## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive summary</td>
<td>3</td>
</tr>
<tr>
<td>1 Introduction</td>
<td>5</td>
</tr>
<tr>
<td>2 Commentary on the draft IPC</td>
<td>16</td>
</tr>
<tr>
<td>3 Commentary on the good practice informational material</td>
<td>27</td>
</tr>
<tr>
<td>4 Corporate finance</td>
<td>28</td>
</tr>
<tr>
<td>5 Requirements that might equally apply to dealings with customers</td>
<td>29</td>
</tr>
<tr>
<td>6 Items excluded from the IPC</td>
<td>31</td>
</tr>
<tr>
<td>Annex A Cost-benefit analysis</td>
<td></td>
</tr>
<tr>
<td>Annex B Compatibility with the FSA's general duties</td>
<td></td>
</tr>
<tr>
<td>Annex C List of questions</td>
<td></td>
</tr>
<tr>
<td>Annex D Draft Inter-Professionals Code</td>
<td></td>
</tr>
</tbody>
</table>
1 The Financial Services Authority (‘the FSA’) is issuing this consultation paper to fulfil the commitment it gave in its policy statement The Open Approach to Regulation (published 27 July 1998), to consult on material changes in regulatory requirements, policy or procedures.

2 This consultation paper invites comments on the draft Inter-Professionals Code which will appear as one chapter of the market conduct sourcebook.

3 We would welcome comments on all aspects of the proposed rules and the cost benefit analysis. We have listed at the end of this consultation paper a number of questions on which we are particularly interested in hearing respondents’ views, but responses are invited on all relevant issues.

4 In line with our normal practice, we will make available for public inspection all of the responses we receive unless the respondent requests otherwise. The FSA may, in particular, copy any of the responses it receives to the Treasury.

5 All references to clauses in the Financial Services and Markets Bill (FSM B) relate to the version published on 30 March 2000.

6 The closing date for comments is 31 July 2000.

You can send your response by electronic submission using the form on the FSA’s website (at www.fsa.gov.uk/pubs/cp/cp47_response.html), in writing or by e-mail to the following:

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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.
Executive summary

1 This paper is directly relevant to authorised firms that deal, arrange and advise on transactions in investments with market counterparties. It is also highly relevant for those market counterparties of these firms which are not themselves authorised.

2 This paper builds on the consultation undertaken in October 1998 with the Discussion Paper on Differentiated Regulatory Approaches: The Future Regulation of Inter-Professional Business. The FSA’s response document in June 1999 made clear the intention to develop a Code for inter-professional dealings which this paper now addresses. The earlier consultation showed a clear consensus on the need to maintain a carefully balanced regulatory framework for inter-professional business that will continue to make the UK an attractive centre in and from which to undertake wholesale financial services. The proposals should also allow for an appropriate differentiation between different areas of inter-professional business.

3 The Inter-Professionals Code (IPC) sets out guidance on how the FSA’s Principles for Businesses (in turn, set out in ‘The FSA’s Principles for Businesses’) apply to inter-professional business and articulates good market practice. It will be a chapter in the Market Conduct Sourcebook in the FSA Handbook. It sets out the standards expected of firms in their bilateral dealings with professional counterparties (market counterparties). As such, the approach of the IPC marks a clear differentiation from what is expected of authorised firms in their dealings with customers; the detailed rules of the draft Conduct of Business Sourcebook (COBS) are, for the most part, ‘switched off’ for dealings with market counterparties and these are covered by the IPC. This approach is consistent with the requirement in the Financial Services and Markets Bill to secure the appropriate degree of protection for consumers and to maintain confidence in the financial system.

4 The draft COBS, published with Consultation Paper (CP) 45 in February 2000, sets out that part of the FSA Handbook which contains the detailed
conduct of business requirements for firms regulated by the FSA in their dealings with private and intermediate customers. The FSA’s proposed approach to the classification of customers is set out in CP43, also published in February 2000. This paper is a companion both to COBS, in that it sets out the standards of conduct expected of firms in their dealings with market counterparties, and to CP43 which seeks to define who should be considered as a market counterparty.

5 The group of firms that undertakes the relevant regulated activities with market counterparties comprises firms currently authorised by the SFA and those exempted under s43 of the Financial Services Act 1986, who will be accustomed to the current differentiation in this area. In addition, the IPC will cover all those firms undertaking dealing, arranging and advising business with market counterparties. This will include firms currently regulated by PIA, IMRO insurance firms (outside the general insurance area of their business) and friendly societies (other than non-Directive firms), and other firms to the extent that they undertake relevant business. The proposals will represent a bigger change for this second group.

6 The proposed IPC comprises three main elements: guidance on how the relevant FSA Principles apply to the conduct of dealings with market counterparties; specific rules in some areas where the FSA considers them appropriate; and guidance on those rules in relevant areas. The CP also lays out proposed information material on good market practices in some areas.

7 Under the proposals in CP43, the scope of market counterparties could extend across a wider range than at present, potentially covering all relevant dealings between authorised firms. The scope of the IPC will be dependent on the outcome of the consultation on CP43 – in particular, it may not cover all the firms currently specified if, for example, all authorised firms are not to be treated as market counterparties.
1 Introduction

1.1 This CP presents a draft Inter-Professionals Code (IPC)\(^1\) outlining the standards expected of authorised firms when they undertake dealing in and arranging and give associated advice on a wide range of investments with a market counterparty. The detailed provisions in COBS are, for the most part, ‘switched-off’ for the regulation of firms’ conduct when dealing with a market counterparty.\(^2\) The IPC sets out the FSA’s expectations for this area of business, which are generally high-level rather than detailed.

1.2 The precise definition of market counterparty depends on the outcome of the consultation on customer classification (CP43) but it is clear that, for the most part, a market counterparty will not be owed the duties that would be owed to a customer.\(^3\) Under the proposals in CP43, a market counterparty may include: an authorised firm; a country or government; a central bank; a supranational; an overseas financial firm; and a company or corporate who opts to be treated as such, rather than as an intermediate customer. Revised proposals in this area will be published shortly.

1.3 This CP builds on the consultation initiated by the Discussion Paper ‘Differentiated regulatory approaches: the future regulation of inter-professional business’ in late 1998. In the FSA’s June 1999 Response Document relating to that consultation, we emphasised that:

- the level of supervision applied to inter-professional business should be appropriate having regard to the risks to the FSA’s statutory objectives;
- there would be a new Code\(^4\) comprising rules, evidential provisions and guidance, with the bulk of it being guidance;

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1 See Annex D.
2 But certain areas of COBs remain ‘switched on’ for all clients notably rules on Chinese walls and client money.
3 Though under some of the options canvassed in CP43, a market counterparty acting as agent for an underlying customer may be able to claim protections for that customer from the firm with which it is dealing.
4 The Code, or IPC, is not a statutory Code, and should not be confused with the FSA’s Approved Persons Code nor the Code of Market Conduct.
• this articulation of the Principles through guidance (and some rules) was intended to provide more certainty for firms than having the Principles alone;

• the FSA continues to recognise that inter-professional business will in many ways be self-disciplining; and

• it was unlikely that isolated departures from the guidance set out in the IPC would warrant enforcement action.

This Consultation Paper proposes a draft IPC which embodies those propositions.

New regulator for the new millennium

1.4 On 24th January 2000 the FSA published a document setting out the main lines of the regulatory approach it will follow in future.

Over time, the consequences of this approach will be significant. The aim is to have a regime which:

• is built on a clear statement of the realistic aims and the limits of regulation;

• recognises the proper responsibilities of consumers themselves and of the firm’s own management, and the impossibility and undesirability of removing all risk of failure from the financial system;

• is founded on a risk-based approach to the regulation of all financial business which integrates and simplifies the different approaches adopted by the current regulators – this will in time lead to a zero-based assessment of the level and allocation of resources across the full range of the FSA’s activities;

• operates a transparent new framework for identifying and addressing, as part of the regular planning cycle, the most important issues facing firms, markets and consumers (each year the FSA will set out publicly the areas identified for priority attention – what it will describe as its regulatory themes);

• uses the full range of tools available to the FSA under the new legislation, including consumer education;

• switches resources from reactive post-event action towards front-end intervention;

• creates incentives for firms to manage their own risks better and thereby reduce the burden of regulation.
1.5 As a consequence, the proposals in this CP will need to be re-appraised as the FSA's work in developing its new supervisory framework, and implementing the proposals set out in 'A new regulator for the new millennium'.

Process

1.6 In preparing this draft IPC, the FSA has benefited from the advice of a specialist practitioner group, established for this specific purpose. The group comprised members nominated by the British Bankers' Association, the London Investment Banking Association, the Wholesale Market Brokers Association, the Futures and Options Association, the International Swaps and Derivatives Association, the Fund Managers Association, the Association of Private Client Investment Managers and Stockbrokers, the American Banking & Securities Association of London, the Association of Corporate Treasurers and the Bank of England. In addition, the FSA has received comments from the FSA's Practitioner Forum, the SFA Conduct of Business Committee, the Derivatives Joint Standing Committee, the Bank of England's Foreign Exchange Joint Standing Committee and Money Markets Liaison Group, the London Bullion Market Association Management Committee, MERLIN (the Markets and Exchanges Regulatory Liaison Information Network) and from bilateral meetings with a number of firms and trade associations.

1.7 The FSA will invite the Practitioner Group on the IPC to reconvene to consider the responses to this consultation.

Objectives

1.8 The primary objective of the IPC is to provide some articulation of the standards expected in inter-professional business and, in so doing, to increase certainty about what regulatory requirements apply in this area. This objective was well supported in the responses to our earlier consultation.

1.9 The basis of the IPC lies in the FSA's market confidence objective. The FSA wishes to sustain the efficient functioning of London's markets and avoid applying inappropriate and disproportionate regulation to inter-professional business. The FSA believes the IPC is consistent with these goals and seeks the views of all interested parties on whether or not this has been achieved. The IPC expands on those of the FSA's Principles for Businesses which are relevant to inter-professional business. The FSA also proposes to publish good practice information that could be included as an annex to the IPC.

Scope

1.10 The IPC recognises the lesser need for consumer protection in inter-professional business, and that a differentiated approach to regulation in this...
area is essential. All those involved in such business share in the aim of maintaining confidence in, and promoting, good standards of market conduct that already exist in the United Kingdom. Primarily, the IPC will apply to the activities of authorised firms in their dealings with market counterparties, but it should also provide a guide to good market practices generally and therefore lends itself to being adopted or endorsed by other market counterparties who are not themselves authorised persons.

1.11 The IPC is primarily in the form of guidance on how the FSA will interpret the Principles for Businesses, and particularly Principle 5 (proper standards of market conduct), as they relate to dealings between market counterparties. The IPC also establishes specific rules where the FSA believes particular behaviour by a firm is required and where the Principles do not enable the FSA to impose specific requirements on how business is conducted. Guidance has been developed to assist firms in their dealings but is deliberately flexible so as not to inhibit innovation. The objective standards that are set out in the IPC may also serve an additional purpose, by providing a clear and broadly shared view as to good or benchmark market practices and thereby facilitating the bilateral resolution of disputes between a firm and its market counterparties. The IPC will also give to users of the UK markets, including those from overseas, a clear indication of the standards of conduct that will generally prevail.

1.12 For dealings on a recognised investment exchange (‘RIE’), the FSA expects authorised firms to follow the rules of that exchange. Where appropriate, certain specific rules in the IPC are ‘switched off’ in deference to the RIEs’ own rules.

1.13 Similarly, the IPC does not affect a firm’s obligations to comply with the Code of Market Conduct (COMC) in respect of market abuse. The COMC applies to all participants operating in the markets which are designated for the purpose of the new market abuse regime. This is considered in more detail below.

1.14 In devising the IPC, we have used the FSA’s current London Code of Conduct as one starting-point, and the guidance and rulings given by SFA in respect of certain market practices and behaviour as another. As such, the IPC currently focuses on dealing and arranging activity particularly as it relates to trading. Clearly, though, the definition of arranging activity goes much wider, including for example, corporate finance activity. These activities are currently within the proposed scope of the IPC but a more tailored approach is likely to be necessary in such areas. These issues are addressed in section 3 and we would generally invite comment on the scope and applicability of the IPC.
Statement of purpose

1.15 The IPC has three main purposes: to increase certainty by amplifying the Principles as they apply to inter-professional business; to set out rules for inter-professional business in cases where it is not appropriate to rely on the Principles alone; and to set out the FSA's understanding of certain market practices and conventions. (See Section 2.2 of the IPC.) In fulfilling these functions, the IPC should promote market confidence. The IPC does not pretend to be an exhaustive interpretation of how the Principles will apply to inter-professional business. We believe, however, that it covers the main issues and situations that are likely to give rise to regulatory considerations.

1.16 The purpose of the IPC is also the protection of consumers in two ways. First, the FSA believes that one way of protecting the interests of consumers is maintaining confidence in the financial system. So the primary purpose of the IPC (promoting market confidence) is linked to the protection of consumers. Second, the IPC will protect the interests of a market counterparty dealing with an authorised person and, for the purposes of the FSA's general rule-making power in clause 135 of the FSM B, such a market counterparty is a 'consumer' (clause 135(9)). (This statement of purpose, in conjunction with that in section 2.2 of the draft text in Annex D, satisfies the requirement in clause 151(2)(b) to publish an explanation of the purpose of the draft rules in the IPC.)

The nature of guidance and the structure of the IPC

1.17 The IPC is primarily guidance. This is in the form of (1) guidance on the Principles and on specific rules and (2) guidance in the form of a statement of what the FSA understands to be generally regarded as market conventions and good market practice in certain areas. Under clause 153 of the FSM B, the FSA has flexibility in the range of guidance it issues. The guidance in the main IPC is guidance on the Principles, while the guidance in the Annex 3 is not guidance on the Principles, but is the FSA's understanding of what is good market practice. We consider the status of the informational annex material in section 3 and we consider some options for annex material and third party codes in section 2.6. Here, we focus on the status of the guidance on the Principles.

1.18 As discussed in the response document on CP13 'The FSA's Principles for Businesses', guidance does not impose obligations on a firm. It is used to amplify the FSA's expectations and requirements in certain areas. As made clear in CP8, guidance may 'offer useful information to firms about methods of complying with regulatory requirements, while leaving a degree of flexibility to firms to meet their regulatory obligations in different ways'. And, a firm has 'latitude to make commercial and operational judgements about how they are going to meet regulatory requirements'.

Financial Services Authority 9
1.19 The response document on CP13 also made clear that ‘if a firm acts in accordance with general guidance in the circumstances contemplated by the guidance, then the FSA will proceed on the footing that it has complied with the aspect of the rule to which the guidance refers’. In this context, it is also important to note that the FSA’s Principles are made under its rule making powers and therefore have the status of rules.

1.20 Whether a firm has followed the FSA’s guidance in a particular context may be relevant in determining if enforcement action is appropriate (see the forthcoming Enforcement Manual). The Practitioner Group on the IPC suggested that further clarification was needed in this general area, in particular concerning the implications for a firm of not following the relevant guidance. We have set out the relevant considerations in some detail below.

- First, it is clear that guidance (unlike an evidential provision) does not create an expectation that it must be followed to show compliance with the relevant rule. Nor is the burden of proof on the firm to show why it has deviated from the guidance.

- Second, there is no presumption that if a firm does not act in accordance with the particular guidance, it has not complied with the relevant rule. Guidance is part of the regulatory toolkit, explaining the FSA’s interpretation of the relevant rules/Principles. Each firm’s behaviour in respect of the relevant rules and guidance will be relevant to the FSA’s approach to supervision and to the targeting of its supervisory effort. Any deviation by a firm from the relevant guidance will not necessarily indicate any failing on its part. Discussion of how a firm conducts itself will form part of the FSA’s assessment of firm-specific risks, as well as helping develop FSA’s insight into industry developments.

Enforcement

1.21 The IPC applies to bilateral dealings between a firm and a market counterparty. The IPC is primarily guidance on the Principles, so the FSA will rely on the Principles for enforcement action in most areas of conduct to the extent that such behaviour is a regulatory, as opposed to a commercial, matter. As noted above, the COMC will cover market abuses. Other rules such as those in the Prudential Sourcebook (covering mismarking, for example) and systems and controls requirements will also be relevant.

1.22 This emphasis on the Principles (and guidance supporting the Principles) has implications for the level of enforcement activity in the IPC area. In general, the FSA expects that most disciplinary cases will involve some breaches of detailed rules (whether or not they also include breaches of the Principles). However, there will be some cases where it may be appropriate to discipline a firm on the basis of the Principles alone. This may arise where there are no
detailed rules which prohibit the behaviour in question, but the behaviour clearly contravenes a Principle. Nevertheless, because few detailed rules and only some of the Principles will apply in the IPC area, and because of the inherent nature of inter-professional business as self-disciplining, there is likely to be less scope for enforcement action. This does not, however, imply that a lower standard of behaviour is acceptable for inter-professional business.

1.23 This general approach to the supervision of inter-professional business is appropriate, as the detailed regulatory expectations of inter-market counterparty bilateral dealings are relatively few.

