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Financial Services Authority

The Training and Competence Sourcebook Review

February 2007



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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 23 May 2007.

Comments may be sent by electronic submission using the form on the FSA's website at (www.fsa.gov.uk/pages/library/policy/CP/2007/cp07_04_response.html).

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

1 Overview

- 1.1 This Consultation Paper (CP) seeks views on proposals to introduce a more outcome-focused Training and Competence (T&C) regime, including a new and significantly shorter Training and Competence Sourcebook (TC Sourcebook) for retail firms only. It reflects the outcome of the review of the current T&C requirements which we have been undertaking as part of our general Handbook Review.
- 1.2 We are already committed, following consultation in CP 05/10,¹ to removing the detailed T&C requirements for wholesale business (ie for activities carried on by firms for non-private customers). Respondents to CP05/10 also supported our suggestion for a wider review of the TC Sourcebook as a whole.
- 1.3 So the proposals in this paper focus mainly on the T&C requirements for retail business. They do, however, include some consequential amendments for wholesale business. They also take account of the changes needed to make the TC Sourcebook comply with the Markets in Financial Instruments Directive (MiFID)², on which we consulted separately towards the end of last year to meet the MiFID transposition deadline.³
- 1.4 All of these changes will, however, come into force at the same time – on 1 November 2007 when MiFID comes into force.

Purpose of review

- 1.5 The main drivers behind the TC Sourcebook review are:
 - our better regulation agenda;

1 See CP 05/10, *Reviewing the FSA Handbook* (July 2005) and the related Feedback Statement FS06/1, *Reviewing our Training and Competence regime: Feedback on Chapter 4 of CP 05/10* (March 2006).

2 Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments, Commission Directive 2006/73/EC of 10 August 2006 and Commission Regulation (EC) No 1287/2006 of 10 August 2006

3 See CP06/19, *'Reforming Conduct of Business Regulation'* (October 2006) and the related Policy Statement, PS 07 /2, *Implementing the Markets in Financial Instruments Directive (MiFID) – Feedback on CP06/14, CP06/19 and CP06/20* (January 2007), in which we consulted on the changes required by MiFID.

- our aim of moving to a more principles-based, outcome-focused regulatory regime; and
 - the need to ensure that the Sourcebook complies with MiFID.
- 1.6 The current TC Sourcebook is a combination of high-level requirements and more prescriptive rules and guidance. It supports and expands on the competence-related requirements in the Financial Services and Markets Act 2000 (FSMA) and the high-level principles in our Handbook.
- 1.7 In reviewing the current regime, we have adopted a ‘blank sheet of paper’ approach, as we believe there is significant scope for simplifying and streamlining the current sourcebook. This in many respects continues to reflect the requirements of the various predecessor bodies that came together to form the FSA.
- 1.8 Our proposals aim – in line with the approach we are adopting elsewhere in the Handbook – to move away, wherever possible, from prescriptive rules and to remove rules where the costs are no longer justified by the benefits. Where appropriate, we propose to rely on high-level rules and guidance. This will give firms greater flexibility to decide how to achieve the desired standards, while ensuring that consumers are appropriately protected. We have also sought to make the new Sourcebook much shorter and easier to follow.
- 1.9 There is one main area – retail exam requirements – where we have concluded that it is necessary, at this stage, to retain an element of prescription. We explain this further below and in Chapter 3.
- 1.10 Our proposals do not, however, represent any lowering of the competence standards expected of firms – and firms will need to be able to demonstrate why they consider that their T&C arrangements meet the required standards.

Our proposals

- 1.11 In summary, we propose to:
- introduce a new, overarching competence rule in SYSC⁴ which will replace the Commitments in TC1 and will apply to all UK authorised firms, including wholesale firms. (This will be achieved by extending the high-level competence requirement in MiFID for ‘common platform’ firms⁵ to ‘non-common platform’ firms (see paras 3.14 to 3.21). It also involves some consequential technical amendments for wholesale firms – see paras 3.22 to 3.24);
 - replace the existing TC Sourcebook with a new, simpler, more user-friendly Sourcebook, which will be around one-third of its current length. This will apply to retail business only, although wholesale firms may wish to refer to it in deciding how to comply with the high-level SYSC requirement. It will comprise a

4 Senior Management Arrangements, Systems and Controls Sourcebook

5 ‘Common platform’ firms is the term we have given to firms subject to either or both MiFID and the Capital Requirements Directive.

small number of (mainly exam-related) rules, plus a modest amount of more focused guidance (see paras 3.37 to 3.77);

- retain the compulsory examination requirements for specified retail activities (as now) and the existing ‘safe harbour’ for firms who use exams taken from the Financial Services Skills Council (FSSC)’s list of ‘appropriate examinations’ (see paras 3.49 to 3.71);
- give due recognition to exams passed by employees of firms not subject to a compulsory exam requirement (eg those carrying out wholesale business) where they choose to use exams approved by the FSSC to demonstrate compliance with the knowledge element of the competence requirement (see para 3.26 to 3.27);
- simplify the scope provisions (see para 3.40);
- retain the existing record-keeping requirements (as amended to comply with MiFID) (see para 3.48); and
- carry forward relevant transitional (‘grandfathering’) provisions but in a simplified form (paras 3.75 to 3.77).

1.12 In drawing up these proposals, we gave careful thought to whether, in a principles-based environment, we should remove the TC Sourcebook altogether and rely instead on the high-level requirements in FSMA, PRIN⁶ and SYSC.

1.13 However, we have concluded that the risks on the retail side are significantly different and that, while there is scope to step back from much of the detail, some supporting rules and guidance are still necessary, at this stage, to ensure an appropriate level of consumer protection. Our decision was influenced, in particular, by:

- detailed cost-benefit analysis work undertaken for us by Europe Economics (see below);
- our conclusion that it was necessary to retain compulsory exam requirements in the retail sector (see below and paras 3.49 to 3.60);
- the outcome of our Treating Customers Fairly (TCF) thematic work on the quality of advice (see para 3.33)⁷;
- the work being undertaken on professionalism and reputation as part of the Retail Distribution Review (RDR); and
- the views of our industry working group (see para 1.19).

1.14 Our decision to retain the exam requirements for retail firms reflects, in particular, the results of our TCF thematic work on the quality of advice, which suggests that it is too soon to step back from prescription in this area. It was also reinforced by the cost-benefit analysis work undertaken on our behalf by Europe Economics and received strong support from our industry working group.

6 Principles for Businesses Sourcebook

7 *Quality of Advice Process in Firms Offering Financial Advice: Considerations for Treating Customers Fairly* (July 2006)

- 1.15 A key consideration was whether retaining the exam requirements would place UK MiFID firms at a competitive disadvantage with those based in other EEA⁸ Member States. This issue arises because, under MiFID, we can no longer apply our T&C requirements to inwardly-passporting MiFID firms. T&C arrangements will be a matter for the firm's Home State and a significant number of Member States do not impose exam requirements.
- 1.16 So we asked Europe Economics to carry out a detailed piece of work to assess the costs and benefits of our retail exam requirements and the extent of any potential competition issue. This confirmed our view that these requirements continue to play an important and cost-effective role in maintaining consistent and appropriate baseline knowledge standards. It also indicated that firms do not believe that retention of the exam requirements would result in undue costs or significant competitive distortions between UK and inwardly-passporting MiFID firms. (We are publishing Europe Economics' report on our website at the same time as this CP and the results are summarised in para 3.56 to 3.57 and Chapter 4.)
- 1.17 This does not, however, mean that we are ruling out the possibility of stepping back further in the future. There are encouraging signs that the industry is keen to work with us in this area and may be willing in the future to develop appropriate industry guidance.
- 1.18 Our longer-term aspiration is to be able to remove the TC Sourcebook altogether and rely on high-level competence requirements across all sectors. However, we cannot do this until we are satisfied that firms have a clear understanding of what is required and we have evidence of an appropriate T&C / TCF culture being embedded in retail firms as a whole. We will keep the position under review.

Industry working group

- 1.19 In formulating these proposals, we have benefited from the views of an industry working group. This included representatives from the FSSC and a wide range of relevant trade associations, professional bodies and exam providers which are listed in Annex 1. We are grateful to working group members for the time and effort they have given to helping us with this work and for their valuable input, which has contributed significantly to the development of our thinking. We should note, however, that while the proposals contained in this paper take careful account of the views expressed by the group, they do not necessarily reflect the views of individual participants.

Structure of this CP

- 1.20 Chapter 2 provides some background to our proposals, and the proposals themselves are explained in Chapter 3. Our cost-benefit analysis of the proposed changes is in Chapter 4, and we explain in Chapter 5 why we believe that our proposals are compatible with our statutory objectives and the principles of good regulation in FSMA. The organisations which participated in our industry working group are listed in Annex 1 and a list of the consultation questions is at Annex 2. The draft

8 European Economic Area

Handbook text giving effect to our proposals can be found in Annex 3. (The proposed new TC Sourcebook is in Annex E of the draft instrument and the proposed changes to SYSC are in Annex B. Consequential changes to other parts of our Handbook are in the other annexes.)

Who should read this CP?

- 1.21 This CP will be of interest to all authorised firms, relevant trade bodies, professional bodies, exam providers, consumer representatives and other organisations which operate within the financial services industry. Most of our proposals are of relevance to those operating in the retail sectors of the financial services industry. However, some proposals (see, in particular, paras 3.22 to 3.24) will also be of interest to those involved in the wholesale sector.

Next steps

- 1.22 This consultation will close on 23 May 2007. We will then finalise the draft rules in the light of responses to this CP and publish a policy statement giving feedback in the summer. This will set out the rules in their final form, including those for wholesale business and those required by MiFID. These rule changes will come into force on 1 November 2007, when MiFID is implemented.
- 1.23 Our annual T&C Conference will take place during the consultation period on 28 March 2007. This will provide a valuable opportunity to discuss the proposals in this CP with interested stakeholders. (Details of the conference are available on our website.)

Consumers

This CP will be of interest to consumers who buy investments, general insurance, mortgages and other home finance products and to their representatives and consumer groups. Effective T&C arrangements are crucial to our statutory objective of consumer protection.

Our proposals will not lower the standards of competence expected of firms and their employees in any way. On the contrary, we believe that they will make the TC Sourcebook much more accessible and place the emphasis on the outcomes we want firms to achieve. This should give firms greater flexibility to adapt their processes to suit their business, while ensuring that they are held accountable for achieving the standards of competence which we believe that consumers who rely on them are entitled to expect.

2 Setting the scene and options for change

- 2.1 The T&C regime for financial services has evolved significantly over the past 20 years since its formal introduction as part of the regulatory regime for investment business under the Financial Services Act 1986.
- 2.2 The value and importance of effective T&C arrangements in the complex area of financial services products is now widely recognised not only by regulators charged with protecting consumers, but also by firms.
- 2.3 The benefits for consumers are clear. The financial services world is a complex one and retail consumers, in particular, are heavily dependent on the knowledge, skills and expertise of those with whom they do business. This is because there is a significant asymmetry of knowledge between the consumer and the firm, which prevents the consumer from being able to judge the quality of the advice or information they are receiving. Consumers cannot be expected to have the same knowledge as those who advise them, so they need to be able to rely on and trust in their competence and integrity. There are obvious parallels here with other professions, such as medicine and law, where the patient or client must be able to rely on the competence of their doctor or lawyer.
- 2.4 Employing competent staff also makes good commercial sense for firms. Well-trained staff are essential if a firm is to offer good quality services and products. This creates satisfied customers and helps to retain and build business – a virtuous circle. It also helps to minimise the risk of mis-selling - and the reputational damage and redress liabilities that this can entail.
- 2.5 So our T&C requirements seek to formalise and codify what is, in any case, good business practice to ensure that consumers doing business with authorised firms can rely on the competence of their staff and the products and services they provide. Given our risk-based approach to regulation, we have always placed greater emphasis on protecting the retail customer and this is reflected in the fact that our T&C requirements for those doing retail business have generally tended to be more prescriptive than for wholesale business.

Evolution of T&C regime

- 2.6 As noted above, the current T&C regime has its roots in the regulatory regime for investment business which preceded FSMA and has undergone significant changes over subsequent years.

