-categorisations made under the  |                                   |                 |

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|     |               |   | transitional provisions for <i>COBS</i> 3.   |                                      |                        |
|     |               |   | <u>Categorisation of new clients between 1 November 2007 and 30 June 2008 (Business that is neither <i>MiFID</i> nor equivalent third country business)</u>  |                                      |                        |
| 3.9 | <u>COBS 3</u> | R | <p>(1) A new <i>client</i> that could have been correctly categorised as an <i>intermediate customer</i> under the rules in force on 31 October 2007:</p> <p>(a) may be treated as an <i>elective professional client</i> if it could have been categorised as an <i>expert private customer</i> that had been categorised as an <i>intermediate customer in accordance with COB 4.1.9</i> on the basis of its experience and understanding; or</p> <p>(b) otherwise may be treated as a <i>per se 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 an <i>market counterparty</i> under the rules 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> | From 1 November 2007 to 30 June 2008 | <u>1 November 2007</u> |

COBS 13.1.1G (Purpose of Investment research)

13 Investment research

13.1 Purpose

13.1.1 G The purpose of this chapter is to ~~implement the provisions of~~ :

- (1) ~~MiFID relating to~~ set out those *rules* relating to the production and dissemination of *investment research* and *non-independent research*; and
- (2) implement the *Market Abuse Directive* relating to the disclosures to be made in, and about, *research recommendations*.