The relationship between COBS and the IPC

1.24 The draft COBS, as published in CP45, makes clear that it is intended to switch off COBS where a firm's business falls within the scope and application of the IPC, i.e. when the firm deals with a market counterparty. Rule 1.3.5 in chapter 1 of COBS effectively ‘switches off’ COBS in deference to the IPC where it applies to a firm’s business with market counterparties. (See Section 2.3 for further discussion.)

1.25 In developing the IPC, we have used the working assumption (consistent with CP43) that market counterparties comprise all authorised firms as well as countries, supranationals, central banks etc. Additionally, corporates may opt up from the intermediate customer category into the market counterparty category. The proposed contents for the IPC relate to what is expected when an authorised firm deals or arranges a deal with a market counterparty. If all authorised firms are classified as market counterparties, one option under CP43 is that additional customer protections could be provided by the application of certain COBS rules (such as customer priority, best execution etc) when the authorised firm is acting as agent for underlying customers. The IPC will be dependent on the outcome of the consultation on classification: first, not all authorised firms may come to be defined as market counterparties; second, if they are, there will still be questions of scope to finalise which will include the interaction of COBS and the IPC where customer duties are owed.

The relationship between the IPC and the Code of Market Conduct

1.26 Our starting-point is that there is a clear distinction between matters covered by the IPC and by the Code of Market Conduct (COMC). They are derived from different powers within the FSMB and the IPC explicitly states that it does not affect any obligations owed under the COMC.

1.27 The focus of the IPC is on bilateral dealings involving a specific set of (market) counterparties. The focus of the COMC is on the multilateral relationship between the market participant and the rest of the market. But
although we can make and maintain this distinction, the policy objectives of both the IPC and the COMC are ultimately concerned with market confidence and integrity. (Table 1 below seeks to clarify the boundary between the two Codes.)

1.28 In broad terms, the COMC is aimed at those markets that will be designated by HMT in a Statutory Instrument that HMT will derive from the FSMB. HMT has already consulted on the basis of designating the markets centred on the (currently) six RIEs and will cover qualifying investments, which includes any investment admitted to trading under the rules of one of the designated markets. Certain activity which affects, or references, the price or value of a qualifying investment may also fall within the scope of the regime (see table 1). The COMC also applies equally to both the authorised and unauthorised community where their actions have an impact on a designated market. This means that the unauthorised community will, for the first time, be subject to the same standards with respect to market abuse as the authorised community. As such, the COMC is of greater significance for unauthorised market participants than is the IPC, since they will be open to enforcement action if they breach the COMC.

1.29 The IPC has a wider coverage in terms of investments (since it embraces those with and without any connection to on-exchange transactions). However, its application is limited to the dealings of authorised firms with market counterparties. The COMC is principally aimed at exchange-traded business where the trading activity is abusive but related transactions are also covered by the definition of a qualifying investment. For example, transactions such as swaps or OTC options, that reference or relate to the price or value of an underlying exchange-traded product (including indices) are within the scope of the market abuse regime in so far as they are abusive behaviour. As a consequence, some activities such as in relation to non-market price transactions (NMPTs) are potentially covered by both codes. For example, if a NMPT, or a part of a NMPT, were referenced to an on-exchange deal and had a distortionary impact on the price of an on-exchange transaction, there is a possibility that the activity could be abusive, and the transaction could fall foul of COMC as well as the rules on non-market price transactions. (This interaction is considered in some detail below in the section on NMPTs.)

1.30 The IPC will embody some of those standards that the ‘reasonable regular users’ of the relevant markets will expect to see but by no means all of them. But the specific overlap between the IPC and the COMC is limited as the IPC does not set out the behaviours that do/do not constitute market abuse. These are deliberately left to the COMC.
### Table 1 – The boundary between IPC and the Code of Market Conduct

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<th>Where does a transaction fall?</th>
<th>IPC</th>
<th>COMC</th>
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<td></td>
<td>Covers transactions in an IPC investment, to the extent that this is part of dealing and arranging (and associated advice) with/for a market counterparty. Parts of the IPC are disapplied for transactions undertaken subject to the rules of an exchange (e.g. taping).</td>
<td>Applies to behaviour in relation to qualifying investments traded on a market prescribed by HMT. Qualifying investments include anything which is the subject of, or whose price or value is expressed by reference to the price or value of those qualifying investments. Relates primarily to on-exchange business, but related OTC deals that are referenced to the price or value of a qualifying investment are also covered by the COMC.</td>
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| Is the type of counterparty important? | Yes. Transactions by an authorised firm with market counterparties only are covered. | No, not for the scope of the COMC. The COMC applies to all persons, not just those who are authorised. |

| What is the territorial scope? | It applies to a firm’s inter-professional business carried from an establishment in the UK. | All behaviour in relation to qualifying investments which are traded on a prescribed market is potentially covered by the COMC, regardless of whether the behaviour takes place in the UK. |

| What is the status of its contents? | Rules and evidential provisions made under clause 135 of the FSMB. Guidance on the FSA Principles, made under clause 153. | The COMC can state what does not amount to market abuse under clause 115 (2) (b) in the Act. The COMC also provides the FSA’s opinion as to what amounts to market abuse and factors that are to be taken into account whether or not behaviour amounts to market abuse. |

| The general relationship between the two Codes. | The IPC explicitly says [2.5.1G] that it does not effect obligations arising under the COMC. | Nothing in the COMC modifies or affects any other obligations imposed by other FSA rules, principles or codes. |

| Exchange rules. | The IPC is to be interpreted in the light of any relevant exchange rules [2.5.5G]. | The FSA may recognise certain exchange rules as providing a safe harbour. |
1.31 The coverage of the IPC will extend to firms’ proprietary trading activity to the extent that it is a regulated activity or an ancillary activity. The manner in which these are conducted with market counterparties can significantly affect market confidence and integrity. However, as the traders and arrangers who undertake the business on behalf of the firms will not by definition be trading with customers they will not automatically fall within the scope of the Approved Persons Regime. However, proprietary traders who exert significant influence in relation to the conduct of the firm will be in the regime. A firm will need to consider its size and complexity, and the nature of the responsibilities of senior individuals as set out in the rules and guidance for controlled functions in CP26.

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<th>IPC</th>
<th>COMC</th>
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<tr>
<td><strong>Non-market price transactions (NMPTs).</strong></td>
<td>The IPC’s rules and guidance in this area require a firm to satisfy itself about the rationale for the trade.</td>
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| **Are there any specific provisions that are related in the two Codes?** | (1) The NMPT rules in the IPC are switched off in relation to transactions subject to exchange rules. | Any market participant will, where appropriate, be disciplined using the powers set out in Part VIII of the FSMB. |
| | (2) IPC has requirements not to mislead a counterparty (i.e. a bilateral relationship); but is silent on misleading the market (i.e. a multilateral relationship). | |

**The relationship between the IPC and the Code for Approved Persons**

The coverage of the IPC will extend to firms’ proprietary trading activity to the extent that it is a regulated activity or an ancillary activity. The manner in which these are conducted with market counterparties can significantly affect market confidence and integrity. However, as the traders and arrangers who undertake the business on behalf of the firms will not by definition be trading with customers they will not automatically fall within the scope of the Approved Persons Regime. However, proprietary traders who exert significant influence in relation to the conduct of the firm will be in the regime. A firm will need to consider its size and complexity, and the nature of the responsibilities of senior individuals as set out in the rules and guidance for controlled functions in CP26.
1.32 The IPC applies at the level of firms. The Principles and Code for Approved Persons (APC) outline the conduct that is expected of individuals who have been approved, on the basis of the FSA’s powers under clause 58 of the FSM B.

1.33 Certain parts of the APC set standards for dealings between individuals and customers, and where appropriate these are disapplied where the dealings are with market counterparties. As such, the differentiation achieved in the APC in respect of inter-professional dealings will be consistent with the differentiation between the IPC and COBS. As clarification, the APC does not extend an Approved Person’s obligations towards a market counterparty beyond those that his firm owes under the IPC.

1.34 The proposed controlled functions which determine the scope of the Approved Persons regime and feedback on the consultative draft text of the APC will be set out in the CP ‘The Regulation of Approved Persons: Controlled Functions’ to be published in Summer 2000, and in the response to CP35. It is envisaged that the governing body and certain other members of the senior management of a firm\(^6\) will be included within the scope of the regime. Such Approved Persons will be subject to the provisions of Principles for Approved Persons 5-7. Principle 7 requires a Senior Manager to take reasonable steps to ensure that the business for which he is responsible complies with the relevant regulatory requirements. Therefore, insofar as the firms’ activities are governed by the IPC, the Senior Managers will need to take reasonable steps to ensure that the IPC is observed by the firm’s employees for whom he/she is responsible.

\(^6\) i.e. the members of its governing body and certain others occupying positions where they may exert significant influence on the conduct of the firm’s affairs so far as they relate to a regulated activity.
2 Commentary on the draft IPC

Application provisions and statement of purpose

2.1 The IPC only covers transactions between firms and their market counterparties. However, not all transactions between firms and market counterparties are covered.

- The activities covered by the IPC are a subset of those covered by COBS. Thus, for example, deposit-taking and general insurance business fall outside the IPC.

- Certain firms are excluded altogether from the IPC. These are service companies, non-directive friendly societies and non-directive insurers. Its application to UCITS qualifiers is also limited, as required under clause 262 of the FSM B.

The IPC only covers the activities of dealing in IPC investments and arranging deals in IPC investments. The giving of advice is covered only to a limited extent: it is covered if the advice is given for the purpose of dealing or arranging services that the firm is already providing or which it wishes to provide to the counterparty in question.

2.2 These are IPC investments:

(i) shares;

(ii) instruments creating or acknowledging indebtedness;

(iii) government and public securities;

(iv) instruments giving entitlement to investments;

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7 Service companies are firms whose sole investment business is making arrangements, enabling or facilitating deals between market counterparties or intermediate customers without accepting any responsibility for the performance of the parties. They will be defined more fully in a consultation paper to be issued Summer 2000. Non-Directive Insurers and Friendly Societies are defined in CP41.

8 The IPC calls such advice ‘transaction specific advice’, and the full definition can be found in Annex D.
(v) certificates representing certain securities;
(vi) options;
(vii) futures;
(viii) contracts for differences;
(ix) rights to or interests in investments falling within (i) to (viii). 9

2.3 This list excludes deposits, general insurance contracts, Lloyd’s syndicate capacity and syndicate membership, long term insurance contracts which are contractually based investments, pure protection contracts and units in a collective investment scheme.

2.4 The activities of a firm carrying on long term insurance business are of themselves outside the scope of the IPC. The IPC will however potentially cover dealing in IPC investments (and arranging deals) carried out for the purpose of that business. Basically this means that the IPC covers the investment of policyholders’ funds in shares, bonds and other IPC investments insofar as they involve the insurance company dealing with a market counterparty.

2.5 Similarly, running a collective investment scheme is not of itself an IPC activity. However, the activity of investing scheme funds in shares, bonds and other IPC investments is potentially within the IPC.

2.6 Electronic trading and matching systems are covered by the IPC.

2.7 In broad terms, the COBS is ‘switched off’ where the IPC applies (see rule 1.3.5 in CP45a). However, in transactional terms it is possible for both COBs and IPC to apply to different aspects of a transaction. Some guidance on this is included in paragraphs 4 and 6 of Annex 3. The COBS applies to the customer-facing relationship and the IPC applies to the market-facing elements of any transaction. The IPC will apply where a firm acts as agent for a market counterparty (2.4.1R). In some areas, such as record-keeping and inducements only one rulebook will apply to a particular transaction. But for the more general provisions of the IPC, both the IPC and the COBS will apply, to the extent that transactions involve different elements and different relationships. For example, if a firm buys an IPC investment form a market counterparty on behalf of a customer the IPC applies to the relationship between the firm and the market counterparty; COBS governs the relationship between the firm and its customer.

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9 An IPC investment is a subset of what COBS refers to as ‘designated investments’, excluding long term insurance and units in a collective investment scheme.
Territorial scope

2.8 As stated above, the basis of the IPC lies in the FSA's objective to maintain market confidence. The primary purpose of the IPC is to maintain the integrity both of UK markets and of the activity of UK firms; and the scope clause, 2.3.6R, is drafted accordingly. The IPC covers the activity of those firms carrying on relevant business from an establishment maintained by the firm in the United Kingdom. The activity of the overseas branch of a UK authorised firm is not covered by the IPC since it is envisaged that local market rules will apply; these activities of the firm may, however, still be covered by the relevant FSA Principles. The activity of foreign branches within the United Kingdom is covered by the IPC if they are carrying out inter-professional business.

2.9 Consider the following examples:

- a UK regulated firm dealing in the United Kingdom with a UK-based market counterparty is covered by the IPC;
- a UK regulated firm dealing in the United Kingdom with a European-based market counterparty is covered by the IPC;
- the overseas branch of a UK regulated firm is not covered by the IPC;
- the unauthorised overseas subsidiary of a UK regulated firm is not covered by the IPC.

A further dimension to consider is where a transaction is booked, in addition to where it is dealt or arranged. For example, where a transaction is booked to another legal entity and that entity is in the United Kingdom that entity may be covered by the IPC as it is a party to the transaction. Where as a matter of internal policy, the deal is booked to the UK office, the key question is whether that means that the IPC business is carried on from an establishment maintained by the firm in the United Kingdom.

Q2.1: Is the application of the IPC sufficiently clear? If not, please suggest what further guidance you would like.

Q2.2: Are there any areas of business currently included within the IPC which you think ought to be excluded? And are there any areas currently excluded which you think ought to be included?

Q2.3: Do you consider that the territorial scope of the IPC has been appropriately defined?

Third party codes and market specific annexes

2.10 It is proposed that the IPC might also include market specific annexes and/or references to other bodies' codes of conduct that relate to the relevant
regulated activity. There is no cross-reference to the Code for Non-investment Products,\textsuperscript{10} this will appear elsewhere in the FSA Handbook, since the FSA’s interest relates primarily to whether any breach of that Code brings into question the fitness and properness of a firm/individual.

2.11 The FSA could develop further annexes to provide more guidance on what behaviour is expected in particular markets. This might be desirable if respondents feel that some of the material in the main IPC is too general for their particular activities. The annexes could be guidance on the Principles and/or information on market conventions and good practices.

2.12 The FSA does not propose to incorporate directly in the IPC any third party industry Codes. The FSA could, however, explicitly commend certain industry codes within the IPC, strengthening their status in relation to the Principles. Section 2.11 of the IPC contains draft references to such Codes.

2.13 Some practitioners have expressed concern that FSA acknowledgement of industry codes could inhibit (because of concern about the regulatory consequences) or delay their evolution (through the need to consult, etc).

2.14 Consider two examples of industry codes. First, there is currently an oil markets participants code made by the FSA and included within the SFA rulebook. This material is now mostly subsumed within the IPC or the COMC. But are there any other conventions, practices etc which oil market participants, or other energy markets participants, might want to see recognised in this area? Second, the Gilt Repo Code is currently part of the London Code of Conduct but will in future not be included within the IPC. Is a code of this type best left as a standalone document or ought it to be acknowledged in the IPC?

Q2.4: (a) Are there areas of activity where annex material is desirable?

(b) Should the FSA commend or acknowledge certain industry codes?

Standards expected of firms when undertaking inter-professional business

2.15 A key tenet of the IPC is that market counterparties are responsible for their own decisions and actions. Market counterparties are deemed to have either sufficient understanding of the relevant financial market and product, or the resources to obtain that understanding, to obviate the need for the level of protection afforded by the COBS. Firms are accordingly not required to assess the suitability of a transaction for a market counterparty.

\textsuperscript{10} This industry code of good practice is being co-ordinated by the Bank of England and relates to those non-investment products currently covered by the London Code of Conduct (wholesale deposits, spot and commercial forward foreign exchange and bullion).
2.16 Section 2.6 provides guidance in two particular areas. First, it seeks to make clear that there is no regulatory duty to undertake suitability checks when dealing with a market counterparty nor is there any duty of best execution (2.6.3G). Second, it seeks to clarify the extent to which Principle 7 applies to inter-professional business. Principle 7 stipulates ‘that a firm must pay due regard to the information needs of its customers and communicate information to them in a way which is clear, fair and not misleading’. This principle is restricted in respect of inter-professional business to a prohibition against misleading communication. The requirements for clear and fair communication, elaborated upon in COBS, do not apply to dealings with Market counterparties. The IPC states that silence is unlikely to be misleading, but there are instances when this general presumption does not apply. One example is the guidance on disclosing a material interest in a transaction, where the firm owes a responsibility to the counterparty, discussed in 2.6.6G to 2.6.9G.

Q2.5: Is the guidance on communication that will be construed as ‘non-misleading’ sufficiently clear and comprehensive? If not, how could it be expanded?

Trading practices

2.17 The IPC’s section on dealing practices (2.7) draws heavily on the London Code of Conduct. However, the material that appears in the IPC itself applies to all inter-professional business (absent any narrowing of the application provision).