The Financial Services Act 1986 regime

- 2.7 Following the implementation of the Financial Services Act 1986 in April 1988, the Securities and Investments Board (SIB) commissioned a study into the competence of those engaged in ‘investment business’ as defined under the new legislation. This study (undertaken by Dr Oonagh McDonald)⁹ identified concerns about shortcomings in the competence levels of those involved in investment business activities and the problems (eg mis-selling) that could be created as a result. It led to the introduction of more formalised T&C arrangements (including, in particular, a wide-ranging set of exam requirements) across the financial services industry as a whole. This was done by the various self-regulating organisations and professional bodies which were then responsible (under the overall auspices of the SIB) for regulating the different sectors of the investment business industry.¹⁰

Creation of the FSA

- 2.8 The next significant development was the implementation of FSMA on 1 December 2001 (commonly referred to as ‘N2’). This replaced the SIB and the various self-regulating organisations with a single statutory regulator - the FSA - and enabled us to bring the various T&C requirements of these bodies together in a single TC Sourcebook as part of the new FSA Handbook. The TC Sourcebook was also extended to take account of the much wider constituency of firms and activities which came within the FSA’s scope at that point.
- 2.9 FSMA gives the FSA an explicit statutory objective to protect consumers and a formal framework for imposing competence requirements on firms. As we explain in Chapter 3, our Handbook contains rules and guidance which sets out in more detail what this means for firms.
- 2.10 In more recent years, the scope of the TC Sourcebook has expanded further as new activities, such as mortgage lending and intermediation and general insurance intermediation have been brought within our regulatory scope. In each case, the application of T&C requirements (in particular, exam requirements) to ‘new’ activities has been subject to consultation and cost-benefit analysis, and reflects our risk-based approach to regulation.

9 See the Securities and Investments Board’s Consultation Paper, CP40, Training and Competence in the Financial Services Industry (May 1990)

10 These included the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO) and the Financial Intermediaries, Managers and Brokers Regulatory Association (FIMBRA), which later merged, in 1994, to form the Personal Investment Authority (the PIA); the Securities and Futures Authority (SFA) and the Investment Management Regulatory Organisation (IMRO). It also included the various ‘Recognised Professional Bodies’ responsible for regulating the investment business activities of lawyers, accountants and actuaries and other professionals.

The role of the FSSC

- 2.11 The next significant landmark occurred with the creation of the FSSC in 2003. This body was set up as part of the network of sector skills councils and now plays a key role in our T&C regime.
- 2.12 Following consultation in CP194,¹¹ we decided, in July 2004, to step back from prescribing in the TC Sourcebook the ‘approved examinations’ which those carrying out specified activities must pass. We amended the Sourcebook to require instead that those undertaking specified activities must pass an ‘appropriate exam’ and we provided a ‘safe harbour’ for those who selected an exam recognised as appropriate by the FSSC.
- 2.13 The newly established FSSC took on the responsibility for setting exam standards – and for completing the review of existing standards on which we had recently embarked. The FSSC maintains a list of ‘appropriate examinations’ that meet its standards and firms whose employees are subject to an FSA exam requirement can comply with it by selecting an exam from this list. Alternatively, they may, if they prefer, choose to take a different exam (eg one set in-house) provided that they are able to demonstrate how this is appropriate.

Better regulation and the move to more principles-based regulation

- 2.14 We have indicated in numerous publications over the past two years the importance we attach to better regulation and our desire to move to a more principles-based approach. This reflects our commitment to step back, where possible, from prescription and place greater emphasis on the responsibility of senior management to ensure their firms secure the desired regulatory outcomes. We are also keen to deregulate where we consider that the benefits of regulation no longer justify the costs.
- 2.15 Our commitment to a general review of the Handbook is a key part of this agenda and the TC Sourcebook Review forms part of this work. As explained in Chapter 1, we began by consulting on removing the detailed TC rules (including compulsory exam requirements) for wholesale firms. This was because we believed – for reasons set out in CP05/10 – that the desired outcomes could be achieved in a less prescriptive way without risk to consumer protection.
- 2.16 Responses to CP05/10 confirmed our view that there was also scope to simplify the rules for retail firms, but recognised that the scope for deregulation is potentially more limited. The need to maintain the required levels of competence here is paramount, as retail consumers usually need more protection.

Compliance with MiFID

- 2.17 Another reason for reviewing the TC Sourcebook now is the need to implement MiFID for firms carrying out certain kinds of designated investment business activities which fall within its scope.

11 CP194: *Amendments to the Training and Competence Sourcebook: including consultation on competencies for mortgage advisers* (August 2003).

2.18 MiFID contains a high-level competence requirement (in Article 5 (1)(d)), which requires firms within its scope to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. Since MiFID is a maximum harmonisation directive, we have had to consider carefully whether existing requirements need to be disapplied for this sector. While MiFID does not apply to other sectors, such as mortgages and general insurance, we have also had to consider the potential implications of a differentiated approach to T&C in those areas. We explain these issues in more detail in Chapter 3.

What do we mean by ‘competence’?

2.19 Defining ‘competence’ in the abstract is difficult as it depends on the particular activities that an individual is conducting. However, in general terms, we believe that to carry out a role properly and professionally, an individual must have the necessary:

- knowledge;
- skills; and
- expertise.

This is so that those who rely on that person’s services can be confident that they will be appropriately protected. In other words, an individual must have the necessary technical mastery of his subject and the skills and expertise to apply that knowledge appropriately to practical, real-life situations. Our T&C regime is designed to achieve this outcome for those who undertake regulated financial services activities on behalf of authorised firms.

2.20 Knowledge can be assessed and demonstrated by various means, but one of the most common methods is through an exam. Exams play a significant role in the current T&C regime in assessing baseline competence – with compulsory exam requirements for those activities where we consider specialist knowledge is essential. These provide an objective and independently verified benchmark of the ‘entry level’ knowledge required to undertake specific activities. Exams also provide an important benchmark internationally and enable individuals to work overseas on the basis of mutual recognition arrangements.

2.21 However, as noted above, knowledge is only one strand of the competence assessment. Equally important is an individual’s possession of the skills needed to do the job and their expertise in applying their knowledge and skills in practice. This generally calls for ‘on the job’ training and close supervision by suitably qualified and experienced staff to determine when an individual has achieved the required level.

2.22 Appropriate ethical behaviours are also important – these are closely linked to the corporate culture of the firm and a key responsibility of senior management.

Options for Change

- 2.23 In reviewing the TC sourcebook, we have considered four main options:
- (i) leave the TC Sourcebook as it is;
 - (ii) leave the TC Sourcebook broadly as it is, but disapply provisions where the benefits are outweighed by the costs;
 - (iii) delete the TC Sourcebook completely and rely instead on the high-level requirements in FSMA, PRIN and SYSC; or
 - (iv) delete the current TC Sourcebook and replace it with a shorter, more outcome-focused Sourcebook *for retail firms only* to support the high-level competence requirement in SYSC.
- 2.24 **Option (i)** is not, in our view, viable, given our better regulation agenda and desire to move to more principles-based regulation. We are already committed to removing the detailed rules for wholesale business and, as indicated above, we believe there is also significant scope for simplification on the retail side.
- 2.25 Nor do we consider that **Option (ii)** represents a satisfactory way forward. The scope to deregulate on the retail side is more limited given the greater need to protect retail consumers, but this option would not provide the additional flexibility of a more principles-based approach and would also fail to remove the complexity and improve the accessibility of the current Sourcebook.
- 2.26 **Option (iii)** is a radical option. It would involve removing the TC Sourcebook altogether, and relying on the existing high-level requirements in PRIN, SYSC and FIT¹². This would be in keeping with our desire to move to more principles-based regulation, but we believe that it would be a step too far at this stage. In particular, it would involve removing the compulsory exam requirements for retail firms. For reasons we explain in the next chapter, we believe these continue to provide an important protection for consumers.
- 2.27 **Option (iv)** is therefore our favoured option at this stage although, in the longer term, we also aim to move to higher-level requirements for retail firms when the conditions are right. In the meantime, this option enables us to deregulate where we consider it 'safe' to do so and to simplify, streamline and significantly shorten the TC Sourcebook. This would also leave scope for different parts of the industry to produce their own guidance, which they could ask us to confirm.
- 2.28 Our proposals for changing the Sourcebook and the rationale behind these changes are explained in detail in the next chapter.

12 The Fit and Proper test for Approved Persons Sourcebook

3 Proposals

- 3.1 This chapter outlines our proposals for changing the T&C regime, focusing mainly on the requirements for retail business (ie firms doing business with ‘retail clients’ or ‘customers’).
- 3.2 Our proposals take account of:
- the views of our industry working group;
 - the cost-benefit analysis work undertaken on our behalf by Europe Economics on the impact of exam requirements and potential competition issues arising from MiFID;
 - the findings from our Treating Customers Fairly (TCF) thematic work on the quality of advice; and
 - the work on the professionalism and reputation strand of the Retail Distribution Review (RDR).
- 3.3 We believe that our proposals are consistent with our better regulation agenda in that they seek to replace prescriptive rules with principle-based requirements wherever possible. However, for the reasons outlined in Chapter 2 and expanded below, we propose to retain a small number of rules where we believe this is necessary to ensure that appropriate standards are maintained.
- 3.4 We have also had particular regard to the Cost of Regulation work undertaken by Deloitte and the work on Administrative Burdens carried out by Real Assurance Risk Management in 2006¹³. These studies highlighted certain T&C requirements as a source of significant incremental costs / administrative burdens for retail firms – in particular, those about maintaining competence and record-keeping respectively. However, while these costs were high relative to the other costs highlighted, they were not high in absolute terms and we believe they continue to be justified by the benefits they bring.
- 3.5 There can, we believe, be no question about the need for employees to maintain their competence over time. It is difficult to see how removing this requirement could be

13 Deloitte: the cost of regulation study. (June 2006); *Real Assurance Risk Management: Estimation of FSA Administrative Burdens*. (June 2006)

consistent with our consumer protection objective and, as we explain below, the MiFID competence requirement is an ongoing, not a one-off, requirement. We also consider it essential that firms should be able to demonstrate to us the basis on which they have assessed their employees as competent, and to do this, they need to keep appropriate records.

Our proposals

- 3.6 Our starting point in reviewing the TC Sourcebook is that the high-level standards in FSMA and the FSA Handbook will remain in place. These are general requirements and are already expressed in a principles-based way.
- 3.7 Threshold Condition 5 (on suitability) in FSMA introduces the concept of competence as part of the authorisation process and this statutory requirement is amplified in various parts of the FSA Handbook.
- 3.8 Three of the high-level Principles for Businesses are relevant to T&C:
- Principle 2**, which requires firms to ‘*conduct their business with due skill, care and diligence*’;
- Principle 3**, which requires firms to ‘*take reasonable care to organise and control their affairs responsibly and effectively*’; and
- Principle 6**, which requires a firm to ‘*pay due regard to the interests of its customers and treat them fairly*’.
- 3.9 SYSC expands on Principles 2 and 3. It requires firms to take reasonable care to establish and maintain appropriate systems and controls to enable them to satisfy themselves as to the suitability (including competence) of anyone who acts for them. This includes making proper arrangements for staff to achieve, maintain and enhance competence. In addition, COND¹⁴ makes it clear that a firm’s obligation to ensure that it conducts its affairs soundly and prudently involves assessing the competence of its management and staff as a whole.
- 3.10 The TCF requirement enshrined in Principle 6 is also important. Good T&C arrangements are essential to a firm’s ability to comply with this obligation and should form part of any TCF analysis. As with our conduct of business rules, much of what our T&C regime is designed to deliver is consistent with this principle.
- 3.11 In addition, staff who perform ‘controlled functions’ must become ‘approved persons’ and their suitability must be assessed in line with the requirements in FIT. The competence requirements in the TC Sourcebook form part of this regime for relevant customer controlled functions. As part of our better regulation work on the Approved Persons regime, these functions are being merged into one generic function with effect from 1 November 2007, but the requirement to be competent will still apply.¹⁵

14 Threshold Conditions Sourcebook

15 See Policy Statement 07/04, published on 23 February 2007.

However, our proposals necessitate some consequential changes to the Approved Persons chapter in our Supervision Manual and these are covered later in this chapter.