Clarity of role

2.18 The proposed guidance on clarity of role draws on the requirements of both the London Code and the SFA in stressing the importance of firms making clear the capacity in which they are acting when they enter into a relevant transaction. This section also expands on how a firm should act when it faces a conflict of interest in its inter-professional business. The FSA’s view is that market counterparties would expect a firm to disclose a conflict of interest only when it owes its counterparty a specific responsibility which could be affected by that conflict. In principal to principal transactions, no such responsibility could normally exist and hence there would be no expectation of disclosure.

Firmness of quotation

2.19 The proposed guidance on firmness of quotation (2.7.6G – 2.7.8G) is intended to encourage clarity about the basis of prices quoted between market counterparties. This guidance is of particular relevance in markets where the terms of transactions (deals) are quoted orally in what are currently ‘section 43’ markets. The guidance is intended to reduce the scope for confusion over whether a quote is firm or indicative, and whether it is for a marketable amount or for a non-standard transaction (deal) size.
2.20 The proposed guidance, however, recognises that conventions will vary across markets, and that, as a consequence, firms will normally follow any recognised conventions in a particular market (in the absence of specific agreement to the contrary).

Q2.6: Is the proposed guidance on firmness of quotation practicable/desirable for the markets in which your firm operates?

Marketing, inducements and payments in kind

2.21 The provisions in this section concern two issues. First, marketing incentives and inducements, where the focus is on having in place appropriate procedures to ensure that any inducements offered or received are proper and will not conflict with any duty or obligation that the recipient has (2.7.9G-2.7.13G). The objective here is to prevent improper payments and inducements to undertake business.

2.22 The second element of this strand of the guidance concerns payments for brokerage which should normally be in cash form, in the absence of explicit agreement to the contrary (2.7.12G). The objective here is to avoid any hidden conflicts of interest which might arise in the area of commission, effectively by ensuring transparency. This objective extends to name passing brokers, who should be remunerated through paid commissions and not through spreads as this is inconsistent with their role in arranging transactions.

2.23 The third strand of the guidance concerns entertainment. The guidance (2.7.13G) emphasises that firms should have in place controls to ensure that: entertainment and gifts do not constitute improper inducements; that they are not inappropriate; and that they are commensurate with the level and type of business undertaken with the counterparty.

Q2.7: We believe the guidance on inducements is consistent with current good practice amongst market counterparties. Do you share that view? If not, what amendments could be made?

Non-market price transactions

2.24 The section on NMPTs is aimed at preventing a firm from undertaking transactions with a market counterparty at non-market rates, if the purpose is improper or illegal. The rule is designed to prevent such transactions being used to hide losses or profits, or to transfer surreptitiously a designated investment at an under or over value, in order to misrepresent a firm’s or market counterparty’s books and records. However, it is recognised that it is difficult to define the boundary between acceptable and unacceptable transactions. For example, asset swaps or other structured products are undertaken for valid reasons but may have some non-market rate features.
2.25 The guidance in the IPC in this area is largely that the firm should review the proposed transaction to assess its appropriateness. The structure of the provision has been developed from that in the London Code of Conduct, though it is different in both form and substance. For example, there is no longer a requirement to obtain senior level sign-off from the counterparty, in recognition of the problems this has caused in practice, particularly with overseas counterparties.

2.26 The boundary between the IPC and the COMC is quite complex in this area. The COMC has strict provisions in the areas of misleading impressions and price distortion. Some elements of NMPTs could mislead if the transaction or part of the transaction affects a designated market, either directly through an exchange or through a related product that falls within the scope of the market abuse regime. The procedures one should go through in handling a potential NMPT may be useful to a firm in assessing whether a relevant transaction might also potentially fall foul of the COMC. Formally, however, the NMPT rule is switched off in deference exchange rules for those transactions which are subject to the rules of an exchange.

2.27 It should be noted that this section applies to arrangers and agents as well as to those trading as principal. Under the structure of 2.8.3R, a firm must not undertake the deal unless it has taken reasonable steps to ensure the trade is not improper. Arrangers, including electronic matching systems and other electronic trading systems, may comply with this rule by introducing procedures to check whether the trade is at a non-market rate and filter it out if it is. The regulation of electronic matching systems and other infrastructure providers is the subject of a separate FSA consultation. Such entities may fall outside the IPC, depending on new regulatory approach that is developed. For the moment however, we would welcome the responses of the relevant firms in this area.

Q2.8: Do firms agree with the basic premise that transactions, both simple and structured, should be at market rates/prices? And if they are not, that a thorough review of the motives for the transaction should be undertaken?

Q2.9: Is the guidance generally helpful? If not what else would assist firms?

Q2.10: Are the boundaries between COMC, the NMPT rule and RIE rules clearly defined? If not, what would assist firms?

Q2.11: What different features might the rules contain for arrangers and ATS-type entities?

Taping

2.28 Existing requirements for taping vary widely across firms. Section 43 firms are expected to tape transactions under the London Code of Conduct, although it
does allow firms to demonstrate that other methods of recording transactions are sufficient. Other firms carrying on inter-professional business have no comparable requirement as part of SRO regulation. In practice, however, many (especially SFA firms) have to record lines because of their exchange membership. The high costs of retaining tapes means that voice recordings are usually only a temporary means of recording transactions, before the details are confirmed by other means. All firms are to be under an explicit obligation to make and retain adequate records (see X.16.1R in the draft of Block 1 of the Handbook set out in CP35, Senior Management Arrangements, Systems and Controls).

2.29 Discussions with practitioners have suggested that the market trend is moving away from taping, with trading becoming increasingly electronic with automatic processes where taping does not have a role. Further, it has become apparent that the London Code of Conduct does not reflect wider market practice on the retention of tapes. Due to costs, there is pressure to reduce the retention period to the minimum. While the London Code of Conduct suggests a retention period of two months or more, for many transactions firms delete tapes after a week or two. International comparisons indicate that taping is not compulsory in the USA or Japan, but parts of Europe require taping in some areas, mainly for on-exchange deals.

2.30 A significant development in the near future concerns the requirements of the ISDN Directive, due to come into force in October this year. This states that a person can tape calls only with the consent of the other party or if it has been legally authorised. The Government has yet to say how it will implement the Directive. We have consulted with the DTI, who are still considering the position since there is a derogation until October 2000 to implement this aspect of the Directive. We shall continue to liaise with them on this issue.

2.31 The IPC provides guidance on the high level rule on record keeping, which is a requirement set out in Block 1. That said, the IPC confirms that firms have some flexibility in how they make and retain records to meet this record-keeping requirement; there are various ways of doing it, one of which may include voice recordings. The rule at 2.9.4 merely confirms that those firms which use voice recordings as their primary means of record keeping (which are unusual, for cost and practicality reasons) should keep the tapes as long as the record keeping rule requires. Taping plays a key, and indeed unique, role in capturing the details of transactions. However, the benefits of taping, it is felt, accrue principally to firms for their internal control purposes, particularly in facilitating dispute resolution. For this reason, many firms tape calls even though they are under no regulatory obligation to do so. These benefits vary significantly with the nature of the business the firm undertakes and with the markets in which it operates. In setting out the benefits, our policy objective is to encourage firms to tape. But ultimately, it is up to firms to weigh the costs of taping against the risks they face in not doing so.
Q2.12: Do you have any comments on the proposed guidance on taping? Would a further rule be desirable in this area?

**Firms acting as name passing brokers**

2.32 The terminology used in this paper covers different functions. The term ‘broker’ describes those firms acting as agent in this area. The term ‘arranging’ is used to describe those activities covered by paragraphs 13 and 14 of Part II of the Regulated Activities Order (arranging deals for another and making arrangements enabling or facilitating deals). Name passing brokers may undertake both agency and arranging activities.

2.33 The role of a name passing broker is quite distinct from that of a principal. Section 2.10 has been specifically drafted to identify this fact and detail the scope of the activity undertaken by a broker when acting in a name passing capacity. The guidance is broadly in line with that in the current London Code (paras 29-30, 80-85): guidance regarding the passing of names; rules in respect of the treatment of differences; the prohibition on taking positions; and the guidance regarding not unfairly favouring one market counterparty over another. It is recognised that a broker (or firm), provided it has the requisite permission, may act in a number of distinct capacities including name passing and matched principal. The IPC could give more expansive guidance for each of these activities if it were considered useful.

Q2.13: (a) Is there any guidance in respect of name-passing activity in the London Code which has been omitted from the IPC but should be retained?

(b) Would it be useful if the IPC contained a section on brokers that detailed their different roles with guidance on the scope of these activities?

**General structure**

2.34 There are a number of ‘big picture’ structural issues concerning the IPC and the proposed annex of informational material (section 3). We would welcome your views on the following:

Q2.14: Do the sections on dealing practice, which draw heavily on the London Code of Conduct, translate into provisions suitable for the much broader range of markets the IPC now covers?

Q2.15: How well does the IPC work for the type of business you (are likely to) conduct with market counterparties? How could it be improved?

2.35 The IPC and COBS have different starting points. Section 5 below identifies for consultation certain areas where the consistency of the two may need to be addressed. A more general concern relates to the broad consistency between the IPC and the COBS and whether they share sufficiently common origins.
2.36 The FSA needs to strike an appropriate balance between the disapplication of unnecessary COBS material and tailoring material to inter-professional dealings. For those participants who may have some degree of choice over whether they are treated as a market counterparty or as an ‘intermediate customer’\(^\text{11}\) it may be useful to highlight the main differences in the protections provided by the two categories\(^\text{12}\) in the area of business covered by the IPC. As discussed, the customer related Principles 6, 8, 9 and part of 7, do not apply to dealings with market counterparties. In addition, a useful summary of customer protections was provided in Annex B of CP43, and readers may like to cross-refer to that table. Table 2 below covers the main protections for dealing and arranging and associated advice for market counterparties (with no underlying customers) with those for an intermediate customer.

| Table 2 – Summary of Protections for dealing, arranging and related advice |
|-------------------------------------------------|-----------------|-----------------|
| Know your customer                              | Market Counterparty | Intermediate customer |
| Suitability                                     | No               | Yes, limited    |
| Customers understanding of risk                 | No               | No              |
| Information about the firm                      | No               | Yes             |
| Disclosure of charges                           | No               | No              |
| Conflict of interest and material interest      | Some disclosure  | Yes             |
| Churning/switching                              | No               | Yes, but limited|
| Dealing ahead                                   | No               | Yes             |
| Customer order priority                         | No               | Yes             |
| Best execution                                  | No               | Yes, but opt out allowed |
| Timely execution                                | No               | Yes             |
| Allocation                                      | No               | Yes             |
| Confirmations                                   | Guidance         | Yes, but flexibility |
| Fair and clear comments                         | Communication not to be misleading | Principle 7 applies in full |
| Marketing incentives, inducements               | Guidance         | Yes             |
| Customer Assets                                 | Yes              | Yes             |
| Client Money                                    | Yes, but opt-out allowed | Yes, but opt-out allowed |

\(^\text{11}\) under the proposals in CP43.
\(^\text{12}\) leaving aside the discussion above on whether some of the provisions in the IPC might also apply to customer dealings.
Q2.16: Are there any inconsistencies between COBS and the IPC which concern you? How might they be best addressed?

2.37 In drafting the IPC the FSA has been conscious that different sections of the market counterparty audience will have different preferences regarding the amount of detail that the IPC should contain. In addition, depending on the outcome of the consultation on customer classification, the range of market counterparties could be much wider than presently in the SRO world. As such, there are areas of the IPC where we have erred on the side of providing more guidance rather than less.

Q2.17: (a) Does the draft IPC strike the right balance between high level guidance and more detailed prescription? Please relate your comments to specific examples.

(b) Does the draft IPC allow sufficiently for the differences between different areas of inter-professional business?

2.38 This CP contains no proposals on transitional arrangements. These will be developed shortly.

Q.2.18 Are there any particular issues that you think the transitional rules should address in the area covered by the IPC?
3 Commentary on good practice informational material

3.1 Annex 2.5.2 of the draft IPC (in annex D) contains guidance (information) regarding good market practices in a number of relevant areas. This material is not proposed as guidance to the Principles, but as useful information issued under FSA’s powers in clause 153(1)(c) and (d) of the FSM B. It is intended to provide a statement of good market practices, to improve market confidence and certainty among participants about how business is conducted in the UK.

3.2 The material in this annex would not have any formal status in relation to the Principles. Failure to follow the guidance here would not be expected to indicate any breach of FSA requirements. It could appear either as an annex to the IPC within the Handbook, or as a separate ‘factsheet’. Both the FSA and the industry are concerned that there should be absolute clarity about the status of this material.

3.3 The commentary below highlights the main features of this material. In considering it, we would welcome your views on the section as a whole:

Q3.1: Should the FSA produce informational material by way of guidance in the area of inter-professional dealings?

Q3.2: If yes, should it appear as an annex to the IPC or as a separate factsheet?

3.4 We do not propose to comment in detail on all the items in this section. Many feature already in more detail in the London Code.

Q3.3: Which of these areas in this section are of use? Would you like more detail in any area? Should other areas be covered?
4 Corporate finance

4.1 As indicated in the introduction, corporate finance business is included in the scope of the draft IPC\textsuperscript{13} - where the activity involves dealing and arranging and related advice for market counterparties. There is nothing within the draft, however, which gives explicit guidance on the activity.

4.2 Consultation Paper 45 makes clear those rules which apply to corporate finance business when undertaken with customers. The main issue to address is whether a corporate finance business undertaken with a market counterparty should appear in the IPC, or whether it should appear in COBS. There are currently two classes of corporate finance, one where the client is a market counterparty and one where he is not. The former is treated under the IPC, the latter under COBS. The amount of corporate finance business undertaken with market counterparties will in part depend on the outcome of the customer classification consultation.

Q4.1: Should any corporate finance business with market counterparties be included in the IPC?

Q4.2: If corporate finance is to be excluded from the IPC, should we exclude all activities within the COBS definition or should some be kept within the IPC?

Q4.3: Does this interfere or cause problems for venture capital business? If so, please stipulate how and why.
5 Requirements that might equally apply to dealings with customers

5.1 The starting-points of the IPC and the COBS are different: the former emphasises matters of market confidence while the latter is grounded much more directly in consumer protection. It is important that the boundary between the two is clearly identified. In large measure, this is currently achieved by the proposed over-arching application provision (discussed above). But it is clear that some provisions in the draft IPC might equally apply to a firm’s dealings with its customers (particularly intermediate customers). We would welcome views on which provisions might apply to dealings with customers and where these might best be located in the final Handbook. Some might be extended more readily than others; the rules on NMPTs for example are clearly to protect market confidence but might be equally as applicable to deals with intermediate customers (whereas for deals with private customers may not be sufficiently big, sufficiently often to warrant special rules).

5.2 Those provisions in the IPC which might equally apply to a firm’s dealings with its customers include:

a) the requirements on firms acting as name-passing brokers;
b) the guidance on stop-loss orders;
c) the section on non-market-price transactions;
d) the guidance on the taping of dealing room conversations; and
e) firmness of quotation.

5.3 None of these have direct counterparts within COBS, though the rules in COBS may deliver some of the same standards of behaviour by different means. The dealing protections may provide sufficient consumer protection such that not all of these IPC provisions would need to be extended downwards.
5.4 If it is desirable to extend all or any of these provisions to dealings with customers, two questions arise. First, is an identical provision appropriate for customer dealings? This may not be appropriate given that much of the IPC is written as guidance whereas the majority of COBS is in the form of compulsory rules. Second, if the same provision is appropriate, there is the question of where it should best be located. It could appear in either COBS or the IPC, and then be cross-referenced. Or it could appear in both.

Q5.1: (a) Ought the provisions on (1) name-passing brokers, (2) stop-loss orders, (3) non-market price transactions, (4) taping and/or (5) firmness of quotation be extended to dealings with intermediate or private customers, or both?

(b) Are there any other areas of the IPC which might equally apply to a firm’s dealings with its customers?
6 Items excluded from the IPC

... but included in the current London Code of Conduct

6.1 The IPC is approximately one-third the length of the London Code of Conduct. There is broad continuity in most of what has been retained - it is generally at a higher level and much of the product-specific detail has been lost (though may reappear at a later date in the annexes). The main exclusions from the IPC, compared with the London Code, are considered in this section.

Mediation

6.2 The FSA currently runs a mediation procedure for regulated firms operating under the London Code of Conduct. The FSA proposes to discontinue this service with the implementation of the IPC. There are a number of reasons for this decision:

• The cost-benefit analysis in Annex B identifies the discontinuity in costs that might arise in extending the mediation service from the current level of activity, to a process covering the whole new professional constituency. The possible scale of activity involved under the new arrangements alters the nature of the decision involved.

• Both the FSA and many of the respondents to the earlier consultation believe that mediation/arbitration is a desirable way to resolve disputes between professionals, but the majority view is that the FSA is not best placed to undertake this function. However, the WMBA have argued strongly that the FSA should retain this function.

6.3 Although the FSA is proposing to withdraw this service, the FSA would still recommend that market counterparties use mediation and alternative dispute resolution procedures to address disputes. If there were a complaint about a breach of the IPC, the FSA might still pursue this as a regulatory matter.

Q6.1: Do you agree that FSA should cease to offer a mediation service for professionals?
There are a number of other items which currently appear in the London Code of Conduct but which it is proposed to exclude from the IPC.

Some of these are issues which will be addressed elsewhere in the Handbook. These include the current guidance on undisclosed principals and on marking-to-market, which will feature in the prudential sourcebook.

Other omissions

Three omissions warrant explicit consideration. First, the IPC does not contain the guidance in the London Code of Conduct that brokerage should be paid promptly. The FSA considers this to be primarily a commercial issue, which does not need to be addressed explicitly as part of the guidance on the Principles in the IPC. Practitioners' views in this area have been mixed, and the WMBA has argued strongly that FSA should retain this interest in the IPC.

Second, the current London Code of Conduct guidance on dealing mandates is excluded from the IPC. This is because of the difference in counterparty coverage between the old regime and the new. It is not appropriate to give guidance to market counterparties in respect of the dealing (or policing) mandates. This is because they currently relate to services that may be given to customers, which are outside the scope of the IPC (but which are covered by the London Code of Conduct). If guidance in this area is considered useful it might appear as part of COBS.

Third, the London Code contains a section on ‘know your counterparty’ and outlines the procedures a firm might have in place for assessing the legal capacity of a counterparty to deal, their credit standing, as well as the appropriateness of certain complex products for end-users. This material will in future reside elsewhere in the Handbook – in the Prudential Sourcebook, in COBS (where customers are involved) and in Block 1.

Q6.2: Do you have any objections to these proposed exclusions from the IPC?

Q6.3: Do you think it would be useful for COBS to contain guidance on dealing mandates?

... and other exclusions

Financial promotion

The draft Financial Services and Markets Act (Financial Promotions) (Exemptions) Order (‘Exemption Order’) exempts all financial promotions to investment professionals – article 39 (which includes all authorised firms), high net-worth individuals – article 41, high net-worth companies,
unincorporated associations etc- article 42, and sophisticated investors - article 43.

6.10 Both the Exemption Order and the structure of customer classification have yet to be finalised. When they have been, the FSA will reconsider the definition of market counterparty against the definitions used in relation to the articles of the Exemption Order identified above. There are two main areas of concern. First, whether the capital thresholds used to determine what is a high net worth company are consistent with the thresholds the FSA uses to determine whether a corporate can opt up to market counterparty status. Second, whether there could be any market counterparties who are not within any of the Exemptions identified above. If there is a mismatch any Financial Promotions to these market counterparties by an authorised firm could still be potentially covered by COBS Chapter 3.

6.11 Based on the current proposals, set out in CP43 and the Exemption Order, it has been decided that the IPC does not need to include any rules or guidance in relation to Financial Promotions for inter-professional business. If an authorised firm sends a communication to an other authorised firm, who then passes the communication to one or several of its customers, under the current formulation of COBS and the Exemption Order the second authorised firm is obliged to comply with COBS Chapter 3. However, if the first authorised firm has already confirmed the compliance of the financial promotion with Chapter 3 for the type of recipient intended by the second authorised firm, the second firm can rely on this.

6.12 It should be remembered that all communications by market counterparties are covered by the Principle 7 regarding misleading statements.
Introduction

A1 The purpose of cost-benefit analysis (CBA) is to assess, in quantitative terms where possible, and otherwise in qualitative terms, the economic costs and benefits of a proposed new policy. Any CBA of a new regulatory proposal seeks to compare the new regulatory environment with the previous one. This CBA focuses specifically on the incremental changes that will arise with the implementation of the IPC.

A2 As discussed above, the IPC is an integration of two of the current regulatory approaches that apply to two distinct (though, not mutually exclusive) groups of 'professional market participants':

a) the London Code of Conduct (LCC), currently observed by Section 43 (s43) firms in their dealings with core principals and end-users; and

b) the relevant Principles, which firms authorised by the SROs and other regulators follow in their dealings with market counterparties.

In addition, there are certain ancillary activities (such as certain life insurance firms and friendly societies) which have now been brought within the scope of the new Principles, with the proposals in CP13. The professional firms' and managers of collective investment schemes' activities in this area are also covered by the IPC. This CBA focuses separately where necessary on the changes forced by s43 firms and on those faced by firms who would otherwise operate in this area on the basis of relevant Principles alone.

A3 The CBA is also conducted on the basis of the scope provided by the customer classification consultation paper (CP43). As such:

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14 These proposals are subject to change; revised proposals will be published shortly.
a) s43 firms will now face a revised code (the IPC) governing their dealings with market counterparties (while their dealings with customers are subject to COBS), and

b) many authorised firms face a Code for the first time and, at the same time, may be undertaking business with a potentially wider set of market counterparties.¹⁵

These issues are discussed in more detail under the section titled ‘scope of the IPC’.

A4 The material in this CBA has been drawn from two main sources:

a) discussion with broker/principal firms and relevant trade bodies and a detailed CBA questionnaire focussing on such matters as the direct costs of the IPC and its market impacts; and

b) regulatory and supervisory records, and experience within the FSA.

A5 The incremental changes to the proposed IPC have been captured in tabular form in Appendix 1 (for s43 firms) and in Appendix 2 (for authorised firms).

A6 Most of the incremental changes in the IPC do not seem to impose significant incremental costs. This CBA is based on an assessment that the new and additional costs imposed on firms by the IPC are of minimal significance. This assessment has been reached on the basis that:

• the contents of the IPC do not impose significant new requirements for s43 firms operating under the London Code;

• for those authorised firms operating under the Principles (those currently regulated by the SROs, operating collective investment schemes, non-Directive life insurance companies and friendly societies), the guidance in the IPC indicates one means of complying with the Principles, but these firms have discretion to comply with the Principles by alternative routes; and

• for this second group, the few specific rules which are proposed in the IPC do not constitute a major additional burden.

Since these rules largely correspond to the sorts of controls that firms will have in place already to ensure that they are not paying more than they should for relevant investments.

There are some exceptions to this ‘minimum significance’ assessment. These are the FSA’s decision to stop providing a mediation service and the costs incurred by practitioners in reading, digesting and implementing the IPC. These issues are discussed below in this CBA. Policy changes are also

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¹⁵ There will be a separate CBA on the proposals for counterparty classification when the draft rules are published.

2 Annex A
proposed in the areas of taping of transactions, and the prompt payment of brokerage. These issues are discussed in detail in this CBA, but the overall conclusion is that the increase in costs will be of minimal significance as a result of these policy changes.

Scope of the IPC

A7 When considering whether the scope of the IPC has changed from that covered under the existing regulatory regimes we need to examine the product and market counterparty scope and the s43, SRO and other relevant regulatory regimes.

Product scope

A8 Comparing the IPC with the LCC there are different changes which both add and subtract from its scope. First, the product scope of the IPC is narrower (than the LCC) in the sense that it is focussed exclusively on investment products, whereas the LCC also included certain non-investment products—responsibility for those non-investment products covered by the LCC will no longer rest with the FSA. It is proposed that the Bank of England will co-ordinate production of a code on market practice in the area of non-investment products.

A9 Second, the product scope of the IPC has become wider (compared with that of LCC) as a much broader range of OTC investments are included and on-exchange investments are now covered. This includes long term UK local authority and other public sector debt, gilt-edged securities, equities, and derivatives in all these underlying products, and energy and commodity derivatives. However, these investments are currently regulated under the Principles in the SRO regimes.

A10 Conclusion on IPC product scope: the product scope of the IPC does not extend into any new product areas not covered at present by one of the current regulatory regimes, the IPC’s scope does not represent an incremental change as transactions in these products are already regulated.

Scope of activity

The IPC covers a wider range of activities than the LCC as summarised in Section 2.1-2.7, the commentary on the Application Statement:

- it includes the existing s43 investment business currently under the London Code;

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16 These non-investment products are wholesale deposits, spot and commercial forward foreign exchange and bullion.
• it includes the buying and selling of shares or units in a collective investments scheme, either as part of operating the scheme or as dealing as agent or principal;

• it includes the non-Directive insurance buying and selling of securities by companies and friendly societies.

Each of these activities is currently covered by the FSA Principles. The scope of the revised FSA Principles and the associated CBA are set out in ‘The FSA’s Principles for Businesses’ Firms will already be complying with the Principles. Where the IPC provides guidance on the Principles, it effectively sets out one way of obtaining compliance with those Principles, but there is clearly no unique route by which to comply. As a consequence, the FSA is of the view that the guidance in the IPS does not impose significant new costs on firms who fall within its scope. The position of the rules in the IPC is considered below.

**Market counterparty scope**

A11 The scope of market counterparties will be determined as a result of the consultation on CP43. However, some changes from the present structure will clearly take place and these are discussed here. For those currently operating under the Grey Paper (s43), listed money market institutions can transact with an end-user in the relevant products under the terms of the LCC if they have undertaken the relevant ‘know your counterparty’ checks. ‘End-users’ may include both institutions and sophisticated individuals.

A12 The IPC offers guidance on transactions with market counterparties and, therefore, will not extend to transactions between market counterparties and non-market counterparty ‘end-users’ (as the LCC currently does). This proposal represents a narrowing of the counterparty scope of the IPC compared with the LCC. (For example, the CP43 proposals do not envisage a private individual being able to opt-up to be a market counterparty).

A13 Comparing the SRO regimes with the IPC: Under the SRO regimes a customer could be classified as a market counterparty if the customer meets one of a number of criteria. Under the SRO regime, if any two authorised firms regulated by the same SRO trade then that is potentially a transaction between a firm and a market counterparty.

A14 It is possible from the proposals in CP43, that all authorised firms could be classified as market counterparties, in relation to the business for which they are authorised (and any other business for which authorisation is not required) – subject to one of the four policy options set out in CP43. This proposal could increase the number of types of counterparty which are able to deal with each other on an firm-market counterparty basis. (See Appendix 3
for a discussion of how the number of firm-market counterparty trades may change post-N 2.)

A15 Post N 2 situation: the combined effect of some of the proposals in CP43 and the IPC may be along the following lines:

a) Corporates who are currently wholesale counterparties can do large trades with listed money market institutions and are covered by the LCC. Post N 2 the corporate may be given the opportunity to opt up into the 'market counterparty' category for the full range of business covered by the IPC. If the corporate chooses not to opt up then the corporate will be treated as a customer and be subject to conduct of business rules (and not fall under the IPC). Under the proposals in CP43, firms will not be able to treat private individuals as market counterparties but some corporates may opt-up into that category.

b) Authorised firms who are currently classified as customers (and therefore follow COBS) may be classified as market counterparties post N 2. They may, however, be able to utilise an 'opt down' provision under one of the proposals in CP43 and not be classified as 'market counterparties'.

A16 Given that post-N 2 firms may be given the opportunity to opt up or opt down a classification, firms are likely to choose the option that will minimise their costs. Therefore, those firms faced with a classification that imposes an increase in cost of more than minimal significance, with no offsetting benefits, are likely to change their classification by opting up or down. Those who remain within their classification band presumably do so as result of the increase in costs incurred being of minimal significance.

A17 The potential widening of the scope of authorised firms who may fall under the IPC (when they deal as market counterparties) arises as a result of the integration of regulatory regimes. Current additions to the range of 'authorised firms' which may fall under the IPC post N 2 include:

a) 735 insurance firms;

b) 40 friendly societies;

c) 1850 managers of collective investment schemes;

d) 40 permitted persons; and

e) approximately 2,000 of the 14,000 professional firms.

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17 For example, it may be possible for IMRO and PIA firms not to be market counterparties of any of the SFA firms with which they deal, and if IMRO or PIA firms dealt with each other, the relationship may not necessarily be on a market counterparty basis.

18 Considered to be the likely number of RPB firms wishing to transfer over to the FSA regulatory regime.
However, the volume of dealings between authorised firms may not be significantly affected by these changes (see Appendix 3). Nor does FSA expect the changes to impact significantly on the direct costs to FSA of implementing and maintaining this regulatory regime.

Rules on taping: compliance costs

Industry practitioners were asked whether the taping rule in the IPC (2.9.4R) added an incremental cost. Currently, the LCC has a taping provision for dispute resolution purposes, whilst market counterparties falling under the SRO regimes follow the high level rules on record keeping that apply generally across all firms (and any relevant exchange rules). As a result, their response was that the rules and guidance in the IPC would not bring about a major change in firms’ behaviour. The usefulness of taping depended on the type of business the firm undertook.

Another reason for market participants not having to incur significant incremental costs due to the taping ‘rule’ is the provision in 2.9.7G of the IPC. This says that ‘If the records identified in 2.9.3G are substituted by written or electronic confirmations produced in accordance with the record keeping rule, then the confirmation may be an adequate record of the transaction.’ Costs of storage will be much lower for written or, increasingly, electronic confirmations.

Other IPC rules: compliance costs

There are few other rules in the IPC. Leaving aside those rules which define the scope of the IPC, the rules are as follows:

- Non-market price transactions. The rules here require a firm not to enter into a non-market price transaction unless it is satisfied that it is not for an improper purpose. If the transaction is on-exchange business, the IPC rule does not apply. In the FSA’s view, this requirement should not impose significant additional costs on firms who are in compliance with the Principles.

- Settlement of differences. There are some specific rules in respect of the settlement of differences by firms acting as name passing brokers. The application of these rules should be limited to those undertaking this business and who would already be expected to follow similar requirements.

- Compensation schemes. Firms must provide information on compensation arrangements if asked. This is a Directive requirement.

19 For example, the practitioners indicated that name passing brokers in the s43 area refer to tape records on numerous occasions on each day, whereas principals appear to refer to tapes less frequently (perhaps once per week or less).
As a consequence, the FSA’s view is these rules do not impose significant new costs on firms. If you believe that FSA has overlooked certain key costs associated with the proposed rules in the IPC (see question B1 in Annex B).

Dispute resolution: compliance costs

A21 At present, the FSA provides a mediation service for s43 firms which is free at the point of use. The costs to the FSA of providing this service are roughly £5,000 per dispute. On average, the FSA mediates on around 4 disputes every year. Other than resolving disputes, the FSA also fields queries from s43 firms regarding the FSA’s stance on a potential dispute. On average the FSA fields around 20 such queries each year, the cost of which is deemed to be negligible.

A22 The FSA is proposing to cease providing this mediation service. In the case where the FSA provides no mediation service, firms are likely to use the next best alternative i.e. use mediation services provided by the private sector.\(^{20}\) Given that the FSA’s mediation service is provided free of charge (at the point of use) to practitioners, the alternative dispute resolution mechanisms that the practitioners turn to are bound to cost more individually. For example, the mediation service provided on fee basis by a London based body costs approximately £8,000.\(^ {21}\) Assuming that every year four disputes are resolved by the dispute resolution mechanism the ongoing incremental cost to s43 firms is £32,000. Assuming further that the 20 or so queries that the FSA fields each year will now have to be resolved at a similar cost by the commercially provided mediation service the ongoing incremental cost to s43 firms is £192,000 (£32,000+£160,000).

A23 Moreover, even though the mediation service is at present free at the point of use for practitioners, the industry is paying for the service because the industry pays for the FSA. Therefore, abolishing the FSA mediation service will save the industry the (admittedly low) costs incurred by the FSA in running the service.

A24 The SROs operate a full arbitration service for their firms’ counterparties. However, the SROs do not promote themselves as offering any dispute resolution forum for market counterparties. They expect firms to resolve disputes through the courts, through ad hoc mediation or through comprehensive provisions within the clauses of their contracts. There has been only one instance in which the service has been used by a market counterparty. The SFA’s arbitration secretariat’s work is focused on the consumer arbitration scheme, which is only available to private customers and limits awards to £50,000. Consequently, incremental costs are not expected to

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\(^ {20}\) Practitioners feel that disputes are unlikely to go to court (due to the time, expense and anonymity preferences involved in doing this) and are likely to be settled between market participants.

\(^ {21}\) Of this £8,000 charge per dispute mediated on, roughly £5,000 arises from having to pay for a mediator at £350 per hour. The remainder of the charge consists of the registration fee, room hire charges and food.
accrue to the SRO market counterparties if the FSA decides to cease providing a mediation service.

Efficiency of competition

A25 At present, most of the disputes between s43 firms that the FSA is called to mediate upon, involve similarly sized firms. However, FSA personnel providing the mediation service estimate that one fifth of the disputes involve firms of markedly dissimilar sizes.

A26 If the FSA stops providing the mediation service and if commercially provided mediation services are expensive, then there is a risk that the smaller players involved in these disputes might be put at a competitive disadvantage. However, the figures available to the FSA indicate that these services are fairly inexpensive (charging around £8,000 per dispute) and unlikely to disadvantage smaller players.

Prompt payment of brokerage

A27 The LCC had a rule on the prompt payment of brokerage. The IPC is silent on this issue. Without prompt payment of brokerage, brokers may find themselves in the untenable position of breaching their capital requirements. This could put brokers in breach of their regulatory capital requirements if they do not maintain an excess of funds to call upon in such a scenario.