- 3.12 The current TC Sourcebook builds on these high-level requirements by setting out – in a more detailed manner – the standards of competence which a firm’s employees must achieve:
- TC 1 contains high-level ‘Commitments’ that apply to all regulated firms. These require firms to ensure that their employees are – and remain – competent for the work they do; that their employees’ competence is regularly reviewed and supervised; and that it is appropriate to the nature of the business; and
 - TC 2 contains more specific rules and guidance which apply to firms that carry on activities involving a higher degree of consumer risk. These cover matters such as recruitment, training, attaining and maintaining competence (including exam requirements) and supervising and monitoring employees.

In the next section, we describe how we propose to cut back some of these more detailed requirements.

Proposed changes to SYSC

- 3.13 We have recently amended SYSC to implement the high-level competence requirement in MiFID. We believe this provides a useful basis for a more principles-based T&C regime. We are therefore proposing some further changes to SYSC, which we describe below. (The draft rules giving effect to these proposed changes can be found at Annex B of the draft instrument in Annex 3.)

New overarching ‘competent employees’ requirement

- 3.14 MiFID contains a high-level competence requirement¹⁶ which we are obliged to apply to investment firms that come within its scope. This requires that such firms:
- ‘ must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them..... taking into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.’*
- 3.15 We have already consulted, in CP 06/9,¹⁷ on copying out this provision (and related guidance) into SYSC 5 for ‘common platform’ firms.^{18 19} The FSA Board made these changes in November 2006 and the common platform will come into effect on 1 November 2007 unless relevant firms elect to comply earlier. So SYSC

16 in Article 5, paragraph 1(d) of the *MiFID Level 2 implementing Directive*, 2006/73/EC of 10 August 2006

17 See CP 06/9 *Organisational systems and controls: common platform for firms* (May 2006) and Policy Statement 06/13: *Organisational systems and controls – common platform firms: Feedback on CP 06/9* (November 2006).

18 ‘Common platform’ firms is the term we have given to firms subject to either or both MiFID and the Capital Requirements Directive.

19 SYSC 5.1.1R: ‘A common platform firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.’

SYSC 5.1.13R: ‘The systems, internal control mechanisms and arrangements established by a firm in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of investment services and activities undertaken in the course of that business.’

3 will be disapplied for these firms on the date that the common platform comes into effect for them, but will remain in force for all non-common platform firms.

- 3.16 The new SYSC 5 requirement is similar in its effect to the high-level provisions in Chapter 1 of the TC Sourcebook (TC1), known as the ‘Commitments’. These currently apply to all authorised firms and take the form of guidance on our Principles for Business (see para 3.12).
- 3.17 The ‘Commitments’ have served as a useful focus for firms in highlighting the overall purpose of the TC Sourcebook. However, we believe that these are covered – either explicitly or implicitly – by the MiFID competence requirement. The obligation to employ personnel with the relevant skills, knowledge and expertise is an ongoing one, carrying with it the expectation that employees will need to maintain as well as attain the relevant standard of competence. This, in turn, implies the need for employees’ competence to be appropriately supervised and subject to regular review.
- 3.18 So this suggests that we should remove the Commitments at least for common platform firms to avoid duplication. However, since the new MiFID requirement in SYSC covers essentially the same ground as the Commitments, our preference – in the interests of simplicity and consistency - is to remove the Commitments altogether and apply the MiFID requirement to all UK authorised firms.
- 3.19 We should have preferred to do this by simply extending the application of the new MiFID competence rule in SYSC 5 to all UK authorised firms. However, the systems and controls requirements for common platform firms currently appear in different sections of SYSC from those for non-common platform firms. We have indicated²⁰ that we intend to issue a consultation paper in the fourth quarter of 2007 on whether to extend the common platform requirements to non-common platform firms in different industry sectors or groups. So it may be possible to apply a single SYSC rule at some point in the future.
- 3.20 In the meantime, however, we propose to insert an equivalent provision (plus related guidance) into SYSC 3 for non-common platform firms (see SYSC 3.1.6R). For ease of reference, we refer to both of these rules as the ‘competent employees rule’ and propose to make this a new defined term in the Glossary (see Annex 3).
- 3.21 This proposal does not, in our view, alter in any way the competence standards expected of firms. We have considered whether the reference to ‘expertise’ in the MiFID requirement introduces an additional test over and above the current requirements. However, we do not believe it does. Expertise is, in our view, a subset of competence – it refers to the necessary combination of knowledge and skills that individuals need to discharge the responsibilities of their particular role. For the avoidance of doubt, however, we propose to include guidance (at TC 1.1.4G) in the new TC Sourcebook to make this clear.

Wholesale business

- 3.22 The above proposal requires a small modification to our commitment to disapply the detailed TC requirements in Chapter 2 of the TC Sourcebook for wholesale business

20 FSA Business Plan 2007/08.

with effect from 1 November 2007. The proposal on which we previously consulted would have left wholesale firms subject only to the ‘Commitments’ in TC1, but we are now proposing to remove these in favour of the proposed new competent employees rule in SYSC described in the previous paragraphs.

- 3.23 So we propose instead to apply the new high-level competent employee requirements in SYSC 3.1.6 R and 5.1.1R to wholesale firms. This is essentially a technical amendment. It does not, in our view, represent a substantive change to the T&C obligations for wholesale firms on which we previously consulted, since these new SYSC rules cover the same ground. It does, however, mean that the competence requirements for wholesale firms will now appear in SYSC and that these firms will not be subject to any of the provisions in the proposed new TC Sourcebook. Wholesale firms may, however, find the new Sourcebook helpful in deciding how to comply with the SYSC requirements – a point which we propose to highlight in new guidance in SYSC.
- 3.24 While wholesale firms will no longer be subject to exam requirements, we have always recognised that many of these firms will want to continue to use exams as part of their T&C arrangements and CP05/10 respondents strongly urged us to recognise this in some way in the rules. We welcome the fact that wholesale firms are now working closely with the FSSC to develop bespoke standards²¹ for wholesale business. We are also keen to assure firms that continue to use exams approved by the FSSC as part of their T&C arrangements that we will take appropriate account of such arrangements from a regulatory perspective. The new provisions which we propose to include in SYSC to address this point are described in the next section.

Safe harbours / Recognition of exams

- 3.25 The current TC Sourcebook provides a safe harbour for those who are subject to an appropriate examination requirement and who choose an exam from the FSSC’s list of appropriate examinations. We propose to carry this forward for retail firms, as we explain later in this Chapter (see para 3.61).
- 3.26 However, we cannot provide firms (eg wholesale firms) which continue on a voluntary basis to use FSSC approved exams with a ‘safe harbour’ from an exam requirement which no longer applies to them. Nor can we provide such firms with a safe harbour from the competent employees rule, since this is a much wider requirement. As explained above, exams essentially test the knowledge component of the competent employees rule and firms will also need to ensure that their employees have the necessary skills and behaviours for the roles they perform.
- 3.27 So we propose to introduce a new provision into SYSC. This will indicate that where a firm that is not subject to a compulsory exam requirement still chooses to use exams approved by the FSSC, we will take its exam arrangements into account in assessing compliance with the knowledge component of the new competent employees rule in SYSC (see SYSC 3.1.10G and 5.1.5AG). These provisions will be of particular interest to wholesale firms for reasons explained above, although they may also be of interest to firms whose employees are carrying on a retail activity which is not subject to an exam requirement.

21 FSSC National Occupational Standards

FSSC endorsement of T&C schemes

3.28 The FSSC has recently announced its intention to endorse firms' T&C schemes as a whole. This is expected to start in late 2007 and we will be exploring with the FSSC the potential implications of this initiative, as their proposals take shape.

- Q1 Do you agree with our proposal to extend the high-level competence requirement in MiFID to non-common platform firms so that it applies to all UK authorised firms – and do you have any comments on the draft rules and guidance we propose to insert into SYSC 3 to achieve this?
- Q2 Do you agree with our proposal to remove the TC Commitments?
- Q3 If so, do you agree that it is appropriate to apply the new high-level competence requirement in SYSC to wholesale business instead?
- Q4 Do you have any comments on our proposed provision indicating that we will take account of firms' exam arrangements where they choose to use an examination selected from the FSSC's list of appropriate examinations, even though they are not required to do so?

Do we still need a TC Sourcebook?

3.29 As explained in Chapter 2, we have given serious consideration to whether we could now remove the TC Sourcebook altogether and rely, instead, on the high-level requirements described above to indicate the regulatory outcomes we expect firms to achieve.

3.30 We have concluded that it is too early at this stage for us to remove the TC sourcebook entirely. In reaching this conclusion, we have been influenced by a number of factors.

3.31 Our view that it is necessary to retain compulsory exam requirements in the retail sector was undoubtedly a key issue because it calls for a small number of prescriptive rules – we discuss this below. However, we also believe that there is a continuing need to give firms a clear indication of the key outcomes which their T&C arrangements need to achieve for assessing, maintaining and supervising competence more generally.

3.32 Our industry working group shared this view. It was also supported by the results of our TCF thematic work and by the cost-benefit analysis work undertaken for us by Europe Economics on exam requirements, which we describe further below. This suggests there is still some way to go before we can safely step back from prescription in some areas.

3.33 As we indicated earlier in this chapter, T&C arrangements are an important aspect of a firm's TCF arrangements. Our TCF findings showed that for the sample of firms we looked at, about a third did not have appropriate T&C procedures in place for

their advisers. This had an impact on the quality of advice provided to customers, with half of the advisers in these firms providing unsuitable recommendations. We are working closely with our colleagues in the TCF area to ensure that there is a close link between our requirements for firms to treat customers fairly (including developing the appropriate culture) and our competence requirements. Only when we are satisfied that firms generally have the appropriate T&C culture will we be able to consider whether it is appropriate for us to reduce prescription further.

- 3.34 We see a potentially significant role for industry guidance in terms of reducing the need for FSA rules and guidance on T&C in future. This industry guidance could be tailored to the specific needs of different sectors of the industry and ‘confirmed’ by us, as envisaged in our recent Discussion Paper²² on this topic. There are encouraging signs that the industry is keen to work with us in this area and may be willing in the future to develop appropriate industry guidance. However, we recognise that any such initiatives will inevitably take some time to develop and are unlikely to be in place when the new T&C requirements come into force in November this year.
- 3.35 As we explained in Chapter 2, we have also had to consider how far the maximum harmonisation nature of MiFID places restrictions on our ability to impose T&C requirements beyond the high-level competence requirement on MiFID firms. We have also had to look at any consequential implications this may have for non-MiFID firms. We are, however, satisfied that MiFID allows us, if we wish, to retain requirements (including exam requirements) as a supervisory tool for checking firms’ compliance with the MiFID competence requirement.
- 3.36 Against this background, we propose to retain a TC Sourcebook at this stage, but to replace the existing Sourcebook with a new, much shorter one, which we describe in the remainder of this chapter. However, removing the TC Sourcebook remains a longer-term goal, once we are satisfied that this can be done without reducing competence standards in the industry.

Q5 Do you agree that it is appropriate to retain a TC Sourcebook at this stage, but that the longer-term aim should be to remove it?

The proposed new TC Sourcebook

- 3.37 The proposed new TC Sourcebook, which will replace the current TC Sourcebook, is in Annex E of the draft instrument at Annex 3. It will apply to UK authorised retail firms only, although wholesale firms may wish to refer to it.
- 3.38 The new Sourcebook is approximately one-third of the length of the current Sourcebook. It includes only a small number of (mainly exam-related) rules, together with a limited amount of guidance. Wherever possible, these have been expressed in an outcome-focused and user-friendly way to make them easily accessible. This will not, however, lower competence standards and firms will still need to be able to demonstrate how their T&C arrangements meet the required standards.
- 3.39 The new Sourcebook comprises three short sections which we explain below.

22 Discussion Paper 06/5: *Confirmation of Industry Guidance*. (November 2006)

Section 1 – Application and purpose

- 3.40 This section explains the scope and purpose of the TC Sourcebook. The new Sourcebook will apply only to activities conducted for retail clients or customers and will supplement the competent employees rule in SYSC for firms carrying on these activities. This has allowed us to remove much of the complexity which has inevitably arisen over time. The relevant scope tables setting out which firms and activities are subject to the new Sourcebook (together with certain exemptions) are in the appendices to the Sourcebook. (The retail activities covered remain the same as under the current Sourcebook.) This section also makes it clear that the term ‘competence’ means having the necessary skills, knowledge and expertise for an individual’s particular role, including a good standard of ethical behaviour.