A28 A recent exercise indicated that the six largest wholesale market brokers were owed a total of £20 million in brokerage fees by principals 60 days after a transaction was concluded. Given that existing guidelines on prompt payment of brokerage seem unable to prevent principals from behaving in this fashion, it is not likely that the IPC’s silence on this issue will have an adverse impact on the lateness of brokerage payment. The industry is working on developing its own solutions.

Other compliance cost issues

SRO regulated market counterparties

A29 For those SRO-regulated firms dealing with market counterparties, the IPC offers a much greater level of formal guidance on the Principles (compared with the SRO rulebooks). The practitioners that we have spoken to are of the opinion that this guidance is merely a codification of existing market practice and should not impose significant incremental costs. Those firms operating under both SRO and s43 requirements have indicated that in many areas they will tend to adopt the stronger rule (or guidance).

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22 This might arise due to small players not being able to afford the costs of mediation and hence choosing to settle through bilateral negotiations (in which larger players have more bargaining power).

23 This conclusion critically depends on the time taken to resolve a dispute. The longer the dispute lasts, the more the mediator will charge, the greater the disadvantage for the smaller player.
A30 The introduction of the IPC is likely to impose a one-off compliance cost for the relevant firms as they read and digest the new IPC. The practitioners we have spoken to estimate this one-off cost to be a person day of an experienced practitioners' time. Assuming that a day of such a resource costs approximately £600, the total one-off cost to the industry (assuming that there will be around 10,000 affected firms) is around £6 million.

Other benefits
Reductions in costs

A31 Given that the FSA may no longer provide a mediation service, the costs previously incurred by providing this facility (around £20,000) will be eliminated.

A32 The boundary between the s43 and SRO regulation was imprecise in some dimensions (e.g. boundary with respect to debentures or credit derivatives) and necessitated work by dual-regulated firms to identify the application of the relevant regulatory regime. Harmonisation of the (s43 and SRO) regulatory regimes eliminates the need for firms to seek legal advice on the choice of which regulatory regime their different business types fall under. This led to compliance costs being higher than they were intended to be. Harmonisation of the s43 and SRO regimes eliminates this and is expected to lower compliance costs.

Conclusion

A33 In general, it is the FSA's view that the IPC does not impose significant incremental costs. Some incremental costs are likely to arise for practitioners if the FSA ceases to provide a mediation service. For a given dispute, the price at which such a mediation service is provided will rise from zero to £8,000. Compliance costs, small for a given practitioner (one person day) but substantial for the industry as a whole, are likely to arise from practitioners having to read and digest the IPC. In specific areas, such as on non-market price transactions, it is suggested that the implementation costs for complying with this rule are not likely to be substantial. The harmonisation of the regulatory regimes now brought about within the IPC is likely to provide benefits for practitioners by reducing the need to seek legal advice and eliminating the tendency of adhering to the stricter code when unsure of the regime governing a transaction.

24 Assuming that an average practitioner's annual salary is £75,000 and overheads for this practitioner amount to a similar amount, lead to the conclusion that a day of a practitioners' time costs £600 (=£150,000/250).

25 Non-investment products are expected to have a separate 'good practice' code which will be co-ordinated by the Bank of England. While, this does raise the prospect of having different rules for certain OTC trades in investment and non-investment products, the intention is to formulate a Non-investment Products Code which is broadly consistent with the IPC.
The following tables clarify the changes made to the FSA’s policy on market counterparty transactions. For ease of understanding new policy has been split into two tables: one for proposed changes contained elsewhere in the Handbook and the other for changes contained specifically within the IPC. This CBA covers the changes proposed specifically within the IPC.

### Table A1

<table>
<thead>
<tr>
<th></th>
<th>Existing Arrangements for s43 Firms</th>
<th>Arrangements post-N2 that will be detailed elsewhere in the Handbook</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Wholesale counterparties are divided into two groups;</td>
<td>A CP will be issued shortly containing proposals for investors to be categorised within one of three groups:</td>
</tr>
<tr>
<td></td>
<td>1 core principals; and</td>
<td>1 market counterparties;</td>
</tr>
<tr>
<td></td>
<td>2 end users.</td>
<td>2 intermediate customers; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3 private customers.</td>
</tr>
<tr>
<td>2</td>
<td>Under s43 there is no requirement for individuals to be registered. The LCC covers firms and employees, and holds firms liable for their employee’s actions.</td>
<td>Specified groups of individuals will be subject to approval and covered by the APC.²⁶</td>
</tr>
<tr>
<td>3</td>
<td>No provisions for Chinese walls.</td>
<td>The IPC is likely to incorporate guidance on Chinese Walls. The IPC will cross-refer to these provisions which are likely to appear in the Conduct of Business Sourcebook (CoBS).</td>
</tr>
</tbody>
</table>

²⁶ Approved Persons Code. See CP26 and forthcoming revised proposals.
<table>
<thead>
<tr>
<th>4</th>
<th>Requirements on record-keeping are currently drawn from the Grey Paper.</th>
<th>Record-keeping requirements should form part of rules of general application and sit in Block 1 of the Handbook. The IPC cross-referes to these and has its own, more detailed provisions where these are considered necessary.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Client money segregation rules are currently drawn from the Grey Paper.</td>
<td>There will be client money rules in the Handbook covering current s43 and SRO business. (See CP38.)</td>
</tr>
<tr>
<td>6</td>
<td>The LCC refers to the potential conflict of interest arising from employees dealing for their own account in any of the products covered by the LCC. (See para 56 of LCC.)</td>
<td>Requirements on personal account dealing will be a rule of general application and hence appear in Block 1 of the Handbook.</td>
</tr>
<tr>
<td>7</td>
<td>The LCC refers to money laundering guidelines and makes special provisions for name passing brokers. (See para 20 of LCC.)</td>
<td>The FSA's rules on money laundering will appear in the Money Laundering Sourcebook.</td>
</tr>
<tr>
<td>8</td>
<td>Mismarking is a breach of the LCC, although guidance is not explicit.</td>
<td>The Prudential Sourcebook will take account of mismarking.</td>
</tr>
<tr>
<td>9</td>
<td>The LCC currently has a requirement for firms to train staff adequately. (See para 16 of LCC.)</td>
<td>The requirements for training will appear as part of the Training and Competence Sourcebook. (See CP34.)</td>
</tr>
<tr>
<td>10</td>
<td>A single code is applicable for all relevant markets and also covers certain Non-Investment Products (NIPs).</td>
<td>The main body of the IPC is expected to contain market annexes tailored to specific product markets. NIPs will be covered by a separate industry code.</td>
</tr>
<tr>
<td>11</td>
<td>Undisclosed principal requirements: LCC requires listed firms to ensure that they properly consider the risks before undertaking such activity.</td>
<td>The Prudential Sourcebook will take account of undisclosed principal requirements.</td>
</tr>
<tr>
<td>12</td>
<td>Grey paper contains guidance on transactions reporting.</td>
<td>Transaction reporting will be in Ch.17 of the Supervision manual.</td>
</tr>
</tbody>
</table>
## Table A2

<table>
<thead>
<tr>
<th>#</th>
<th>Existing Arrangements for s43 Firms</th>
<th>New Inter-professionals Code (IPC) Proposed by FSA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>LCC requires clarity on whether a quote is firm or indicative. (See para 73.)</td>
<td>The IPC contains guidance on this subject. See 2.7.6-2.7.8.</td>
</tr>
<tr>
<td>2</td>
<td>Specific guidance is given on:</td>
<td>The IPC will contain guidance on confidentiality (in the annex) but these are less detailed (in comparison with the guidance in the LCC). See Annex 3, paragraphs 2.1-2.2.</td>
</tr>
<tr>
<td></td>
<td>• dealers/brokers visiting each other’s dealing rooms and the location of business execution; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• the sharing of confidential or market sensitive information whereby the onus of confidentiality is placed on management.</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>The LCC contains provisions on restricting entertainment, gifts and gambling.</td>
<td>The IPC provides guidance on undertaking marketing incentives, inducements and payments in kind in accordance with Principles 1 (integrity) and 5 (proper standards of market conduct). See 2.7.9-2.7.13.</td>
</tr>
<tr>
<td>4</td>
<td>The LCC recognises dealing mandates as useful in certain cases and gives guidance on their content where this is so.</td>
<td>The IPC does not contain guidance on dealing mandates for market counterparties as these are only appropriate for customer transactions.</td>
</tr>
<tr>
<td>5</td>
<td>Guidance is given on prompt payment of brokerage in the LCC.</td>
<td>The draft IPC does not contain guidance on this subject.</td>
</tr>
<tr>
<td>6</td>
<td>Under the LCC, s 43 firms are required to tape deals and keep them for two months or obliged to ‘persuade FSA’ of why the firm is not taping. In the case of FSA arbitration of a dispute, particular relevance would be attached to the lack of taping.</td>
<td>The IPC contains a rule on taping for those firms where voice recordings serve the purpose of records. No retention period is specified but firms must maintain these records for as long as a firm is required to comply with the Act. Guidance suggests scenarios where voice recording may be appropriate. See 2.9.1-2.9.12.</td>
</tr>
<tr>
<td>7</td>
<td>Under the current regime, s43 firms are given the facility to receive mediation by the FSA with regard to disputes concerning activities under the guidance of the LCC.</td>
<td>The FSA proposes to cease offering a mediation service in this area but supports the use of alternative dispute resolution procedures. See 2.4.7.</td>
</tr>
<tr>
<td></td>
<td>Some OTC transactions are regulated under the LCC and some by the SROs.</td>
<td>Level playing field (in regulatory terms) for all OTC investment transactions (and for on-exchange transactions). See 2.5.4</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>9</td>
<td>Confirmations: LCC provides guidance to the effect that confirms are exchanged and checked promptly.</td>
<td>IPC will provide guidance on this subject but this will be less detailed (compared with the guidance in the LCC). See Annex 3, paragraph 6.1-6.7.</td>
</tr>
<tr>
<td>10</td>
<td>There are currently no provisions for exchange rules in the LCC.</td>
<td>In the case of exchange business, any statement on what the Principles do and do not require of a firm in a particular situation should be read subject to any exchange rule that applies. See 2.5.5.</td>
</tr>
<tr>
<td>11</td>
<td>Non-market price transactions (NMPTs): LCC has requirements on firms when conducting ‘historic rate rollovers’ and ‘off-market rate’ deals. The objective is to prevent fraud/concealment of losses.</td>
<td>The IPC may have rules on this subject and hence guidance is given to clarify the firming of the current position. Ultimately, the practical outcome will be the same, or slightly less onerous since the rules no longer require a sign-off from the counterparties. See 2.8.</td>
</tr>
</tbody>
</table>
The following tables clarify the changes made to the FSA’s policy on SRO market counterparty transactions. For ease of understanding, new policy has been split into two tables: one for proposed changes contained elsewhere in the Handbook and the other for changes contained specifically within the IPC. This CBA covers the changes proposed specifically within the IPC.

### Table A3

<table>
<thead>
<tr>
<th>#</th>
<th>Existing arrangements for SRO regulated firms</th>
<th>Arrangements post-N2 that will be detailed elsewhere in the Handbook</th>
</tr>
</thead>
</table>
| 1  | Investors are classified into two broad categories:  
   | 1 non-customers, which comprise market counterparties; and  
   | 2 customers, which can be sub-divided into non-private and private. | Counterparty classification is being formulated by the FSA. CP43 contains proposals for investors to be categorised within one of three groups:  
   | 4 market counterparties;  
   | 5 intermediate customers; and  
   | 6 private customers. |
| 2  | Rule 5-3 of the SFA Rulebook deals with conduct regarding use of Chinese Walls. | The IPC is likely to incorporate a cross-reference to Chinese Walls requirement. |
| 3  | Rule 5-54 of the SFA Rulebook deals with record keeping.  
<p>| Ch.3 contains rules on financial records and reporting. | Record-keeping requirements should form part of rules of general application and sit in Block 1 of the Handbook. The IPC cross-refers to these and to has its own guidance where it is considered necessary/useful. |</p>
<table>
<thead>
<tr>
<th>4</th>
<th>Chapter 4 of the SFA rulebook deals with segregation of customer assets and client money.</th>
<th>There will be client money rules in Block 1 of the Handbook covering current s43 and SRO business. IPC will cross-refer to these rules. (See CP38.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Rule 5-51 in the SFA Rulebook relates to personal account dealing.</td>
<td>Rules on personal account dealing will appear in Block 1 of the Handbook.</td>
</tr>
<tr>
<td>6</td>
<td>Rules on money laundering safeguards can be found in the SFA Board Notices (1-538) Notice 159.</td>
<td>The FSA’s role in money laundering (as proposed in the Money Laundering Sourcebook) will concentrate on anti-money laundering systems and controls.</td>
</tr>
<tr>
<td>7</td>
<td>Market Practice is covered by Principle 3 of the Principles of Business by which market counterparties must operate. Guidance is given in a few specific areas.</td>
<td>Standards of market conduct are specified within the COMC, as well as in the IPC.</td>
</tr>
<tr>
<td>8</td>
<td>Mismarking is considered a prudential issue and is, therefore, disciplinable under the FSA Principles.</td>
<td>The Prudential Sourcebook will take account of mismarking.</td>
</tr>
<tr>
<td>9</td>
<td>Misleading financial adverts and financial promotions: Rule 5-9 of the SFA Rulebook deals with advertising and marketing and applies generally to a firm.</td>
<td>Financial promotion: cross referred to in COBS Ch.3 which will exempt market counterparties from rules and guidance on the subject.</td>
</tr>
<tr>
<td>10</td>
<td>Rule 5-49 within the SFA Rule Book refers to reportable transactions.</td>
<td>Transaction reporting rules will be in Ch.17 of the Supervision manual.</td>
</tr>
<tr>
<td>11</td>
<td>Currently, rule 5-8 in the SFA Rule Book on soft commissions is switched off for inter-market counterparty deals.</td>
<td>IPC includes guidance on inducements.</td>
</tr>
<tr>
<td>#</td>
<td>Existing SRO arrangements</td>
<td>New Inter-professionals Code (IPC) Proposed by FSA</td>
</tr>
<tr>
<td>---</td>
<td>---------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>No SRO rule on taping.</td>
<td>The IPC may contain a rule on taping for those firms where voice recordings serve the purpose of records. These records should be maintained for as long as a firm is required to comply with FSA rules. Guidance suggests scenarios where voice recording may be appropriate. See 2.9.1-2.9.12.</td>
</tr>
<tr>
<td>2</td>
<td>Currently the SRO Rule Books have no guidance with regards to firmness of quotation.</td>
<td>IPC provides guidance on the firmness of quotation. See 2.7.6-2.7.8.</td>
</tr>
<tr>
<td>3</td>
<td>Some OTC transactions regulated by the LCC and some by the SROs.</td>
<td>Unified regulatory regime for all OTC investment transactions (and for on-exchange transactions). See 2.5.4.</td>
</tr>
<tr>
<td>4</td>
<td>There is no requirement for firms to issue confirmations when dealing with market counterparties.</td>
<td>IPC provides guidance on this subject. See Annex 3, paragraph 6.1-6.7.</td>
</tr>
<tr>
<td>5</td>
<td>After hours/out of office dealing: no guidance currently.</td>
<td>The IPC provides guidance on this issue. See Annex 3, paragraph 4.1-4.3</td>
</tr>
<tr>
<td>6</td>
<td>Passing of names: no guidance currently.</td>
<td>The IPC provides guidance on this issue. See 2.10.2.</td>
</tr>
<tr>
<td>7</td>
<td>Definition of a broker’s role: no guidance at present. Are constrained to activities of their relevant ISD category.</td>
<td>The role of the broker should be spelt out in either the IPC and/or in the definition of permissions.</td>
</tr>
<tr>
<td>8</td>
<td>Confidentiality: no requirements currently.</td>
<td>The IPC annex contains guidance on confidentiality. (See Annex 3, paragraph 2.1-2.2.)</td>
</tr>
<tr>
<td>9</td>
<td>Stop loss orders: no specific requirements currently.</td>
<td>The IPC provides guidance on this issue. See Annex 3, paragraph 3.1-3.2.</td>
</tr>
<tr>
<td>10</td>
<td>Exchanging of Standard Settlement Instructions (SSIs): no requirements currently.</td>
<td>The IPC provides guidance for exchanging SSIs in a simplified LCC format. See Annex 3, paragraph 7.1-7.2.</td>
</tr>
<tr>
<td>11</td>
<td>Exchange rules: firms expected to follow exchange rules.</td>
<td>In the case of exchange business, any statement on what the Principles do and do not require of a firm in a particular situation should be read subject to any exchange rule that applies. See 2.5.5.</td>
</tr>
<tr>
<td>12</td>
<td>Negotiation of deals: no requirements currently.</td>
<td>IPC provides guidance on negotiation of deals. See Annex 3, paragraph 2.3-2.5.</td>
</tr>
<tr>
<td>13</td>
<td>Settlement of differences: no requirements currently.</td>
<td>Rules and guidance on how to settle differences in name passing business. See 2.10.3-2.10.9.</td>
</tr>
<tr>
<td>14</td>
<td>Marketing incentives: no requirement currently.</td>
<td>The IPC provides guidance on marketing incentives, inducements and payments in kind. See 2.7.9-2.7.13.</td>
</tr>
<tr>
<td>15</td>
<td>Third party codes: no inclusion currently.</td>
<td>The IPC will make use of market specific annexes. See 2.11.</td>
</tr>
<tr>
<td>16</td>
<td>Master agreements: currently no requirements.</td>
<td>The IPC offers guidance on master agreements.</td>
</tr>
<tr>
<td>17</td>
<td>Deals using a connected broker: no specific requirement currently beyond general requirements on ‘conflicts of interest’.</td>
<td>Guidance now focuses on disclosure. See 2.10.10-2.10.11.</td>
</tr>
</tbody>
</table>
A36 The number of trades between firms and market counterparties are likely to be greater under the IPC than under the predecessor regimes. This can be illustrated with the help of an example. In the present world if a PIA authorised firm trades with an SFA authorised firm then that trade (a) is not necessarily considered to be a market counterparty-market counterparty trade and (b) is regulated under the PIA’s COBS rules. The result of this will be that although the number of trades between various SRO authorised firms stays unchanged the regulatory regime under which these trades fall is likely to change (they will fall under the IPC and not COBS). Therefore, there is no reason for this to lead to an increase in the FSA’s direct costs. All transactions by authorised firms are currently regulated and will be post N2.

A37 The figure below illustrates the situation, where one firm authorised by an SRO trades with another:

<table>
<thead>
<tr>
<th>SFA</th>
<th>IMRO</th>
<th>PIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firm-MCP trade</td>
<td>COBS now. May become IPC</td>
<td>COBS now. May become IPC</td>
</tr>
<tr>
<td>IMRO</td>
<td>Firm-MCP trade</td>
<td>COBS now. May become IPC</td>
</tr>
<tr>
<td>PIA</td>
<td>COBS now. May become IPC</td>
<td>COBS now. May become IPC</td>
</tr>
</tbody>
</table>
The firm-to-market counterparty trades conducted by SRO members under current regulation are shaded in grey. From N 2, these trades will be regulated under the IPC (for the relevant activities). At present, the trades which fall in the non-grey boxes may regulated by COBS. Under current proposals, from N 2 these trades could become market counterparty-market counterparty trades which and covered by the IPC and not COBS, but note that the proposals for counterparty classification have still to be finalised.
Compatibility with the FSA’s general duties

B1 The purpose of this statement is to explain why the FSA believes that making the proposed rules and guidance included in this consultation paper is compatible with its general duties under clause 2 of the FSM B. The requirement for this statement is set out in clauses 151(2)(c) and 153(3) of the FSM B.

B2 The FSA believes that making the proposed IPC is compatible with:

a) The market confidence objective. The IPC is aimed primarily at promoting market confidence though it is also relevant to other FSA objectives. The primary objective of the IPC is to provide an articulation, or fleshing-out, of the conduct that is expected of firms in accordance with the relevant FSA Principles. The IPC provides mainly guidance on those Principles but also includes a small number of specific rules where these are deemed necessary. The IPC therefore clarifies the standards the FSA would expect to see in firms’ inter-professional dealings and embodies good, or accepted, market practices. It will also help market participants to agree what is, and what is not, good practice; it will help firms to meet good standards of conduct; and it may also serve as a basis for firms to settle any bilateral disputes which might arise in this area.

b) The public awareness objective. The IPC can be used by firms and their market counterparties in order to understand better the basis on which they may transact business. The material in the IPC brings together in one place useful information on good practices in UK markets, which may not otherwise be readily available.

c) The protection of consumers objective. Under clause 5 of the FSM B, it determines the level of protection for consumers the FSA must take account of the differing degrees of risk, experience, needs for information and the general principle that consumers should take responsibility for their decisions. The IPC explicitly seeks to provide a differentiated approach for professional consumers (market counterparties) taking
account of their abilities to look after their own best interests. It is a central tenet of the IPC that such consumers should take responsibility for their own decisions. The IPC recognises that they are experienced and expert in their activities and that they are typically in a position to secure independent external advice if this is necessary. The IPC explicitly recognises that the information needs of market counterparties require much less prescription than do other consumers.

d) **The financial crime objective.** The IPC provides guidance in some areas on certain transactions which may be inappropriate for reasons of fraud or other improper purposes. e.g. The section on non-market price transactions.

### B3 FSA’s reasons for believing that the making of the rules and guidance is compatible with its general duty to have regard to:

(a) **The need to use its resources in the most efficient and economic way.** The FSA’s approach to regulating inter-professional business is focused on a combination of the Principles and guidance (and only a few specific rules). This reflects the mutually self-disciplining nature of much inter-professional business and the relatively low ‘consumer risk’ nature of many dealings. The IPC provides the basis for an appropriate supervisory approach in this area. The FSA does not need to devote extensive resources to either policing or policy in this area. By framing the IPC at an appropriately high level, the IPC should be relatively low cost to maintain – it should not require continuous amendment (once fully established). Similarly, by setting out a greater articulation of the Principles, the need for ad hoc guidance should be reduced.

(b) **The responsibilities of those who manage the affairs of authorised persons.** The fact that the IPC contains mostly guidance leaves senior management considerable flexibility to choose the way that seems best to them in order to comply with the Principles.

(c) **The principle that a burden or restriction ... should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.** Where the FSA proposes to make rules or issue guidance which is expected to change firms’ behaviour in a way that will incur material costs, the FSA has an obligation under the Bill to publish a cost benefit analysis. The FSA has assessed the proposed rules and guidance on which we are now consulting and identified those limited aspects where we consider some, or all, relevant regulated firms may be exposed to new and additional costs which are significant. These are examined in Annex A.
Q.B.1: If the FSA has inadvertently failed to identify all areas where the proposed rules could lead to significant new costs, would respondents to this CP please identify the area concerned, explain why they think it will result in significant and additional costs, and provide quantitative information so that we can carry out a further CBA assessment.

The IPC has not been written in the form of detailed rules (other than where the FSA considers it essential) as the cost of so doing is considered to exceed the possible benefits.

(d) **The desirability of facilitating innovation in connection with regulated activities.** The reliance on a combination of high level guidance and the Principles wherever possible is considered a more flexible tool for achieving the appropriate standards of conduct in this area, and one which allows innovation by firms active in the market. This approach means that in setting up their businesses, firms do not need to follow detailed FSA requirements. As a consequence, firms will have greater flexibility to do business in as innovative way without having to seek frequent rule waivers.

(e) **The international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom.** The IPC seeks to maintain those standards which currently apply to relevant dealings in the UK and which have played some part in ensuring that the UK's wholesale financial markets are an attractive place in which to do business (and indeed which many other centres have chosen to copy), because practices are fair and well understood. The FSA does not believe that it is imposing any standards here which are significantly out of line with those which prevail in other major financial centres.

(f) **The need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions.** Firms will have considerable flexibility over the precise manner in which they choose to conduct their business. As such the IPC is for the most part not creating significant costs for firms in establishing systems in order to comply with the Principles; the IPC does not prescribe a single, uniform model for the conduct of business. The IPC clearly highlights good practices rather than a ‘best’ practice. By laying out that ‘good practice’, it may also help in setting out a level playing field in respect of how firms treat market counterparties of different size and with varying degrees of commercial power.

In general, the regulatory approach of the IPC should lower the costs of doing business for firms and so facilitate competition.
(g) **The desirability of facilitating competition between those who are subject to any form of regulation by the Authority.** The IPC treats similar types of business in a similar way, and the approach removes some of the distortions and costs that arose from having overlapping, but differentiated, regimes. By setting out common, high level standards, entry and innovation should be facilitated.

B4 The FSA believes that it is discharging its general functions in this area in the most appropriate way for the purpose of meeting its objectives, because the IPC allows firms the flexibility to conduct business in the way they see fit while also providing greater clarity about the standards of conduct that the FSA would like to see, than is provided by the Principles alone. In the FSA’s view, the form of the IPC is best-suited to the task it seeks to embrace.

B5 The IPC is accompanied by a cost benefit analysis (see Annex A). This analysis fulfils:

- the statutory obligation to provide a cost benefit analysis in clause 151(2)(a) in relation to guidance made under clause 135 of the FSMB;

- the statutory obligation to provide a cost benefit analysis in clause 151(2) in relation to rules made under clause 153 of the FSMB; and

- the commitment made by the FSA in *The Open Approach to Regulation* to consult publicly on proposals to exercise certain of its formal powers and to carry out, and publish, cost-benefit analysis of regulatory proposals.
Q2.1: Is the application of the IPC sufficiently clear? If not, please suggest what further guidance you would like?

Q2.2: Are there any areas of business currently included within the IPC which you think ought to be excluded? And are there any areas currently excluded which you think ought to be included?

Q2.3: Do you consider that the territorial scope of the IPC has been appropriately defined?

Q2.4: (a) Are there areas of activity where annex material is desirable?
(b) Should the FSA commend or acknowledge certain industry codes?

Q2.5: Is the guidance on communication that will be construed as ‘non-misleading’ sufficiently clear and comprehensive? If not, how could it be expanded?

Q2.6: Is the proposed guidance on firmness of quotation practicable/desirable for the markets in which your firm operates?

Q2.7: We believe that the guidance on inducements is consistent with current good practice amongst market counterparties. Do you share that assessment? If not, what amendment could be made?

Q2.8: Do firms agree with the basic premise that transactions, both simple and structural, should be at market rates/prices? And if they are not, that a thorough review of the motives for the transaction should be undertaken?

Q2.9: Is the guidance generally helpful? If not what else would assist firms?

Q2.10: Are the boundaries between COMC, the NMPT rule and RIE rules clearly defined? If not, what would assist firms?
Q2.11: What different features might the rules contain for arrangers and ATS-type entities?

Q2.12: Do you have any comments on the proposed guidance on taping? Would a further rule be desirable in this area?

Q2.13: (a) Is there any guidance in respect of name-passing activity in the London Code which has been omitted from the IPC but should be retained?

(b) Would it be useful if the IPC contained a section on brokers that detailed their different roles with guidance on the scope of these activities?

Q2.14: Do the sections on dealing practice, which draw heavily on the London Code of Conduct, translate into provisions suitable for the much broader range of markets the IPC now covers?

Q2.15: How well does the IPC work for the type of business you (are likely to) conduct with market counterparties? How might it be improved?

Q2.16: Are there any inconsistencies between COBS and the IPC which concern you? How might they best be addressed?

Q2.17: (a) Does the draft IPC strike the right balance between high level guidance and more detailed prescription? Please relate your comments to specific examples.

(b) Does the draft IPC allow sufficiently for the differences between different areas of inter-professional business?

Q.2.18 Are there any particular issues that you think the transitional rules should address in the area covered by the IPC?

Q3.1: Should the FSA produce informational material by way of guidance in the area of inter-professional dealings?

Q3.2: If yes, should it appear as an annex to the IPC or as a separate factsheet?

Q3.3: Which of these areas in this section are of use? Would you like more detail in any area? Should other areas be covered?

Q4.1: Should any corporate finance business with market counterparties be included in the IPC?

Q4.2: If corporate finance is to be excluded from the IPC, should we exclude all activities within the COBS definition or should some be kept within the IPC?
Q4.3: Does this interfere or cause problems for venture capital business? If so, please stipulate how and why.

Q5.1: (a) Ought the provisions on (1) name-passing brokers, (2) stop-loss orders, (3) non-market price transactions, (4) taping and/or (5) firmness of quotation be extended to dealings with intermediate or private customers, or both?

(b) Are there any other areas of the IPC which might equally apply to a firm’s dealings with its customers?

Q6.1: Do you agree that FSA should cease to offer a mediation service for professionals?

Q6.2: Do you have any objections to these proposed exclusions from the IPC?

Q6.3: Do you think it would be useful for COBS to contain guidance on dealing mandates?

Q:B.1: If the FSA has inadvertently failed to identify all areas where the proposed rules could lead to significant new costs, would respondents to this CP please identify the area concerned, explain why they think it will result in significant and additional costs, and provide quantitative information so that we can carry out a further CBA assessment.

2.1 Application

APPLICATION – WHO?

2.1.1 R  The IPC applies to all firms except:

(1) the IPC does not apply to service companies, non-directive friendly societies and non-directive insurers; and

(2) the IPC is limited in its application to UCITS qualifiers by section 262 of the Act.

APPLICATION – WHAT?

2.1.2 R  The IPC applies to a firm:

(1) when it carries on

(a) regulated activities in relation to a designated investment; or

(b) ancillary activities in relation to activities falling into 2.1.2(1)(a)R;

(2) to the extent that the relevant regulated activity that the firm is carrying on is:

(a) dealing in an IPC investment;

(b) acting as an arranger in respect of an IPC investment or agreeing to do so; or

(c) giving transaction-specific advice or agreeing to do so;

(3) but only if that activity is undertaken with or for a market counterparty.

2.1.3 G Broadly speaking, there are five conditions that have to be satisfied for an activity to qualify as inter-professional business:

(1) the activity is a regulated activity or ancillary activity;
(2) the activity relates to *IPC investments* - thus for example dealings in the units of a unit trust are not covered;

(3) the activity is one of the three kinds listed in 2.1.2(2)R;

(4) the activity is carried on with or for a *market counterparty*; and

(5) 2.1.4R does not exclude the activity.

See Annex 1 for further guidance on the scope of the IPC.

**2.1.4 R** The IPC does not apply with respect to the carrying on of the following activities:

(1) the approval by a *firm* of the contents of a *financial promotion*;

(2) activities carried on between *operators*, or between *operators* and trustees, of the same *collective investment scheme* (when acting in that capacity);

(3) the *regulated activities* of safekeeping and administration of assets or agreeing to carry on that *activity*; or

(4) offering, giving, soliciting or accepting inducements for the purpose of or in connection with activities falling within the scope of *COBS*.

**APPLICATION – WHERE?**

**2.1.5 R** The IPC applies to a *firm’s inter-professional business* carried on from an establishment maintained by the *firm* in the *United Kingdom*.

**2.2 Purpose**

**2.2.1 G** The IPC has three main purposes:

(1) To increase certainty by amplifying the * Principles* as they apply to *inter-professional business*. The IPC reflects that what are proper standards of conduct for a *firm* may differ depending on whether or not the *firm* is dealing with a *market counterparty*.

(2) To set out *rules* for *inter-professional business* in cases where it is not appropriate to *rely on the Principles* (as amplified by *guidance*) alone.

(3) To set out the FSA’s understanding of certain market practices and conventions. Drawing together this information in this way will assist certainty and confidence in the markets covered, reduce the scope for disputes and make it easier to resolve disputes that do arise.
2.2.2 G Market counterparties need and expect a much lower level of protection than private or intermediate customers. The FSA also believes that for many aspects of behaviour, inter-professional dealings are mutually self-disciplining. Market counterparties have commercial sanctions available that they can exercise if they consider the conduct of someone they conduct business with is unacceptable. The FSA has taken into account these factors in deciding what rules the IPC should contain. These factors are also relevant to the FSA’s interpretation of the Principles as they apply to inter-professional business.

2.2.3 G Many of the IPC’s provisions relate to the conduct of bilateral dealings. However the purpose of the IPC is in general the maintenance of confidence in the financial system and securing good market conduct on the part of firms undertaking inter-professional business.

2.3 Relationship with other parts of the Handbook

2.3.1 G The IPC is not the only chapter of the Handbook that applies to firms doing inter-professional business. Firms should always consider what other parts of the Handbook may apply to them. A table setting out some of the key provisions of COBS that may also apply to firms doing inter-professional business and a list of the applicable Principles is set out in Annex 2G.

2.3.2 G Nothing in the IPC modifies any duty owed by a firm to a private customer or intermediate customer under the provisions of any other part of the Handbook. Nothing in the IPC relieves a firm of any other obligation to which it may be subject under the general law.

2.3.3 G Firms should note that the same transaction can give rise to obligations under the IPC and another sourcebook, such as COBS.

2.4 Provisions on agency

2.4.1 R A firm is:

(1) arranging a transaction for a market counterparty; or

(2) dealing with a market counterparty

even if that market counterparty is acting as agent for someone who is not a market counterparty.

2.4.2 G See explanation in Annex 3, paragraph 3.

2.4.3 G A firm acting on a matched principal basis will be treated as acting as a broker (but not a name passing broker) for the purposes of the guidance in the IPC.

2.5 Contents of the IPC

2.5.1 G Although the rules and guidance in this chapter are called a code, the IPC is not a code for the purposes of the Act. Nothing in the IPC should be read as qualifying or modifying the Code of Market Conduct, the Code of Practice for Approved Persons or the Principles for Approved Persons.

2.5.2 G The good practice material (which is in Annex 3) is not guidance on rules unless marked as such. It is a statement of what the FSA understands to be generally regarded as market conventions and good market practice in certain areas.
GUIDANCE ON THE PRINCIPLES

2.5.3 G The IPC does not affect the application provisions of the Principles. The purpose of the application provisions of the IPC, as they apply to the guidance on the Principles, is to say in what situations the IPC may be used as guidance on interpretation of the Principles.