Q6 Do you have any comments on the proposed provisions in Section 1 of the new TC Sourcebook or on the scope tables?

Section 2 – Assessing and maintaining competence

- 3.41 This section contains most of the relatively small number of remaining rules. It requires firms to ensure that an employee attains the necessary level of competence and maintains this over time.

Assessment of competence

- 3.42 We have carried forward into this section as part of the assessment of competence, the current ‘appropriate examination’ requirements for retail firms (at TC 2.1.1R). These will continue to form a compulsory part of the initial assessment of competence for all the activities in Appendix 1 of the TC Sourcebook, unless otherwise stated. The evidential provision in TC 2.5.8E of the current TC Sourcebook is also carried forward into this section (at TC 2.1.10E). This provides a ‘safe harbour’ for firms that are subject to a compulsory exam requirement and that use exams from the list of appropriate examinations maintained by the FSSC.
- 3.43 We also propose to carry forward into this section a small number of other exam-related provisions. These include the current ‘Overseas exemption’ (see TC 2.1.9R). They also include the current requirements for individuals to pass the regulatory module – or, for some higher risk activities, the whole of an appropriate exam – *before* they are allowed to carry on specified activities (see TC 2.1.6R and TC 2.1.7R).
- 3.44 We explain the rationale for these exam-related proposals and seek respondents’ views on the relevant draft rules separately in paras 3.49 to 3.72.
- 3.45 We have dispensed with the distinction in the current Sourcebook between ‘supervising’ those who have not been assessed as competent and ‘monitoring’ those who have. Instead, this section simply requires (at TC 2.1.2R) that a firm must not allow an employee to carry out an activity listed in Appendix 1 without appropriate supervision. We also indicate in guidance (at TC 2.1.3G) that the level and intensity of supervision is expected to be significantly greater where employees have not been assessed as competent. We highlight the need for firms to assess employees as competent against

clearly identified criteria and at a specified date so that they are able to demonstrate why they consider a reduced level of supervision to be appropriate. We also make clear (at TC 2.1.4G) our expectations of those supervising staff.

- 3.46 This section also reminds firms (at TC 2.1.11G) to ensure that their employees' training needs are regularly assessed and satisfied.

Maintaining competence

- 3.47 This section contains a single rule (at TC 2.1.12R) requiring firms to continue to monitor and assess their employees' competence and take appropriate action to ensure they remain competent for their role. This is supported by a short piece of guidance (at TC 2.1.13G) on the kind of issues firms should take into account.

Q7 Do you have any comments on the requirements and guidance in Section 2 of the new TC Sourcebook (with the exception of the exam-related provisions on which we ask separate questions below)?

Section 3 – Record-keeping

- 3.48 This final section simply carries forward (at TC 3.1.1R) the record-keeping requirements in the current Sourcebook (including those necessary to implement MiFID on which we consulted in CP 06/19). The draft rule sets a five-year retention period for MiFID business and carries forward the current record-keeping requirements for non-MiFID business.

Q8 Do you have any comments on the proposed record-keeping requirements in Section 3 of the new TC Sourcebook?

Exam requirements

- 3.49 As indicated above, our view that there is a continuing need for compulsory exam requirements in the retail area was a key factor in our decision to retain a TC Sourcebook.
- 3.50 The current Sourcebook requires firms to ensure that employees undertaking specified regulated activities have passed an appropriate examination before they assess them as competent. We have given serious thought to whether we should retain the examination requirements for retail business, particularly as we are already committed to disapplying the compulsory exam requirements for wholesale business. However, we have concluded that there are significant differences in the retail area, which require retention of the exam requirements at this stage.
- 3.51 Our decision to remove the exam requirements for wholesale firms reflected the different levels of risk that this type of business poses to our statutory objectives. However, as we explained in Chapter 2, there is a significant asymmetry of knowledge in the retail area, which makes retail clients heavily dependent on the competence of the individuals with whom they do business. So the protections required for these consumers are far greater than for the wholesale area.

- 3.52 We recognise that exams are by no means the only way of assessing ‘baseline’ competence – and that they provide only a snapshot of an individual’s knowledge at a particular point. However, the current exam requirements provide a consistent minimum standard for knowledge and understanding of products in the retail sector. The exam standards are independently set by the FSSC and compliance with those standards is assessed by the relevant exam bodies.
- 3.53 Removing the compulsory exam requirements for retail business would, in our view, create scope for greater inconsistency in minimum entry-level knowledge standards across different firms within the industry and potential consumer detriment (eg as a result of mis-selling). There is also a risk – highlighted by many CP05/10 respondents – that such a move could give out the wrong signals about the importance that we attach to this area.
- 3.54 This view was reinforced by the cost-benefit analysis work on our exam requirements undertaken for us by Europe Economics. This examined the potential scope for competitive distortion arising from MiFID between UK firms and inwardly-passporting MiFID firms which retaining the exam requirements might create.
- 3.55 The potential competition issue stems from the fact that the competence requirement in MiFID is a ‘Home State’ responsibility. This means that we cannot apply any of our T&C requirements to inwardly-passporting EEA firms. They will, instead, be subject to their own Member State’s requirements, based on the MiFID competence requirement. (Firms passporting out of the UK into other EEA Member States will, however, be subject to our requirements.) As we explained in CP 06/19, not all Member States have exam requirements, so we have had to satisfy ourselves that retaining the existing exam requirements would not place UK firms at a competitive disadvantage in comparison with firms in other Member States.

Research undertaken by Europe Economics

- 3.56 We therefore asked Europe Economics to carry out an extensive piece of cost-benefit analysis work for us to assess the extent, if any, of these potential competitive distortions and whether this necessitated removal of the exam requirements for MiFID firms – and, by implication, more generally. This work included a survey of a cross-section of authorised retail firms currently subject to exam requirements. Europe Economics’ report can be found on our website at http://www.fsa.gov.uk/pubs/other/tandc_report.pdf and the key points are reflected in the cost-benefit analysis of our proposals in Chapter 4.
- 3.57 In summary, Europe Economics found that:
- there is significant industry support for retaining compulsory exam requirements to provide a consistent and appropriate baseline level of knowledge in the retail sector;
 - firms do not regard our inability to apply the TC Sourcebook, in general, and examination requirements in particular, to inwardly-passporting MiFID firms as creating a significant competitive distortion for UK firms which necessitates removing the existing exam requirements;

- firms consider that, in the absence of a significant increase in the level of FSA supervision, the average competence level in the market would be lower without exam requirements than it would be with; and
 - firms believe that removing compulsory exam requirements would lead to a reduction in consumer confidence in the industry, as consumers take comfort from, and trust in, the standards we apply to regulated firms on their behalf.
- 3.58 The current exam requirements were not highlighted as a major regulatory cost or administrative burden in the Cost of Regulation and Administrative Burdens studies. The cost of the current appropriate examination requirements was identified by Deloitte as amounting to only 0.1% of total costs for the sample of firms reviewed.
- 3.59 So we believe that the compulsory exam requirements in the retail sector continue to provide an important and cost-effective protection to consumers, which it would be inappropriate to remove until we are confident that appropriate standards would be consistently maintained without them.
- 3.60 We therefore propose, at this stage, to retain for retail business the existing compulsory requirement to pass an ‘appropriate examination’, together with a small number of exam-related rules (including the relevant transitional provisions) which we describe at paras 3.62 to 3.72 and 3.75 to 3.77. We are not proposing any changes to the scope of these requirements, so the activities to which they apply will remain the same. Nor are we changing the exam standards. As noted in Chapter 2, this is an area for which the FSSC now has responsibility. However, we will keep the role of exams under review in the light of our continuing TCF / Quality of Advice work and the work which is being undertaken on the ‘professionalism and reputation’ strand of our Retail Distribution Review.

Safe harbour from exam requirement for retail firms

- 3.61 We also propose to bring forward into the new TC Sourcebook the current ‘safe harbour’ arrangements for retail firms that are subject to the exam requirement in TC2.1.1R, where they select an exam from the list maintained by the FSSC (see TC 2.1.10E).

Q9 Do you agree with our proposal to retain the current examination requirements for retail business carried out by UK firms?

Q10 Do you agree with our proposal to retain the current ‘safe harbour’ for retail firms that are subject to an exam requirement and select an exam from the list maintained by the FSSC?

Other exam-related requirements

- 3.62 Our decision to retain compulsory exam requirements for retail business gives rise to the need to carry forward a small number of further provisions into Section 2 of the new TC Sourcebook. These are described below.

Time limits for passing an exam

- 3.63 We are already committed to removing the current exam time limit requirements and related guidance with effect from 1 November 2007. As we explained in CP06/19, we are unable to keep these requirements for MiFID firms and propose to make this deregulatory change for all UK authorised firms to ensure consistent treatment and because it is in keeping with our more outcome-focused approach.
- 3.64 It will be for firms to impose their own time limits as they see fit and employees will still have to be closely supervised until they pass the required exam. So firms will have a strong incentive to encourage them to pass the exams within a reasonable timeframe because of the extra costs that additional supervision entails. We propose to include guidance in the TC Sourcebook (at TC 2.1.8G) on this point.

Requirement to pass a regulatory module before starting an activity

- 3.65 The current TC Sourcebook requires individuals carrying on certain activities for retail clients or customers that are subject to an ‘appropriate exam’ requirement²³ to pass the relevant regulatory module of the examination before starting the activity.
- 3.66 Unlike the exam time limits, these requirements are essentially risk-based, so we can, if we wish, retain these as supervisory tools under MiFID. These requirements reflect the need for individuals acting for retail customers to possess adequate regulatory knowledge before starting the relevant activity.
- 3.67 We propose to retain the current rule, but in a simplified form (see TC 2.1.6R). We considered replacing the rule with guidance to allow firms greater flexibility to decide when the employee should pass the regulatory module. However, we do not think that the industry is yet ready for the regulatory module requirement to be removed.

Requirement to pass an appropriate examination before starting an activity

- 3.68 The current TC Sourcebook requires individuals carrying on certain higher risk activities²⁴ to pass each module of an appropriate exam before starting the activity. This reflects the fact that these individuals need to have both technical and regulatory knowledge before starting these activities. Again, this requirement is essentially risk-based, and, under MiFID, we can, if we wish, retain it as a supervisory tool. So we propose to retain this requirement (at TC 2.1.7R) but in a simplified form for the same reasons outlined above.

23 This does not apply to advice on general insurance and pure protection contracts, basic advice or overseeing activities.

24 Advising and dealing activities, advising on syndicate participation at Lloyd’s or the activity of a broker fund adviser or a pension transfer specialist.

Overseas exemption from passing the full appropriate examination

- 3.69 The current Sourcebook allows firms to exempt employees coming from overseas from having to pass the technical module of an appropriate examination in certain circumstances, although they still have to pass a relevant regulatory module. This provision was originally included to help international job mobility and we think it makes sense to continue to do this.
- 3.70 We therefore propose to retain the overseas exemption rule (at TC 2.1.9R). We still think individuals working in the retail sector need to have a basic knowledge of the UK regulatory system at the outset. However, we believe that it should be possible to exempt these individuals from the need to pass a technical module if they have sufficient up-to-date relevant technical experience.
- Q11 Do you have any comments on the proposed guidance relating to exam time limits in Section 2 of the TC Sourcebook?
- Q12 Do you agree with our proposal to continue:
- (i) to require employees to pass a regulatory module before starting to carry on certain activities for retail clients or customers (as now);
 - (ii) to require employees to pass the whole of an appropriate examination before starting certain specified higher risk activities for retail clients or customers (as now); and
 - (iii) to provide the Overseas Exemption?

Requirements for those supervising employees

- 3.71 We have inserted guidance (at TC 2.1.4G) indicating that anyone supervising an individual who is dealing with retail customers should have the necessary technical knowledge and assessment and coaching skills. This will include considering whether the supervisor should pass an appropriate examination where the individual being supervised has not been assessed as competent. However, the current TC Sourcebook requires those who supervise employees who have not been assessed as competent to advise retail clients on packaged products to pass an appropriate examination. (This is shown in square brackets at TC 2.1.5R.) Our working group strongly supported retaining this rule on consumer protection grounds. However, we think that the guidance at TC 2.1.4G adequately covers this point and that retaining this rule as well is inconsistent with our move towards principles-based regulation. We would welcome respondents' views.
- Q13 Do you think the proposed guidance at TC 2.1.4G is sufficient or should we also keep the rule requiring supervisors of those advising retail clients on packaged products to pass an appropriate examination?