2.5.4 G The guidance on the Principles is drafted to cover the whole range of inter-professional business. It is not, in general, specifically tailored for particular types of business. The guidance on the Principles in the IPC should be read in the light of other requirements that may be applicable in a particular case.

2.5.5 G For example, the guidance on the Principles in the IPC applies to on exchange business, but it has not been drafted to take into account specific rules of exchanges. Any statement on what the Principles do and do not require of a firm in a particular situation should be read subject to any exchange rule that applies.

2.5.6 G The IPC is not a comprehensive statement of how the Principles apply to inter-professional business in all situations. If the IPC does not say anything about how the Principles apply to a particular situation, the Principles still apply.

2.6 Standards expected of firms when undertaking inter-professional business

2.6.1 G This section provides general guidance on the interpretation of the Principles and in particular Principle 2 (skill, care and diligence), Principle 5 (proper market conduct) and Principle 7 (communications with customers). The guidance specifically covers suitability, giving advice and communication of information.

2.6.2 G The Principles, as they apply to inter-professional business, will be interpreted by the FSA on the basis that each market counterparty is responsible for its own decisions. The FSA will interpret the IPC on the same basis.

SUITABILITY AND ADVICE

2.6.3 G The Principles do not require a firm to assess the suitability of a particular transaction for its counterparty once it has established that it is dealing with a market counterparty. The firm is not obliged to ensure that the market counterparty understands the risks involved. Nor is the firm under any duty to provide best execution or other dealing protections. The relationship between a firm and its market counterparty is typically at arm’s length. This is subject to any agreement to the contrary between the firm and the market counterparty.

2.6.4 G Similarly, a firm is not obliged to give advice to a market counterparty. Principle 7 requires a firm to pay due regard to the information needs of its customers, but for these purposes a market counterparty is not a customer. The mere passing of information does not mean that the firm has assumed responsibility for giving advice.

2.6.5 G A firm is not obliged to inform a market counterparty whether it falls within the categories of person potentially eligible for compensation under the Compensation Scheme or any foreign compensation scheme.

COMMUNICATION OF INFORMATION

2.6.6 G Principle 7 requires that a firm’s communications should not be misleading. Otherwise Principle 7 does not apply to a firm’s communications to market counterparties.
2.6.7 G If a firm volunteers information to a market counterparty, but no formal advisory arrangement is agreed, the firm need not advise a market counterparty about the reliance, if any, that it should give to the information. This is subject to the guidance in 2.6.6G. Silence on the part of a firm in most cases does not result in a breach of Principle 7.

2.6.8 G It is for a firm to decide whether it wishes to provide information to a market counterparty. If it does so, and the transaction is not executed immediately, the firm is not obliged to keep the market counterparty informed of any changes to the information, unless the firm has agreed to do so.

2.6.9 G A firm should, before it transacts, disclose to a market counterparty the nature and extent of any material conflict between its own interests (or those of an affiliated company) and any duties it owes to the market counterparty that arise under the general law or contract.

2.6.10 G This would mean, for example, that a firm acting as an arranger for a market counterparty where the firm is an affiliated company of the other principal, should disclose that fact to the market counterparty.

2.6.11 G 2.6.9G does not apply unless the firm has a duty under the general law or contract to act in the interests of the market counterparty in respect of the transaction concerned. The following are examples of where there may be responsibilities that potentially give rise to a duty to disclose material conflicts of interest to the market counterparty:

1. the firm is acting as agent for the market counterparty;
2. the firm has agreed to advise the market counterparty;
3. the firm otherwise owes fiduciary duties to the market counterparty.

2.6.12 G In the case of a transaction between a firm and a market counterparty, that is acting as a principal there would normally be no duty of disclosure, because the firm will not owe any relevant duty to the market counterparty.

2.7 Trading practices

2.7.1 G This section provides guidance on the interpretation of the Principles and in particular Principle 5 (proper standards of market conduct) as they apply to certain trading practices.

Clarity of Role

2.7.2 G A firm should specify to the market counterparty whether it is acting on its own account, a name passing broker, a broker or an arranger before it enters into the transaction.

2.7.3 G If a firm is acting in a transaction as broker or arranger, it should explain to all market counterparties that are to be party to that transaction what type of broker or arranger it is. For example, if the firm is acting as a name-passing broker, it should disclose this fact.

2.7.4 G If a firm has agreed with a market counterparty to act in one capacity in a transaction it should not then act in any other capacity in that transaction without the consent of that market counterparty. For example, if a firm has agreed to act as agent, it should not then act as principal in the same transaction without first seeking the consent of the counterparty. Thus, if a firm bids to transact on an agency basis, it should not without consent execute any part of the trade against its own book.

2.7.5 G It is not consistent with acting solely as an arranger to take positions, even fleetingly, or act on a matched principal basis.
FIRMNESS OF QUOTATION

2.7.6 G A firm should follow market conventions regarding quotation, unless specifically agreed otherwise with its market counterparty in advance. For example, in many markets it is general practice for a firm quoting a rate/price to make it absolutely clear whether its quote is ‘firm’ or ‘indicative’. In others, there is no such convention.

2.7.7 G A firm should make it clear to a market counterparty to whom it gives a quote

(1) whether the quote is firm or not;
(2) whether the quote is subject to any conditions, and, if it is, what they are;
(3) for how long the quote remains firm (in fast moving markets, where practicable); and
(4) whether the quote is firm only for the normal marketable amount (if appropriate, otherwise the firm should state the size of the quote).

Express clarification of these matters is not necessary to the extent that the firm quotes in accordance with the relevant market convention.

2.7.8 G When a firm quotes to a market counterparty a firm rate or price (whether through a broker or arranger or directly), it should not then withdraw that quote or, if that quote is accepted during the period for which the quote remains firm, decline to deal at that rate or price. A firm may decline to deal with a market counterparty in these circumstances if it was unaware of its identity when the firm gave the quote and the name turns out to be unacceptable, for example, on the grounds of credit risk. A firm should not decline to deal if in doing so it would be in breach of contractual obligations.

MARKETING INCENTIVES, INDUCEMENTS AND PAYMENTS IN KIND

2.7.9 G This section provides guidance on the interpretation of the Principles and in particular Principle 1 (Integrity), Principle 3 (Management and controls) and Principle 5 (Proper standards of market conduct) as they apply to marketing incentives, inducements and payments in kind.

2.7.10 G A firm should take reasonable steps to ensure that neither it nor its employees and agents offer, give, solicit or accept any inducement which is intended or likely significantly to conflict with any duty or obligation of the recipient (or his principal or employer) to another person.

2.7.11 G A firm should make and implement appropriate systems and controls and policies consistent with 2.7.10G.

2.7.12 G Any payment for broking or arranging services rendered by a firm should be in cash (which for these purposes includes payment by discounting, reducing or rebating commission) unless otherwise agreed in writing between the parties.
2.7.13  G Entertainment and gifts are regularly offered by firms to market counterparties, or by market counterparties to firms, and are not inappropriate as such, as long as they are consistent with 2.7.10G. However, a firm should satisfy itself that such gifts and entertainment are neither excessive nor inappropriate, taking into account the level and type of regular business undertaken between the firm and the market counterparty.

2.8  Transactions at Non-Market Prices

2.8.1  G In general, transactions should be undertaken at the prevailing market price. Failure to use current rates/prices may result in a firm participating, whether deliberately or unknowingly, in the concealment of a profit or loss, or in the perpetration of a fraud. There may, however, be reasons why transactions at non-market prices are acceptable, and this section requires that a firm takes reasonable steps to check that this is so.

2.8.2  G A transaction may be market abuse even if 2.8.3R does not prohibit it; in appropriate circumstances the firm will have to have regard to the Code of Market Conduct.

2.8.3  R A firm must not enter into or arrange a deal

(1) under which it or its market counterparty deals in an IPC investment;

(2) if either

(a) the dealing rate or price differs from the prevailing market rate or price to a material extent; or

(b) in so dealing it or its market counterparty otherwise gives materially more or less in value than it receives in return,

unless it has taken reasonable steps to ensure the transaction is not illegal or otherwise for an improper purpose.

2.8.4  R 2.8.3R does not apply to a non-market price transaction if it is on-exchange business.

2.8.5  E (1) To take reasonable steps as required by 2.8.3R a firm should:

(a) have in place a policy for the review of the non-market price transaction by an individual or individuals holding a senior position with the firm before the firm commits itself to that transaction;

(b) ensure the review considers the reasons for the transaction;

(c) have reasonable grounds for believing that it has not been put on notice that the reasons are not justifiable and proper; and

(d) make and retain a record of the matters referred to in (a) to (c).
(2) In the case of a transfer by or to a firm to or from its nominee, or a transfer by or to a firm to or from another member of the same group for risk management or other legitimate purposes, a firm may, in place of following the steps set out in (1) above, act in accordance with a policy established and recorded by the firm for that purpose. However, in these circumstances a firm should be able to demonstrate that it has considered the consequences of participating in such transactions.

(3) Compliance with (1) or, as the case may be, (2) may be relied on as tending to show compliance with 2.8.3R.

(4) Contravention of (1) or, as the case may be, (2) may be relied on as tending to show contravention of 2.8.3R.

2.8.6 G The question of whether a transaction is a non-market price transaction is to be judged as at the time it is effected and not with hindsight.

IMPROPER TRANSACTIONS — GUIDANCE

2.8.7 G Examples of improper transactions include:

(1) the perpetration of a fraud;

(2) the improper concealment of a profit or loss;

(3) transactions which amount to market abuse;

(4) vulnerable transactions under the Insolvency Act 1986; and

(5) ‘window dressing’ around the year end to disguise the true financial position of the person concerned.

LEGITIMATE PURPOSES — GUIDANCE

2.8.8 G A non-market price transaction may be considered justifiable if, firstly, it is part of a wider transaction between the same parties that, taken as a whole, would fall outside 2.8.3R and, secondly, the firm is satisfied that the reasons for the proposed transaction structure are legitimate.

2.8.9 G As an illustration, it is recognised that certain types of transactions or structured transactions at non-market rates or prices are undertaken for entirely valid reasons. For example, asset swaps, where the underlying asset is sometimes transferred at par at either the start of the transaction or at maturity, or both. The swap rates are then adjusted to account for the transfer value of the underlying asset. Obviously neither the asset nor the swap is at a market rate but the combination of the two makes such transactions justifiable.
2.8.10 G Where a transaction has more than one component, the individual components may be entered into at non-market rates/prices, so long as the sum of the whole transaction produces an overall market rate or price and the design of the transaction is not otherwise improper.

**IF THE TRANSACTION IS AT A NON-MARKET RATE OR PRICE**

2.8.11 G Where a firm proposes to enter into a non-market price transaction that cannot be justified as described in 2.8.8.G, the senior personnel considering the transaction should:

(1) consider the justification and rationale of the other parties to the proposed transaction and whether the decision to enter into it was taken by the parties concerned at a senior level, and not by an individual trader or treasurer;

(2) (if the transaction is approved) be satisfied that all the material terms of the non-market price transaction (so far as they affect it) have been agreed before the transaction is entered into and that they are promptly recorded in accordance with 2.8.5E. Material terms are likely to include the amounts each counterparty is to pay and receive and whether any amounts are to be netted against or offset against any amounts due and owing under a separate transaction.

2.8.12 G The degree of seniority referred to in 2.8.5(1)(a)E may depend on the nature of the transaction. A transaction justified under 2.8.5(2)E may not require as high a level of seniority as one where other justifications are to be considered.

**ROLLOVERS AND VARIATIONS OF EXISTING TRANSACTIONS**

2.8.13 G The variation or rolling over of an existing transaction should be regarded as a new transaction. The judgment as to whether the transaction as varied is a non-market rate transaction is to be made at the time of the variation.

**2.9 Taping**

2.9.1 G This section provides guidance on the interpretation of the Principles and in particular Principle 3 (management and controls) as they apply to the capture of certain transactional information and other matters. It also provides additional guidance on the record keeping requirements of X.16 [Record Keeping] [see CP35]

2.9.2 R This section 2.9 does not apply to

(1) a firm acting in the course of carrying on the permitted activities of establishing, operating or winding up a collective investment scheme;

(2) an insurer; or

(3) any firm in respect of a transaction if the firm is subject to record keeping requirements in COBS for that transaction.

2.9.3 G A firm should implement appropriate systems and controls with a view to ensuring that the material terms of all transactions to which it is a party and other material information about such transactions are promptly and accurately recorded in its books and records. The manner in which such information may be recorded include the following:
(1) voice recordings of transactions;

(2) voice recordings of oral confirmations;

(3) written trading logs or blotters; or

(4) automated electronic records.

2.9.4 R To the extent that a firm relies upon voice recordings to comply with any record keeping requirements imposed by or under the Act, it must retain those recordings in accordance with the relevant requirements.

2.9.5 G A firm acting as an arranger need record only those terms that are necessary for the transaction to be identified in its records or that are otherwise relevant to its role as arranger. For example, it would not normally know the payment and settlement instructions.

2.9.6 G A firm should be able to access all records as promptly as necessary. Records should be kept in legible and comprehensible form or should be capable of being promptly reproduced in legible and comprehensible form. The firm should make and implement appropriate procedures to avoid unauthorised alteration of its records.

2.9.7 G If the records identified in 2.9.3G are substituted by written or electronic confirmations produced in accordance with [Record Keeping Rule], then the confirmation may be an adequate record of the transaction.

2.9.8 G If a transaction is agreed or arranged through an electronic trading, matching and order-routing system, then the records provided by that system may be an adequate record of the transaction.

2.9.9 G A firm should keep under review whether, and to what extent, to make and retain voice recordings of its front and back office telephone lines used for negotiating, agreeing, arranging and confirming transactions and for the passing of payment instructions.

2.9.10 G If a firm undertakes oral confirmations of the transactions it executes or arranges, voice recordings of such conversations can constitute an adequate record of the confirmation.

2.9.11 G In undertaking a review under 2.9.9G, it is likely to be a relevant factor that voice recordings:

(1) provide an immediate record of all transactions and therefore may assist firms in resolving any disputes;

(2) may assist a firm to identify whether any personnel of the firm or of its market counterparty are involved in inappropriate behaviour. Market counterparties may take comfort in knowing that their transactions are immediately recorded and that this provides evidence that can be relied upon; and

(3) can provide evidence of the rationale for a particular trading strategy or other aspects of inter-professional business and thereby provide protection to the firm.

2.9.12 G A firm should make and implement policies on the length of time it keeps tapes. The FSA does not expect tapes to be kept for the full period required by the general record keeping requirement except in the circumstances provided in 2.9.4R. One factor in setting that policy may be the use of tapes to assist the firm in resolving any disputes with market counterparties.
2.10 Firms acting as Name Passing Brokers and those undertaking transactions through them; provisions concerning brokers and arrangers generally

2.10.1 G This section provides guidance on the interpretation of the Principles and, in particular, Principle 5 (proper standards of market conduct) as they apply to certain responsibilities of firms acting as brokers and arrangers (and in particular as name passing brokers) and of those undertaking transactions through them. In particular, it covers the passing of names and differences.

PASSING OF NAMES

2.10.2 G A firm acting as a name passing broker should not prematurely divulge the names of the prospective counterparties to each other, for example before both sides display a serious intention to transact. However, as soon as the material terms of a transaction have been agreed, a firm acting as a name passing broker should aim to achieve a mutual and immediate exchange of names. When a market counterparty name is unacceptable to another, it is quite proper for a firm acting as a name passing broker not to divulge by whom the name was refused.

SETTLEMENT OF DIFFERENCES

2.10.3 R 2.10.5R to 2.10.9G apply:

(1) to a firm when it acts as a name passing broker; and

(2) to a firm whether acting as principal or agent, when its transaction is arranged by a firm acting as a name passing broker.

2.10.4 R If a firm acting as a name passing broker compensates a market counterparty for a difference, that difference must be settled in money.

2.10.5 R A ‘difference’ means (in 2.10.5R to 2.9.9G) any difference between a rate or price quoted by a firm acting as a name passing broker and the rate or price at which the transaction is ultimately concluded.

2.10.6 G When arranging a transaction, a name passing broker is trying to achieve a mutual and immediate exchange of names, based on firm quotation of prices. Inevitably, for non-electronic arrangers, there will be occasions when the transaction is not completed at the original price (for instance because a firm price has been hit by another counterparty). The broker is said to have missed the original price where a market counterparty accepts a firm quote at that price but the firm is unable to arrange for the deal to be completed at that price.

2.10.7 G Accepting liability for differences is taking a position for the purposes of 2.7.5G and a firm acting as a name passing broker should therefore not do so. However, once a difference has arisen, a firm acting as a name passing broker may agree to compensate the market counterparty concerned for some or all of the difference where it does so to preserve the relationship with the market counterparty concerned or for other legitimate commercial reasons.
2.10.8 G Where a price has been missed, a firm acting as principal should generally complete the transaction at the next available price through the name passing broker that has missed the original price; to do otherwise can be prejudicial to the smooth operation of the markets. If the firm does not proceed with the transaction, it should first consider whether withdrawing would be likely to affect the market concerned in that way, and should immediately communicate its decision to the name passing broker. The firm should not decline to enter into the transaction at the new price if it would breach a reasonable expectation on the part of the name passing broker that it would not do this.