Long-term care insurance

- 3.72 The current TC Sourcebook includes a rule and related guidance on how the exam requirements for advising on long-term care insurance (LTCI) contracts apply to *convertible* contracts which do not initially provide LTCI benefits but contain an option to do so at a later date. The current rule indicates that, with convertible contracts, an adviser needs to pass an appropriate LTCI exam only where he advises on the second contract. However, as we understand it, such contracts are not currently available in the market. So we do not think there is any need to retain the existing rule and associated guidance. We therefore do not propose to carry this provision forward into the new TC Sourcebook.

Q14 Do you agree that there is no need to carry forward the appropriate examination rule and associated guidance relating to *convertible* LTCI contracts?

Consequential amendments

- 3.73 The proposals set out in this chapter require a small number of minor consequential amendments to other parts of our Handbook – in particular, to the Approved Persons chapter in the Supervision Manual. These amendments are shown in the various Annexes of the draft instrument. (We are not proposing any consequential changes to the Conduct of Business Sourcebook because this is being replaced by a new Sourcebook on 1 November 2007.)

Q15 Do you have any comments on the proposed consequential amendments?

Transitional arrangements

- 3.74 In the past, amendments to the rules or guidance in our Handbook have generally imposed new obligations on firms. So transitional arrangements are usually needed to provide firms with enough time to comply – for example, the setting up of new systems or controls. However, the changes that we are proposing in this CP do not impose any new requirements on firms or change the competence standards required of firms. Instead, they involve a significant reduction and simplification of the current TC Sourcebook and are designed to provide firms with increased flexibility in deciding how best to comply with the TC requirements. Firms wishing to amend their T&C arrangements to take advantage of this additional flexibility will be able to do so whenever they are ready after the new Sourcebook comes into force on 1 November 2007. So we do not see any need to provide firms with a transitional period within which to comply with the new arrangements.
- 3.75 However, we do need to carry over certain existing transitional provisions (generally referred to as ‘grandfathering’ arrangements) relating to the appropriate exam requirements, where these remain in force on 1 November 2007.
- 3.76 Some of these provisions give individuals who were assessed as competent before an FSA exam requirement was introduced a specified period of time within which to pass an appropriate exam (eg home reversions). This is to avoid the need for such

individuals to stop carrying on these activities in the meantime. Other transitional provisions completely remove the need for an individual who has been assessed as competent under a previous regulatory regime to pass an appropriate examination, provided they meet certain conditions. For example, certain individuals assessed as competent to carry on investment business under the pre-FSMA regulatory regime were ‘grandfathered’ indefinitely, as were individuals carrying on mortgage business who had been assessed as competent under the previous Mortgage Code Compliance Board regime. So we need to ensure that those who currently benefit from these arrangements continue to do so under the new TC Sourcebook.

3.77 We propose to implement the proposed rules and guidance in this chapter with effect from 1 November 2007 to dovetail with the MiFID implementation date. We also propose to carry forward – in a simplified form – the ‘grandfathering’ provisions relating to the appropriate exam requirements that remain current at that date. These transitional provisions are set out in Annex E of the draft Instrument.

Q16 Do you have any comments on our proposal to implement the changes set out in this paper on 1 November 2007 or on the transitional arrangements which we propose to make?

Q17 Do you have any other comments on the rules and guidance we propose to include in the new TC Sourcebook? Are there any significant gaps?

4 Cost-benefit analysis

Simplification and moving to principles-based regulation

- 4.1 The proposal to simplify the current T&C rules and rely on a more principles-based regime would affect all firms we regulate, including wholesale and general insurance firms that are not subject to current TC 2 requirements.
- 4.2 Wholesale firms would have some new guidance on how to comply with overarching competence requirements. However, as this covers the same ground as the TC 1 Commitments, we do not expect there are any additional cost and benefit implications beyond what we discussed in CP 05/10 and FS 06/1. Retail firms should be given more flexibility in the way they comply with competence principles, but will not be subject to any new requirements or obligations. So no significant costs are expected to arise from the proposed simplification.
- 4.3 Because the standards of the overarching competence requirements would not be lowered, average competence levels should not fall and consumers should not incur any costs because of this proposal.
- 4.4 Conversely, there should be only limited scope for firms to save on ongoing compliance costs. We have not measured the benefits for firms of this simplification as these will depend on each firm's business model and how much they decide to change their TC arrangements. There may be some benefits associated with the flexibility afforded to firms by a more principles-based approach, although we expect these to be relatively modest since firms will still have to meet the same competence standards as they do now.
- 4.5 The estimated costs for the FSA of the simplification are approximately £120,000 (that is, the cost of developing and consulting on these proposals).

Retaining the exam requirement

- 4.6 The proposal to retain exam requirements would not lead to additional costs and benefits for retail firms that currently are already subject to exam requirements (the baseline). Inwardly-passporting MiFID firms may be subject to a small reduction in costs, as we will no longer be able to apply these requirements to them and, in theory, there may be some increased risk of consumer detriment. However, we do not

have any discretion in this area and these firms will still be required to comply with the overarching competence standard in MiFID. Some of these firms may also have a commercial incentive to take the exams on a voluntary basis.

- 4.7 In line with our better regulation agenda and our move to more principles-based regulation, we commissioned Europe Economics to carry out a detailed piece of work to assess the costs and benefits of compulsory exam requirements (against the scenario of no exam requirements). We also wanted to establish whether this would place UK MiFID firms at a competitive disadvantage. We summarise below the key findings from the Europe Economics report, which is available on our website at http://www.fsa.gov.uk/pubs/other/tandc_report.pdf.
- 4.8 On average, UK authorised firms will continue to incur ongoing compliance costs of between 0.06%²⁵ and 0.08 %²⁶ of operational costs each year. However, these compliance costs vary per type of firm. According to Europe Economics, large firms incur about 0.08% whereas small investment and mortgage firms up to 1.59%.
- 4.9 Deloitte estimates that, on average, only 25% of the costs of exam requirements are incremental.²⁷ Europe Economics report that only around 20% of large firms and 25% of smaller investment and mortgage firms would not use exams in the absence of a requirement. Based on these two studies, we estimate that the incremental compliance costs of exam requirements range from 0.01% of operational costs for large firms to 0.4% for smaller investment and mortgage firms.²⁸
- 4.10 These incremental costs for exam requirements are not large enough to significantly impact the competitive position of UK MiFID firms. Europe Economics' research also shows that the firms that incur the largest incremental costs of exam requirements are mortgage firms. Since mortgage business is not subject to MiFID and mortgage firms do not generally compete with EEA MiFID firms they should not suffer from any competitive disadvantage.
- 4.11 Europe Economics estimates that removing exam requirements without increased FSA supervision would result in competence levels falling in about 30% of firms (mainly smaller investment and mortgage firms) and falling below current minimum competence standards in about 15% of firms (mainly mortgage firms). Exam requirements therefore provide benefits to consumers by increasing levels of competence in the industry.
- 4.12 We have not measured how much consumers of different products benefit from this increased competence nor attempted to determine the optimal competence levels in different markets. Our exam requirements are intended to achieve acceptable baseline knowledge standards across the industry. However, the conclusions of the

25 Average cost for investment and pension advice firms according to Deloitte's *'The Cost of Regulation study'*

26 According to the Europe Economics report

27 These figures are for investment and pension advice firms and are based on the 'costs of having exam requirements' as opposed to 'no T&C rules at all' when instead the relevant measure for our proposal should be the 'cost of having exam requirements' as opposed to the 'cost of having only an overarching competence requirement'.

28 The figures are likely to be smaller since firms that will not use exams are likely to replace exam arrangements with alternative methods that will have a cost.

TCF work provide some indications that a fall in competence levels could be detrimental in all markets.

- 4.13 Without these exam requirements, we would have to spend significantly more time on monitoring compliance with overarching TC requirements to maintain current standards. The additional time spent on supervision would need to be passed on to firms through higher fees. We estimate that without these exam requirements we would have to spend somewhere in the region of an additional £500,000 to £1,000,000 each year on supervision.

5 Compatibility statement

Introduction

- 5.1 Sections 155 and 157 of FSMA require us to explain our reasons for believing that making proposed rules or guidance is compatible with our general duties under section 2 of FSMA.
- 5.2 This chapter explains why we believe that the proposed rules and guidance:
- are compatible with our statutory objectives;
 - are the most appropriate for meeting these objectives; and
 - take account of the principles of good regulation to which we must have regard.

Our statutory objectives

- 5.3 We have designed the proposals set out in this CP chiefly to help us meet our statutory objectives of securing appropriate consumer protection. Some parts of our proposals also contribute to meeting our market confidence and public awareness objectives.

Consumer protection

- 5.4 The purpose of a T&C regime is to achieve an appropriate level of consumer protection by ensuring that consumers are dealt with by individuals who are competent to carry out their role. These individuals must have the necessary skills to be able to carry out their role and must be appropriately supervised until they are competent. In proposing changes to the Sourcebook, we have aimed to ensure that:
- firms are aware of the high-level requirements on them to ensure their staff are competent for the roles they perform;
 - firms have appropriate arrangements for assessing their employees as competent, with regard to their skills, knowledge and expertise (including a good standard of ethical behaviour), which may involve passing an examination;

- individuals are properly supervised until they have demonstrated that they have achieved the appropriate level of competence to carry out their role; and
- individuals continue to be appropriately supervised and their competence subject to regular review to ensure that it is kept up to date and remains appropriate for their role.

Public awareness

- 5.5 The proposed rules will support our public awareness objective by providing information which will increase public knowledge and understanding of the procedures firms must follow to ensure that their staff are able to perform their roles properly. However, this is an indirect, rather than a direct, consequence of the proposals contained in this CP.

Market confidence

- 5.6 The proposed rules support our market confidence objective by helping consumers to be more confident to deal with financial services firms because staff in those firms will have to meet our competence standards. Our proposals place particular emphasis on the duties of firms when dealing with retail customers as the asymmetry of knowledge here is likely to be significant and customers are particularly dependent on the quality of advice or service they receive.

Financial Crime

- 5.7 We do not believe that our proposed changes are directly linked to our Financial Crime objective. However, there is an indirect link in that T&C arrangements will include anti-money laundering training to increase awareness of, and reduce opportunities for, financial crime.

Matters to which we must have regard when discharging our general functions

- 5.8 Section 2(3) of the FSMA requires us to have regard to certain principles when discharging our general functions.

The need to use our resources in the most efficient way

- 5.9 We have designed our proposed T&C rules to be as simple and flexible as possible for us to supervise and for firms to be able to understand. This is in line with our desire to move towards more principles-based regulation, with less detailed prescription and more emphasis on outcomes. One of the factors in our decision to retain exams in the retail sector was that we felt that these continue to provide a valuable and cost-effective means of ensuring that appropriate baseline knowledge standards are achieved consistently across the industry. We also believe that our proposal to give due recognition to firms that choose to use an appropriate exam from the FSSC's list even where an examination pass is not required will provide valuable reassurance for firms who choose this route. This will allow other firms

the flexibility to identify alternative ways of meeting the requirement if they prefer to do so.

The responsibilities of those who manage the affairs of authorised persons

- 5.10 We have framed the proposed rules in a simpler, more accessible way to ensure firms are fully aware of their responsibilities for ensuring their employees achieve the required level of competence and of the outcomes we want them to achieve. We have also given senior management of firms greater flexibility to decide how best to comply with the rules.

The principle that a burden or a restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from that burden or restriction

Cost-benefit analysis

- 5.11 We are publishing on our website, at the same time as this CP, the cost-benefit analysis which Europe Economics has carried out on our behalf. It focuses primarily on the costs and benefits of retaining compulsory exam requirements for retail firms (see Chapter 4). In light of this research, we have formed the view that the burdens or restrictions arising from these requirements that we propose to continue to apply to relevant retail firms are proportionate to the benefits, considered in general terms, which we expect to achieve from them.

The desirability of facilitating innovation connected with regulated activities

- 5.12 We have sought to design a regime which does not inhibit possible future innovation. Our move to a simplified, more principles-based TC Sourcebook will not in any way reduce the competence standards we expect of firms.

The international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom

- 5.13 We have consulted on the changes to the T&C regime required by MiFID. We have also asked Europe Economics to carry out a detailed piece of research. This was to identify whether UK MiFID firms will be at a disadvantage in comparison with MiFID firms passporting into the UK (or operating in other Member States) if we retain the compulsory exam requirements. This was a possibility as firms authorised in other Member States will not be subject to the requirements in the TC Sourcebook. On the basis of the results of this research, we do not think there will be significant competition issues arising from this. We are therefore satisfied that the burdens or restrictions that we intend to impose are not disproportionate

to the benefits, considered in general terms, which we expect to result from our rules and guidance.

The need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions

- 5.14 For the reasons set out in the cost-benefit analysis, and in the separate report by Europe Economics, overall we do not believe that our proposals will have a significantly adverse effect on competition.

The desirability of facilitating competition between those subject to any form of regulation by the Financial Services Authority

- 5.15 Our proposals provide greater clarity about the competence standards we require firms to meet and give them increased flexibility to decide how to achieve these outcomes. We believe this flexibility will enable firms to comply with their regulatory obligations in the most cost-effective way, taking account of the nature of their business. This should therefore facilitate competition between the different types of firms that will be subject to these requirements.

Acting in a way most appropriate to meeting the statutory objectives

- 5.16 We believe that our T&C standards are essential to delivery of our consumer protection objective and our proposals set out clearly and with the minimum degree of prescription the competence standards that we believe to be appropriate. However, we have sought to do this in a way that gives firms as much flexibility as possible so they can achieve the required outcomes in the way that best suits them.
- 5.17 We have therefore concluded, for the reasons set out in this chapter, that the proposed rules and guidance represent the most appropriate way of meeting the regulatory objectives.

Industry working group members

Association of British Insurers

Association of Independent Financial Advisers

Association of Mortgage Intermediaries

Association of Private Client Investment Managers and Stockbrokers

British Bankers Association

Chartered Institute of Bankers in Scotland

Chartered Insurance Institute

Council of Mortgage Lenders

Financial Services Skills Council

Investment Management Association

IFS School of Finance

London Investment Banking Association

Securities & Investment Institute

List of consultation questions

- Q1 Do you agree with our proposal to extend the high-level competence requirement in MiFID to non-common platform firms so that it applies to all UK authorised firms – and do you have any comments on the draft rules and guidance we propose to insert into SYSC 3 to achieve this?
- Q2 Do you agree with our proposal to remove the TC Commitments?
- Q3 If so, do you agree that it is appropriate to apply the new high-level competence requirement in SYSC to wholesale business instead?
- Q4 Do you have any comments on our proposed provision indicating that we will take account of firms' exam arrangements where they choose to use an examination selected from the FSSC's list of appropriate examinations, even though they are not required to do so?
- Q5 Do you agree that it is appropriate to retain a TC Sourcebook at this stage, but that the longer-term aim should be to remove it?
- Q6 Do you have any comments on the proposed provisions in Section 1 of the new TC Sourcebook or on the scope tables?
- Q7 Do you have any comments on the requirements and guidance in Section 2 of the new TC Sourcebook (with the exception of the exam-related provisions on which we ask separate questions below)?
- Q8 Do you have any comments on the proposed record-keeping requirements in Section 3 of the new TC Sourcebook?
- Q9 Do you agree with our proposal to retain the current examination requirements for retail business carried out by UK firms?

- Q10 Do you agree with our proposal to retain the current 'safe harbour' for retail firms that are subject to an exam requirement and select an exam from the list maintained by the FSSC?
- Q11 Do you have any comments on the proposed guidance relating to exam time limits in Section 2 of the TC Sourcebook?
- Q12 Do you agree with our proposal to continue:
- (i) to require employees to pass a regulatory module before starting to carry on certain activities for retail clients or customers (as now);
 - (ii) to require employees to pass the whole of an appropriate examination before starting certain specified higher risk activities for retail clients or customers (as now); and
 - (iii) to provide the Overseas Exemption?
- Q13 Do you think the proposed guidance at TC 2.1.4G is sufficient or should we also keep the rule requiring supervisors of those advising retail clients on packaged products to pass an appropriate examination?
- Q14 Do you agree that there is no need to carry forward the appropriate examination rule and associated guidance relating to *convertible* LTCI contracts?
- Q15 Do you have any comments on the proposed consequential amendments?
- Q16 Do you have any comments on our proposal to implement the changes set out in this paper on 1 November 2007 or on the transitional arrangements which we propose to make?
- Q17 Do you have any other comments on the rules and guidance we propose to include in the new TC Sourcebook? Are there any significant gaps?

Draft Handbook text

**TRAINING AND COMPETENCE SOURCEBOOK (AMENDMENT NO 7)
INSTRUMENT 2007**

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 149 (Evidential provisions)
- (3) section 150 (2) (Actions for damages);
- (4) section 156 (General supplementary powers);
- (5) 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 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 Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Insurance: Conduct of Business sourcebook (ICOB)	Annex C
Mortgage: Conduct of Business sourcebook (MCOB)	Annex D
Training and Competence sourcebook (TC)	Annex E
Supervision manual (SUP)	Annex F
Electronic Money sourcebook (ELM)	Annex G
Professional Firms sourcebook (PROF)	Annex H
Energy Market Participants guide (EMPS)	Annex I

Oil Market Participants guide (OMP)	Annex J
Service Companies guide (SERV)	Annex K

Citation

E. This instrument may be cited as the Training and Competence sourcebook Instrument 2007.

By order of the Board

Annex A
Amendments to the Glossary

In this Annex underlining indicates new text and strikethrough indicates deleted text.

competent employees rule (1) for a *firm* which is not a *common platform firm*, SYSC 3.1.6 R.

(2) for a *common platform firm*, SYSC 5.1.1 R.

pension transfer specialist

an individual appointed by a *firm* to check the suitability of a *pension transfer* or *pension opt-out* who has passed the required examinations as specified in ~~the interim approved examination annexes to TC-2~~.

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex underlining indicates new text and strikethrough indicates deleted text.

- 3.1.6 R A firm which is not a common platform firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.
- 3.1.7 R When complying with the competent employees rule, a firm must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.
- 3.1.8 G The Training and Competence sourcebook (TC) contains additional rules and guidance relating to a firm's retail activities.
- 3.1.9 G The training and competence requirements that apply to firms which are not common platform firms when they carry on the firm's wholesale business are in this chapter. However, such firms may wish to take TC into account in complying with the requirements in SYSC.
- 3.1.10 G If a firm which is not a common platform firm requires employees who are not subject to an examination requirement to pass an exam from the list of appropriate examinations maintained by the Financial Services Skills Council, the FSA will take that into account when assessing whether the firm has ensured that the employee satisfies the knowledge component of the competent employees rule.
- ...
- 3.2.14 G ...
- (3) [deleted]
- (4) ...
- ...

- 5.1.4 G The Training and Competence sourcebook (TC) contains additional rules and guidance relating to a firm's retail activities. The FSA's requirements on firms with respect to the competence of individuals are in the Training and Competence sourcebook (TC).
- 5.1.4A G The training and competence requirements that apply to common platform firms when they carry on the firm's wholesale business are in this chapter. However, such firms may wish to take TC into account in complying with the requirements in SYSC.
- 5.1.5A G If a common platform firm requires employees who are not subject to an examination requirement in TC to pass an exam from the list of appropriate examinations maintained by the Financial Services Skills Council, the FSA will take that into account when assessing whether the firm has ensured that the employee satisfies the knowledge component of the competent employees rule.

Annex C

Amendments to the Insurance: Conduct of Business sourcebook (ICOB)

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

ICOB: 1 Application and Purpose

Annex 2 G

Summary of Handbook Provisions for Insurance Intermediaries

<p>This table belongs to <i>ICOB</i> 1.5.1 G. 1</p> <p>This table sets out the provisions in the <i>Handbook</i> that apply to <i>firms</i> which are <i>insurance intermediaries</i> where they:</p> <p>(1) carry on <i>insurance mediation activities</i> in relation to a <i>non-investment insurance contract</i>; or</p> <p>(2) communicate or approve a <i>non-investment financial promotion</i>.</p> <p>(3) It also sets out the provisions in the <i>Handbook</i> that apply to <i>approved persons</i>.</p> <p>(4) For convenience, the former activity is referred to in the table as (1) and the latter as (2).</p>		
	Module	Application
...
	<p>Training and Competence sourcebook, <i>TC</i></p>	<p><i>TC</i> 1 applies when a firm is doing (1) or (2).</p> <p><i>TC</i> 2 applies only in circumstances where an <i>insurance intermediary</i> has employees advising on <i>non-investment insurance contracts</i> with or for a <i>retail customer</i> as listed in <i>TC Appendix 1 R</i><i>TC</i> 2.1.4 R.</p>

...
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7.3.1	...	
7.3.4	G	An <i>insurer</i> should refer to the <i>guidance on TC 1 (Commitments) the competent employees rule in SYSC 3</i> in respect of the competence of any person who carries out claims handling on its behalf.
7.3.5	...	

Annex D

Amendments to the Mortgage: Conduct of Business sourcebook (MCOB)

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

8.6.1 ...

8.6.3 G *Firms* are reminded that ~~TC2~~ the Training and Competence sourcebook sets out requirements for:

- (1) *employees* designing scripted questions for use with customers in non-advised sales of *equity release transactions* ~~which do not involve personal recommendations~~; and
- (2) *employees* overseeing on a day-to-day basis the non-advised sales to *customers* of *equity release transactions* ~~which do not involve personal recommendations~~.

Annex E

The Training and Competence sourcebook

In this annex the entire text is new and is not underlined.

The Training and Competence sourcebook is amended in accordance with the following table:

Previous Version of TC	Changes Being Made
Existing provisions of TC Chapters 1 and 2	Text deleted and replaced with new Sections 1 – 3 and Appendices 1 – 3 in this annex
Transitional provision 1 in TC TP 1.1	Amended so that it reads as set out in TC TP 1 in this annex
Transitional provision 2 in TC TP 1.1	Amended so that it reads as set out in TC TP 2 in this annex
Transitional provision 3 to 9 in TC TP 1.1	Revoked
TC TP 1.2	Amended so that it reads as set out in TC TP 3 as set out in this annex
Paragraph 1 in TC TP 2	Amended so that it reads as set out in TC TP 4 as set out in this annex
Paragraph 2 in TC TP 2	Revoked
Paragraph 3 in TC TP 2	Revoked
Paragraph 4 in TC TP 2	Amended so that it reads as set out in TC TP 5 as set out in this annex
Paragraph 5 in TC TP 2	Revoked
Paragraph 6 in TC TP 2	Revoked
—	TC TP 6.1G is new text
TC Schedules 1 to 6	Amended so that it reads as set out in TC Schedules 1 to 6 in this annex

1. Application and Purpose

Who and what?

- 1.1.1 R This sourcebook applies to a *firm* where its *employee* carries on an activity in Appendix 1 (subject to the limitations set out in Appendix 3).

Where?

- 1.1.2 R The territorial scope of this sourcebook is set out in Appendix 2.

Purpose

- 1.1.3 G The *competent employees rule* is the main *Handbook* requirement relating to the competence of *employees*. The purpose of this sourcebook is to support the FSA's supervisory function by supplementing the *competent employees rule* for retail activities.

Meaning of competence

- 1.1.4 G In this sourcebook, competence means having the skills, knowledge and expertise needed to discharge the responsibilities of an *employee's* role. This includes an *employee's* ability to achieve a good standard of ethical behaviour.

Actions for damages

- 1.2.1 R A contravention of the *rules* in *TC* does not give rise to a right of action by a *private person* under section 150 of the Act (and each of those *rules* is specified under section 150(2) of the Act as a provision giving rise to no such right of action).

2 Assessing and Maintaining Competence

Assessment of competence

- 2.1.1 R A *firm* must not treat an *employee* as being competent to carry on an activity in Appendix 1 until the *employee* has demonstrated the necessary competence to do so and has (if required by Appendix 1) passed each module of an appropriate examination.
- 2.1.2 R A *firm* must not allow an *employee* to carry on an activity in Appendix 1 without appropriate supervision.
- 2.1.3 G *Firms* should ensure that *employees* are appropriately supervised at all times. It is expected that the level and intensity of that supervision will be significantly greater in the period before the *firm* has assessed the *employee* as competent, than after. A *firm* should therefore have clear criteria and procedures relating to the specific point at which the *employee* is assessed as competent in order to be able to demonstrate when and why a reduced level of supervision may be considered appropriate.

Supervising and assessing

- 2.1.4 G *Firms* should ensure that those supervising *employees* carrying on an activity in Appendix 1 have the necessary coaching and assessment skills as well as technical knowledge to act as a competent supervisor and assessor. In particular *firms* should consider whether it is appropriate for those supervising *employees* not assessed as competent to pass an appropriate examination as well [except where the employee is giving advice on packaged products, see TC 2.1.5 R below.]
- [2.1.5 R Where an *employee* is giving advice on packaged products to *retail clients* and has not been assessed as competent to do so, the *firm* must ensure that the individual supervising and assessing that *employee* has passed an appropriate examination.]

Examination requirements before starting activities

- 2.1.6 R A *firm* must ensure that an *employee* does not carry on an activity in Appendix 1 (other than an overseeing activity) for which there is an exam requirement without first passing the relevant regulatory module of an appropriate examination.
- 2.1.7 R A *firm* must ensure that an *employee* does not carry on any of the following activities without first passing each module of an appropriate examination for:

- (1) advising and dealing activities in Appendix 1;
- (2) the activity of a *broker fund adviser*;
- (3) *advising on syndicate participation at Lloyd's*; or
- (4) the activity of a *pension transfer specialist*.

2.1.8 G Where there is an exam requirement, *firms* may wish to impose limits on the time they allow their *employees* to pass an appropriate examination or place limits on the number of times the exam can be taken.

Exemption from appropriate examination requirements

- 2.1.9 R (1) Except as described in (2), if a *firm* is satisfied that an *employee*:
- (a) has at least three years' up-to-date relevant experience in the activity in question obtained while employed outside the *United Kingdom*;
 - (b) has not previously been required to comply fully with the relevant examination requirements in *TC 2.1.1 R*; and
 - (c) has passed the relevant regulatory module of an appropriate examination;
- then the requirement to have passed each module of an appropriate examination in these rules will only apply for that *employee* if he is carrying on one of the following activities:
- (d) *advising on investments* which are *packaged products*, if that advice is given to *private customers*;
 - (e) the activity of a *broker fund adviser*;
 - (f) *advising on syndicate participation at Lloyd's*; or
 - (g) the activity of a *pension transfer specialist*.
- (2) If an *employee* is not carrying out the *CF30 customer function* and the reason he is not doing so is because he is benefiting from the '30-day rule' exemption in *SUP 10.10.7B R*, then the *employee* will be exempt from the appropriate examination requirement in *TC 2.1.1 R* even if he does not meet the requirements in 1(b) and (c) above.

Selecting an appropriate examination

- 2.1.10 E (1) This *rule* applies for the purposes of *TC* 2.1.1 R, [2.1.5 R], 2.1.6 R, 2.1.7 R and 2.1.9 R.
- (2) In ensuring that an examination is appropriate, a *firm* should select an appropriate examination from the list of examinations maintained by The Financial Services Skills Council.
- (3) Compliance with (2) may be relied on as tending to establish compliance with the *rules* referred to in (1).

2.1.11 Training needs

- G *Firms* should ensure that their *employees'* training needs are assessed at the outset and at regular intervals (including if their role changes). Appropriate training and support should be provided to ensure that any training needs are satisfied.

Maintaining competence

- 2.1.12 R A *firm* must continually monitor and assess *employees'* competence and take appropriate action to ensure that they remain competent for their role.
- 2.1.13 G A firm should ensure that maintaining competence for an employee takes into account such matters as:
- (1) technical knowledge and its application;
- (2) skills and expertise; and
- (3) changes in the market and to products, legislation and regulation.

3 Record Keeping

3.1.1 R A *firm* must make appropriate records to demonstrate compliance with the *rules* in this sourcebook and keep them for the following periods after an *employee* stops carrying on the activity:

- (1) at least 5 years for *MiFID business*;
- (2) 3 years for non-*MiFID business*; and
- (3) indefinitely for a *pension transfer specialist*.

Activities and Products/Sectors to which TC applies subject to Appendices 2 and 3		
Activity	Products/Sectors	Is there an appropriate examination requirement?
<i>Designated investment business carried on for a retail client</i>		
Providing basic advice	1. <i>Stakeholder products</i> excluding a <i>deposit-based stakeholder product</i>	No
Advising	2. <i>Securities</i> which are not <i>stakeholder pension schemes</i> or <i>broker funds</i> 3. <i>Derivatives</i> 4. <i>Packaged products</i> which are not <i>broker funds</i> 5. <i>Friendly Society life policies</i> where the <i>employee</i> is not reasonably expected to receive a remuneration of greater than £1000 a year in respect of such sales 6. <i>Friendly Society tax-exempt policies</i> 7. <i>Long-term care insurance contracts</i> 8. <i>Investments</i> in the course of <i>corporate finance business</i> 9. <i>Syndicate participation at Lloyd's</i>	Yes
Undertaking the activity in column 2	10. <i>broker fund adviser</i> 11. <i>pension transfer specialist</i>	Yes
Advising and dealing	12. <i>Securities</i> which are not <i>stakeholder pension schemes</i> or <i>broker funds</i> 13. <i>Derivatives</i>	Yes
Managing investments	14. <i>Investments</i>	Yes
Overseeing on a day-to-day basis	15. Operating a <i>collective investment scheme</i> or undertaking the activities of a trustee or <i>depository</i> of a <i>collective investment scheme</i> 16. <i>Safeguarding and administering investments</i> or holding <i>client money</i> 17. <i>Administrative functions</i> in relation to <i>managing investments</i> 18. <i>Administrative functions</i> in relation to <i>effecting contracts of insurance</i> , or <i>carrying out contracts of insurance</i> , which are <i>life policies</i> 19. Taking <i>retail clients</i> through <i>stakeholder</i>	Yes

	<i>pension scheme</i> decision trees.	
	20. <i>Administrative functions</i> in relation to the operation of <i>stakeholder pension schemes</i>	
<i>Regulated mortgage activity and reversion activity carried on for a customer</i>		
Advising	21. <i>Regulated mortgage contracts</i> for a non-business purpose 22. <i>Equity release transactions</i>	Yes
Designing scripted questions for non-advised sales	23. <i>Equity release transactions</i>	Yes
Overseeing non-advised sales on a day-to-day basis	24. <i>Equity release transactions</i>	Yes
<i>Non-investment insurance business carried on for a retail customer</i>		
Advising	25. <i>Non-investment insurance contracts</i>	No

TC's Territorial Scope subject to the limitation in Appendix 3			
	<i>UK domestic firm</i>	<i>Incoming EEA firm</i>	<i>Overseas firm (other than an incoming EEA firm)</i>
<i>MiFID business</i>	<p><i>TC applies in respect of employees who engage in or oversee activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom and</i></p> <p><i>TC also applies insofar as an activity is carried on from an establishment in, and within the territory of, another EEA State</i></p>	<i>TC does not apply</i>	<i>TC applies in respect of employees who engage in or oversee activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom</i>
<i>Insurance mediation activities</i>	<p><i>TC applies in respect of employees who engage in or oversee activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom and</i></p> <p><i>TC also applies in respect of employees who engage in or oversee activities from a branch established in another EEA state</i></p>	<i>TC does not apply</i>	<i>TC does not apply</i>
<i>Regulated mortgage activity and reversion activity</i>	<p><i>TC applies if the customer is resident in the United Kingdom at the time the regulated mortgage activity is carried on and</i></p> <p><i>TC also applies if the customer is resident (at the time that the activity is carried on in another EEA State) but only if the activity is carried on from an establishment maintained by the firm or its appointed representative in the United Kingdom</i></p>	<i>Same as for UK domestic firm</i>	<i>Same as for UK domestic firm</i>
<i>Any other</i>	<i>TC applies in respect of employees</i>	<i>TC applies in</i>	<i>TC applies in</i>

activity	<p>who engage in or oversee activities from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i></p> <p>and</p> <p><i>TC</i> also applies in respect of <i>employees</i> who engage in or oversee activities with or for a <i>client</i> in the <i>United Kingdom</i></p>	<p>respect of its <i>employees</i> who engage in or oversee activities from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i></p>	<p>respect of its <i>employees</i> who engage in or oversee activities from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i></p>
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Circumstances in which TC does not apply	
<i>Type of firm / Activity</i>	<i>Application</i>
<i>Incoming EEA firm</i>	This sourcebook does not apply where responsibility for any matter it covers is reserved by a European Community instrument to the <i>firm's Home State regulator</i>
<i>Incoming Treaty firm</i>	This sourcebook does not apply where responsibility for any matter it covers is reserved by a European Community instrument to the <i>firm's Home State regulator</i>
<i>UCITS qualifier</i>	This sourcebook only applies where it is relevant to the manner in which a <i>firm communicates</i> or <i>approves a financial promotion</i>
<i>Authorised professional firm</i>	<i>TC</i> does not apply with respect to its <i>non-mainstream regulated activities</i> (see <i>PROF 5.2</i>)

Transitional Provisions

Designated Investment Business

Assessments of competence before commencement

- 1.1 R (1) This *rule* applies in respect of an *employee* of a *firm* employed at *commencement* if the *employee* had, before *commencement*, been assessed as competent by a *firm* in accordance with the applicable *rules* of its *previous regulator*.
- (2) An *employee* described in (1) is exempt from the requirements in this sourcebook to pass an appropriate examination if the activity or role carried on by that *employee* after *commencement* is the same or substantially the same as that for which the *employee* had been assessed as competent before *commencement*.
- 1.2 R If an employee of a *firm* is exempted from an examination requirement under *TC TP 1.1 R* and any other *firm* subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:
- (1) the activity which the *employee* engages in or oversees (or the role of the supervisor) continues to be the same, or substantially the same, as that in respect of which the *employee* had previously enjoyed the benefit of the exemption; and
- (2) the individual has not experienced any significant break of employment since the previous employment for which he has the benefit of an exemption under *TC TP 1*.

Assessments of competence in 12 month period after commencement

- 2.1 R (1) This *rule* applies in respect of an *employee* who had, on 31 October 2007, the benefit of an exemption under transitional rule 2 in *TC TP 1.1* in the form it was in on 31 October 2007.
- (2) An *employee* described in (1) is exempt from the requirements in this sourcebook to pass an appropriate examination but only in respect of the activities in respect of which he had the benefit of that exemption as at 31 October 2007.
- 2.2 R If an employee of a *firm* is exempted from an examination requirement under *TC TP 2.1 R* and any other *firm* subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment

on the same basis provided that:

- (1) the activity which the *employee* engages in or oversees continues to be the same, or substantially the same, as that in respect of which the *employee* had previously enjoyed the benefit of the exemption; and
- (2) the individual has not experienced any significant break of employment since the previous employment for which he has the benefit of an exemption under *TC TP 2.1* or *2.2*.

- 2.3 G At 31 October 2007 transitional rule 2 in *TC TP 1.1* applied in respect of an *employee* of a *firm* which at *commencement* employed individuals who under the rules of its *previous regulator* were not subject to any specific training and competence requirements. This *rule* allowed the *firm* to assess such individuals as competent in the first 12 months after *commencement* without the *employee* having to pass an exam. The exemption applied only in respect of the activities which the individual was able to carry on before *commencement*.

Regulated Mortgage Contracts

Assessments of competence under the Mortgage Code Compliance Board Rules

- 3.1 R (1) This *rule* applies:
- (a) in relation to *regulated mortgage contracts*; and
 - (b) in respect of an individual employed by a *firm* at 31 October 2004.
- (2) If the individual described in (1) was assessed as competent by the *firm* before 31 October 2004 in accordance with the rules of the Mortgage Code Compliance Board applying immediately before 31 October 2004, he is exempt from the requirements in this sourcebook to pass an appropriate examination provided that:
- (a) the activity which the individual engages in or oversees continues to be the same, or substantially the same as that immediately before 31 October 2004; and
 - (b) the individual has not experienced any significant break of employment since the previous assessment.
- 3.2 R If an employee of a *firm* is exempted from an examination requirement under *TC TP 3.1 R* and any other *firm* subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:
- (1) the conditions in *TC TP 3.1 R (2) (a)* and *(b)* are met; and

- (2) the firm assesses the individual to be competent in accordance with *TC 2.1.1 R*

Home Reversion Plans

Assessments of competence before 6 April 2007

- 4.1 R (1) This *rule* applies in respect of an individual employed by a *firm* at 6 April 2007, if that individual had before that date been assessed as competent by the *firm* in relation to:
 - (a) advising on *lifetime mortgages*;
 - (b) designing scripted questions for use in non-advised sales to *customers of lifetime mortgages*; or
 - (c) overseeing non-advised sales of *lifetime mortgages*.
- (2) An individual in (1) is exempt from the examination requirements in this sourcebook in relation to activities carried on in relation to home reversion plans that correspond to those in (1) provided that:
 - (a) the individual has been assessed as competent to apply the knowledge and skills necessary to engage in or oversee the relevant home reversion activity before 6 April 2007;
 - (b) the home reversion activity which the individual engages in or oversees continues to be the same, or substantially the same as that which he engaged in or oversaw immediately before 6 April 2007; and
 - (c) the individual has not experienced any significant break in employment since the previous assessment.
- 4.2 R If an employee of a *firm* is exempted from an examination requirement under *TC TP 4.1 R* and any other *firm* subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:
 - (1) the conditions in *TC TP 4.1 R* (2) (b) and (c) are met; and
 - (2) the firm assesses the individual to be competent in accordance with *TC 2.1.1 R*
- 4.3 R *TC TP 4* does not apply to an individual after 6 April 2009 unless he passes an appropriate home reversion top-up examination before that date.
- 5.1 R (1) This *rule* applies in respect of an individual employed by a *firm* at 6

April 2007 (other than an individual described in *TC TP 4.1 R*).

- (2) The individual in (1) is exempt from the examination requirements in this sourcebook in relation to the following:
 - (a) advising on *home reversion plans*;
 - (b) designing scripted questions for use in non-advised sales to customers of *home-reversion plans*; or
 - (c) overseeing non-advised sales of *home reversion plans*.
- (3) The exemption in (2) only applies if:
 - (a) the individual has been assessed as competent to apply the knowledge and skills necessary to engage in or oversee the relevant home reversion activity before 6 April 2007;
 - (b) the home reversion activity which the individual engages in or oversees continues to be the same, or substantially the same as that immediately before 6 April 2007; and
 - (c) the individual has not experienced any significant break of employment since the previous assessment.

5.2 R If the individual has not passed an appropriate examination before 6 April 2009, the individual in *TC TP 5.1 R (1)* will cease to be exempt from the appropriate examination requirement.

5.3 R If an employee of a *firm* is exempted from an examination requirement under *TC TP 5.1 R* and any other *firm* subsequently employs the individual, that exemption continues to apply in respect of that subsequent employment on the same basis provided that:

- (1) the conditions in *TC TP 5.1 R 3 (b)* and (c) are met; and
- (2) the firm assesses the individual to be competent in accordance with *TC 2.1.1 R*

Transitional provisions relating to assessments of competence

6.1 G If appropriate, a *firm* may treat a competence assessment carried out under *TC* in the form it was in before 1 November 2007 as being sufficient to satisfy *TC 2.1.1 R*.

Schedule 1: Record Keeping Requirements

Schedule 1 Record keeping requirements

TC Sch G TC 3.1.1R provides:

1.1

A *firm* must make appropriate records to demonstrate compliance with the *rules* in this sourcebook and keep them for the following periods after an *employee* stops carrying on the activity:

- (1) at least 5 years for *MiFID business*;
- (2) 3 years for non-*MiFID business*; and
- (3) indefinitely for a *pension transfer specialist*.

Schedule 2: Notification Requirements

Schedule 2 Notification requirements

TC Sch G There are no notification or reporting requirements in *TC*.
2.1

Schedule 3: Fees and other required payments

Schedule 3 Fees and other required payments

TC Sch G There are no requirements for fees or other payments in *TC*.
3.1

Schedule 4: Powers exercised

Schedule 4 Powers exercised

TC Sch 4.1 G The following powers and related provisions in the Act have been exercised to make the *rules* in *TC*:

- (1) section 138 (General rule making power)
- (2) section 149 (Evidential provisions)
- (3) section 150(2) (Actions for damages)
- (4) section 156 (General supplementary powers)

TC Sch 4.2 G The following power in the *Act* has been exercised by the *FSA* to give the guidance in *TC*:

- (1) section 157(1) (Guidance)

Schedule 5: Rights of action for damages

Schedule 5 Rights of action for damages

TC Sch 5.1 G The table below sets out the *rules* in *TC* contravention of which by an *authorised person* may be actionable under section 150 of the Act (Actions for damages) by a *person* who suffers loss as a result of the contravention.

TC Sch 5.2 G If a "Yes" appears in the column headed "For private person?", the rule may be actionable by a "*private person*" under section 150 (or, in certain circumstances, his fiduciary or representative). A "Yes" in the column headed "Removed" indicates that the *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

TC Sch 5.3 G The column headed "For other person?" indicates whether the rule is actionable by a *person* other than a *private person* (or his fiduciary or representative). If so, an indication of the type of *person* by whom the *rule* is actionable is given.

TC Sch 5.4 G Table: Actions for damages: Training and Competence sourcebook

			Right of action under section 150		
Chapter/Appendix	Section/Annex	Paragraph	For private person	Removed	For other person
<i>Rules in TC</i>			No	Yes <i>TC</i> 1.2.1 R	No

Schedule 6: Rules that can be waived

Schedule 6 Rules that can be waived

TC Sch *G* The *rules* in *TC* can be *waived* by the *FSA* under section 148 of the *Act*
6.1 (Modification or waiver of *rules*).

Annex F

Amendments to the Supervision manual (SUP)

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

10.10.1 ...

10.10.7C G The *FSA* would expect an individual from *overseas* to be accompanied on a visit to a *customer*. ~~TC 2.1.95.5 R (1)~~ provides that the *firm* will have to be satisfied that the individual has at least three years' up-to-date relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of ~~TC 2.1.95.5 R (1)~~ are disapplied in these circumstances (except for an individual who gives advice to *retail clients* on *packaged products* or is a *broker fund adviser*). The effect of this is that such individuals need not pass the relevant regulatory module of an appropriate examination (see ~~TC 2.1.9 R(2)5.5 R(3) and TC 2.5.5 R(4)~~).

SUP 10 Annex 1 Frequently asked questions

G

	Question	Answer
	Requirements of the regime	
1	...	
11	What checks should a <i>firm</i> make on a <i>candidate</i> before submitting an application for approval from the <i>FSA</i> ?	The <i>FSA</i> expects <i>firms</i> to perform due and diligent enquiries about their <i>candidates</i> before they submit an application to us for approval. Our approval process is not a substitute for the checks that a <i>firm</i> should be carrying out on its prospective recruits. It is for the <i>firm</i> to determine what checks are appropriate but in making its decision, a <i>firm</i> should have regard to the <i>controlled function</i> to which the application relates. <u><i>Firms' enquiries should include checks to verify relevant qualifications and previous employment.</i></u> Note also the provisions of <i>ENF</i> 8.12.2 G (Publication) and <i>TC</i> 2.2.1 R (Recruitment) .
11A	Should these checks include a	It is for senior management to decide what checks should be made. In deciding if it is necessary to carry out a check of

	check of criminal records?	criminal records, the <i>firm</i> should consider that the FSA does not routinely carry out these checks during the approval process. By virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the Order), the <i>FSA</i> and the industry also have a right to ask about spent, as well as unspent, criminal convictions for employment purposes about <i>candidates</i> for <i>approved person</i> status (see Question 5.01a of Form A (Application to perform controlled functions under the <i>approved persons</i> regime)). Note also the provisions of ENF 8.12.2 G (Publication) and TC 2.1.11G2.1 R (Recruitment) .
12	...	

2 Table How does the customer function relate to the training and competence requirements?

Activity	Paragraph 1 of the table in TC 2.1.4 R <u>Products/sectors in TC Appendix 1 R</u>	<i>Controlled Function</i>	<i>SUP</i>
<u>Advising only,</u> <u>Undertaking an activity,</u> <u>Advising and dealing</u> <u>Managing investments</u> <u>Advising and Dealing,</u> <u>Managing,</u> <u>Advising (without dealing)</u>	<u>2-9,</u> <u>10-11,</u> <u>12-13,</u> <u>14</u> (a)–(c), (d) and (e), (f)–(e)	Customer function (CF30)	10.10.4 R

12.6.1 ...

12.6.10 G The rules and guidance relating to training and competence in SYSC 3 and 5 and in TC for a firm carrying on retail business extend to any *employee* of

the *firm* in respect of whom the relevant *rules* apply. For these purposes, an *employee* of a *firm* includes:

- (1) (1) an individual who is an *appointed representative* of a *firm*; and
- (2) (2) an individual who is employed or appointed by an *appointed representative* of a *firm* (whether under a contract of service or for services) in connection with the business of the *appointed representative* for which the *firm* has accepted responsibility.

12.6.11 G A *firm* should take reasonable care to ensure that:

- (1) it has satisfied *TC 2* in respect of the relevant staff of the *appointed representative*; and
- (2) its *appointed representative* has adequate arrangements in respect of training and competence, which meet the requirements in *TC*.

12.6.11 ...
A

SUP 13A Annex 1G Application of the handbook to Incoming EEA Firms

(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>	...	
<i>TC</i>	<i>TC</i> applies, but only in so far as responsibility for any matter it covers is not reserved by a European Community instrument to the <i>firm's Home State regulator</i> .	<p><u><i>TC Appendix 1 R</i> sets out the activities to which <i>TC</i> applies.</u></p> <p><u><i>TC Appendix 2 R</i> sets out the sourcebook's territorial scope.</u></p> <p><u><i>TC Appendix 3 R</i> sets out the limitations on <i>TC Appendix 2</i>.</u></p> <p><i>TC 1 (Commitments):</i></p> <p>(1) contains guidance relevant to compliance with Principle 3, satisfaction of threshold</p>

		<p>condition 5 and the fit and proper test for approved persons; it is therefore relevant only if they apply to the firm (see the guidance on application of PRIN, COND and FIT above);</p> <p>(2) in particular, does not therefore apply if the firm has permission only for cross-border services and does not carry on regulated activities in the United Kingdom.</p> <p>TC 2 (Rules and guidance) does not apply (TC 2.1.2 R (2)).</p>
SUP	...	

Annex G

Amendments to the Electronic Money sourcebook (ELM)

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

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

Block	Module	Application
High Level Standards	...	
Training and Competence Sourcebook (TC)	TC 1 (Commitments) applies to ELMIs. TC 2 (Rules and Guidance) applies to a <i>firm</i> whose employees carry on activities listed in TC Appendix 1 R- 2.1.4 R . Those activities do not include issuing e-money.	
Regulatory processes	...	

Annex H

Amendments to the Professional Firms sourcebook (PROF)

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

5.3.1 ...

5.3.3 G *TC Appendix 3 R 2-1.1 R (2) provides that TC-2, which imposes the substantive training and competence requirements for retail clients or customers, does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*.*

5.3.4 ...

Annex J

Amendments to the Oil Market Participants guide (OMP)

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

1.22 G Parts of the *Handbook* applicable to *oil market participants*

	Part of the <i>Handbook</i>	Applicability to oil market participants
High Level Standards	...	
Business Standards	Training and Competence Sourcebook (TC)	TC 1 (Commitments) applies. TC 2 (Rules and guidance) is likely to apply where an <i>oil market participant</i> conducts activities set out in TC <u>Appendix 1 R for retail clients</u> 2.1.4 R.
Regulatory processes	...	

Annex K

Amendments to the Service Companies guide (SERV)

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

1.22 G Parts of the *Handbook* applicable to *service companies*

	Part of the <i>Handbook</i>	Applicability to <i>service companies</i>
High Level Standards	...	
Business Standards	Training and Competence Sourcebook (TC)	TC 1 (Commitments) applies. TC 2 (Rules and guidance) does not apply to <i>service companies</i> because the only <i>regulated activities</i> for which they have <i>permission</i> are not within the activities mentioned in TC <u>Appendix 1 R 2.1.4 R</u> .
Regulatory processes	...	

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