2.10.9 G A firm acting as a name passing broker should not make good differences by giving better prices on subsequent transactions, or inappropriate or restrictive payments in kind.

GENERAL PROVISIONS ON BROKERS AND ARRANGERS

2.10.10 G A firm acting as a broker or arranger should not unfairly favour one market counterparty client over another. Treatment that would otherwise have been unfair is not unfair if the market counterparty concerned has expressly consented to it. The ‘client’ of a broker or arranger means (in 2.10.10G and 2.10.11G) a person for whom it is providing its services as broker or arranger.

2.10.11 G A firm should not place an order with a firm acting as a broker or arranger if the main purpose is to ascertain either the identity of any client of that firm, or information about transactions into which any such client may be interested in entering. For example, a firm that wishes to purchase 1000 bonds should not have a firm arrange for the purchase of 100, in order to discover the identity of a person willing to sell those bonds, and then transact with that other person direct for the other 900.

2.11 Codes of Conduct

2.11.1 G A code of conduct applying to a particular type of inter-professional business may also be relevant in ascertaining how the Principles apply to inter-professional business of that sort. The standing of such a code is a relevant factor here. Its standing is to be judged in particular by whether persons whose business includes the business covered by that code generally expect other such persons to observe the standards of conduct set out in the code.

2.11.2 G Particular examples of codes that are relevant in ascertaining how the Principles apply to inter-professional business of the sort covered by the code in question are as follows:

(1) the Gilt Repo Code as published by the Stock Lending and Repo Committee

(2) the Equity Repo Code as published by the Stock Lending and Repo Committee

(3) [possibly others]

2.12 Compensation schemes

2.12.1 R A firm must, if so requested by an investor for or with whom the firm intends to conduct interprofessional business, ensure that, as soon as is practicable following the request, the investor is provided with a summary of the provisions of the following:

(1) the Compensation Scheme (if the firm participates in it); and
(2) (in the case of a firm other than a UK domestic firm) any compensation scheme which is in force in the Home State of the firm in question and in which the firm participates.

2.12.2 R A summary provided in accordance with 2.12.1 R must include a summary of the level and scope of the cover afforded by each relevant scheme and of any conditions that must be fulfilled, and any procedural steps that must be taken, before payments may be made under the scheme.

2.12.3 R In 2.12.1R to 2.12.3R

(3) “compensation scheme” means a scheme or other arrangement for the protection of investors;

(4) “home state scheme” means a compensation scheme falling into 2.12.1(2)R.

2.12.4 G 2.12.1R does not apply to a firm unless it has a permission that covers the activities set out in 2.3.2(b) or (c)R or the regulated activities of making a market, buying with a view to selling, regularly soliciting the public to deal in securities, dealing as principal in contractually based investments and dealing as agent.

2.12.5 G Unless required to do so by 2.12.1R or COBS, a firm is not obliged to inform a market counterparty whether it falls within the categories of person potentially eligible for compensation under the Compensation Scheme or any foreign compensation scheme.
The list of activities in 2.1.2R is not based on types of permission. It is based on the activities of dealing, arranging deals and investment advice. This means, for example, that a firm may be subject to the IPC if it purchases securities in the course of:

1) operating a collective investment scheme,

2) acting as a life insurance company; or

3) acting as agent for a customer;

in making that purchase. This is notwithstanding that the operation of a collective investment scheme, acting as a life insurance company and acting for a private customer are not activities that are covered by the IPC in their own right.

The fact that the IPC applies to the purchase does not relieve the firm from obligations imposed by other parts of the handbook. Thus in the case of the purchase by the operator of a collective investment scheme, the IPC does not cover the duties owed to the scheme and scheme members arising out of that purchase; the CIS Sourcebook continues to apply. Similarly, the life insurance company will continue to be governed by the Insurance Sourcebook. COBS will cover the relationship between the firm acting as agent and the customer.

2.4.1R means that the IPC applies to a transaction between a firm and a market counterparty even if one or both of them is acting for someone else. Thus, for example, if a firm deals, as agent for a market counterparty, with a second market counterparty, the IPC applies to the relationship between the firm and both market counterparties even if any of the market counterparties is acting for someone else.

Managing investments is not one of the activities included in inter-professional business. However the IPC can apply to dealings in IPC investments in the course of managing investments. None of the guidance on the Principles in the IPC should be read as applying to the relationship between the firm and a market counterparty for whom the firm is providing those services. This means that if a firm purchases an IPC investment from a market counterparty in the course of acting as manager of a portfolio of investments belonging to a second market counterparty, then the IPC will apply to that purchase. The IPC will not apply to the relationship between the firm and the second market counterparty.

A transaction may be covered by both the IPC and COBS. For example, if a firm purchases an IPC investment from a market counterparty on behalf of a customer the IPC applies to the relationship between the firm and the market counterparty. COBS governs the relationship between the firm and the customer.
This table sets out some of the key provisions of COBS that also apply to firms doing *inter-professional business*, as well as listing the *Principles* that apply.

Where the *Principles* refer to ‘customer’ this means any person contemplated by section 110(1)(a) or (b) of the Act (as in the December 1999 draft of the Bill). Except in Principles 6, 7, 8 and 9 it does not include a *market counterparty*.

<table>
<thead>
<tr>
<th>Rule</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>COBS</td>
<td>Personal Account Dealing</td>
</tr>
<tr>
<td>COBS</td>
<td>Chinese Walls</td>
</tr>
<tr>
<td>COBS 9</td>
<td>Client assets</td>
</tr>
<tr>
<td>Principle 1</td>
<td>A firm must conduct its business with integrity.</td>
</tr>
<tr>
<td>Principle 2</td>
<td>A firm must conduct its business with due skill, care and diligence.</td>
</tr>
<tr>
<td>Principle 3</td>
<td>A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems</td>
</tr>
<tr>
<td>Principle 4</td>
<td>A firm must maintain adequate financial resources.</td>
</tr>
<tr>
<td>Principle 5</td>
<td>A firm must observe proper standards of market conduct.</td>
</tr>
<tr>
<td>Principle 7</td>
<td>A firm must pay due regard to the information needs of its customers, and communicate information to them in a way which is not misleading.</td>
</tr>
<tr>
<td>Principle 10</td>
<td>A firm must arrange adequate protection for customers’ assets when it is responsible for them.</td>
</tr>
<tr>
<td>Principle 11</td>
<td>A firm must deal with its regulators in an open and co-operative way, and must tell the FSA promptly anything relating to the firm of which the FSA would reasonably expect prompt notice.</td>
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</tbody>
</table>
INTRODUCTION

This annex applies to all kinds of inter-professional business.

CONFIDENTIALITY

Where information is received from a market counterparty under conditions of confidentiality, that confidentiality is likely to be enforceable by the owner of that information. Confidentiality should be respected, subject to regulatory and legal requirements.

Firms are reminded that the use of loudspeakers in broking and dealing rooms in close proximity to other lines of communication could result in breaches of confidentiality.

NEGOTIATION OF TRANSACTIONS

It is good practice for a firm to agree expressly all the economic terms of a transaction before it commits itself to the transaction. A firm should negotiate the remaining terms in good faith and endeavour to agree them as soon as possible.

It is good practice for a firm to regard itself as bound to transact once the rate or price and any other key commercial terms have been agreed (whether orally or in written form), unless the parties explicitly and unambiguously agree to the contrary.

Generally, a firm that regularly uses the services of a firm acting as a name passing broker should indicate to it the market counterparties with which it is not prepared to transact and in which investments. Any such indication should not be in a form that would damage or lower the standing or reputation of the market counterparty in the estimation of reasonable market counterparties who got to know it. A firm given such information should treat it as confidential.

LIMIT ORDERS

Before a firm accepts any limit order from a market counterparty, it is good practice to have made and implemented appropriate

1. policies on such orders and in particular the circumstances in which and the terms on which it will accept such orders; and
2. systems and controls for carrying them out.

A limit order means a stop loss order and any other instruction from a market counterparty to execute transactions if rates/prices reach specified levels. These orders may be time limited or may be for an indefinite period.

OUT OF HOURS/OFFICE DEALING

It is good practice for firms to issue guidelines to their staff on transactions entered into after normal hours or from outside premises, either by mobile phone or any other equipment. The guidelines should cover

1. the type of transactions which may be undertaken in this way;
2. where and with whom such transactions may be executed;
3. permitted limits;
(4) how and when such transactions should be booked into and recorded on the front and back office systems; and

(5) how and when such transactions are to be confirmed.

5.2 Where answering machines are used for instant reporting and recording of all off-premises transactions, they should be installed and located in such a way that reported transactions cannot subsequently be erased without senior management approval.

5.3 The use of mobile phones for business purposes from within the dealing room, except in an emergency, is considered bad practice.

6. **SETTLEMENT ERRORS**

6.1 If a *firm* becomes aware of a settlement error that benefits it at the cost of a *market counterparty*, it is good practice to inform the *market counterparty* promptly and reverse the error.

6.2 If a *firm*, acting as a *broker*, becomes aware that it is holding assets on behalf of a *market counterparty* because of a settlement error which adversely affects that *market counterparty*, it is good practice to inform the *market counterparty* promptly and try to rectify the situation.

7. **CONFIRMATIONS**

7.1 Confirmations provide a useful safeguard against dealing errors and can be a valuable element in the control of the *firm’s* inter-professional business and exposures. It is good practice for a *firm* to make available to, or provide to, the *market counterparty* written confirmation of the material terms of a transaction between them, as soon as possible after the transaction has been agreed or executed.

7.2 Where confirmations are to be exchanged, it is acceptable market practice for the *firm* to agree with its *market counterparty* that only one party need send a confirmation. If a *firm* undertakes this practice to a material extent, it is advisable to identify the legal and other risks involved and address them in the *firm’s* risk control policies.

7.3 If there is a standard form of confirmation that applies to a transaction a *firm* enters into, it is good practice to ensure that that form is used, unless there is good reason not to. One example of where there is an applicable standard form confirmation is where the parties enter into the transaction under the terms of a master agreement that provides for an applicable form of confirmation. Another is where it is customary in the market concerned to use a particular form of confirmation for transactions of that kind.

7.4 In general, it is not good practice for confirmations to be issued by or sent to the individual dealer responsible for the transaction. It is good practice to ensure that the dealer concerned is not responsible for checking confirmations unless there are exceptional circumstances. If the dealer is given that responsibility, it is good practice to subject the process to independent monitoring.

7.5 In general, it is good practice for a *firm* which *arranges* a transaction to try to ensure that the parties agree who is to issue a confirmation.

7.6 Some transactions are matched through an electronic matching system that does not provide for the issue of confirmations, but instead makes and retains records of transactions itself. In such cases, it may be appropriate for a *firm* neither to receive nor issue confirmations, provided the system allows for the back offices of users to verify the details of transactions entered into on the system.

7.7 The statements of good practice in 6.1 to 6.6 do not apply to on exchange business.

8. **STANDARD SETTLEMENT INSTRUCTIONS**
8.1 It is good practice for a firm to make and implement appropriate policies on the use of standard settlement instructions (SSIs) to reduce the incidence and size of differences arising from a mistaken settlement of funds. These are especially appropriate where the firm has a relationship with a market counterparty which suggests there will be regular payment of significant amounts.

8.2 It is good practice to establish SSIs in a secure and verifiable format. A firm acting as an arranger has no responsibility for ensuring that core principals have SSIs in place.

9. **MASTER AGREEMENTS**

9.1 Firms are encouraged to negotiate and execute master agreements. These govern the relationship between the parties and how such a relationship and all transactions thereunder shall be terminated in the event of one party’s default upon a transaction. It is recognised that executed documentation can be and should be used as an efficient Risk Management tool. Market Counterparties should consider the benefits of valid close out netting provisions, as set out in PRU X.X.

9.2 If it is the policy of a firm to use master agreements, it is good practice to make and implement policies for what transactions should be subject to the terms of which master agreement and have systems and controls for ensuring compliance with that policy. If a firm has a policy that transactions should be entered into with a market counterparty only after a master agreement has been implemented, it is advisable to have procedures to ensure that any exceptions are agreed at an appropriate level.
Schedule: Actions for Damages for Breach of Rules

R A contravention of any of the rules in this instrument does not give rise to a right of action by a private person under section 141(1) of the Act (and each of the rules in this instrument is specified under section 141(2) of the Act as a provision giving rise to no such right of action).
DEFINED TERMS IN THE INTER-PROFESSIONALS CODE

NEW IPC TERMS

arranger a person who is arranging deals for another, making arrangements enabling or facilitating deals or agreeing to carry on any of those activities;

broker a person when dealing as agent;

good practice material the contents of the annexes to the IPC except for annexes 1.1.4G and 1.3.1G;

inter-professional business (1) the business of a firm when it carries on

(a) regulated activities in relation to an IPC investment; or

(b) ancillary activities in relation to activities falling into 1.1.2(1)(a)R;

to the extent that the relevant regulated activity that the firm is carrying on is:

(a) dealing

(b) acting as an arranger or agreeing to do so; or

(c) giving transaction-specific advice or agreeing to do so;

but only if that activity is undertaken with or for a market counterparty.

(2) It does not include the carrying on of the following activities:

(a) the approval by a firm of the contents of a financial promotion;

(b) activities carried on between operators, or between operators and trustees, of the same collective investment scheme (when acting in that capacity);

(c) the regulated activities of safekeeping and administration of assets or agreeing to carry on that activity; or

(d) offering, giving, soliciting or accepting inducements for the purpose of or in connection with activities falling within the scope of COBS.

inter-professionals code (or IPC) the rules and guidance in Chapter MAR[2] (the Inter Professionals Code);
**IPC investments**

the following investments as specified in the *Regulated Activities Order*:

(a) shares;

(b) instruments creating or acknowledging indebtedness;

(c) government and public securities;

(d) instruments giving entitlement to investments;

(e) certificates representing certain securities;

(f) options;

(g) futures;

(h) contracts for differences;

(i) rights to or interests in investments falling within (a) to (h);

but not deposits, general insurance contracts, Lloyd’s syndicate capacity and syndicate membership, long term insurance contracts which are contractually based investments, units in a collective investment scheme or pure protection contracts;

**name-passing broker**

a person who arranges deals between counterparties at mutually acceptable terms and passes their names to each of them to facilitate the conclusion of a transaction;

**non-directive friendly society**

see CP41A

**non-directive insurer**

see CP41B

**non market price transaction**

a transaction in which

(a) the *dealing* rate or price differs from the prevailing market rate or price to a material extent; or

(b) in so *dealing* it or its *market counterparty* otherwise gives materially more or less in value than it receives in return.

**transaction-specific advice**

*(advice)*

(1) given in connection with activities carried on by the firm that fall within 1.1.2(2)(a) or (b)R; or

(2) with a view to carrying on any such activities

with or for the market counterparty to whom the advice is given.
OTHER HANDBOOK TERMS

**the Act**
Financial Services and Markets Act 2000;

**advice**
the *regulated activity*, as specified in article 19 of the RAO, of advising a *person* if the *advice* is given to the person in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor, and is *advice* on the merits of his or his principal buying, selling, subscribing for or underwriting a particular investment which is:

(a) specified in any of articles 26 to 34 or, so far as relevant to any of those articles, within article 36; or

(b) a long term insurance contract and a *contractually based investment* or, so far as relevant to such a contract, is an investment as specified in article 36;

or is *advice* to exercise any right conferred by such an investment to acquire, dispose of, underwrite or convert such an investment;

**affiliated company**
in relation to a *person*, an undertaking in the same *group* as that *person*;

**ancillary activity**
a non-regulated activity:

(a) carried on in connection with a regulated activity; or

(b) held out as being for purposes similar to those of a regulated activity;

**appointed representative**
a *person* who:

(a) is a party to a contract with an *authorised person* (his *principal*) which:

(i) permits or requires him to carry on business of a description prescribed in the *Exemptions Order*; and

(ii) complies with such requirements as may be prescribed in that order, and

(b) is someone for whose activities in carrying on the whole or part of that business his *principal* has accepted responsibility in writing; and who is therefore an *exempt person* in relation to any *regulated activity* comprised in the carrying on of that business for which his *principal* has accepted responsibility, in accordance with section 35 of the *Act*;

**approve**
in relation to a financial promotion, approved in accordance with section 19 of the *Act* (see also confirmation of compliance);
arranging deals for another

the *regulated activity*, as specified in article 13 of the *RAO*, of making arrangements for another person (whether as *principal* or agent) to buy, sell, subscribe for or underwrite a particular investment which is:

(a) specified in any of the articles 26 to 34 or, so far as relevant to any of those articles, within article 36; or

(b) a long term insurance contract and a *contractually based investment* or, so far as is relevant to such a contract, as an investment as specified in article 36;

**behaviour**

any kind of conduct, including action or inaction

**business**

in relation to a firm,

commercial activities involving all or any part of that person's business, whether or not the part consists of or includes a regulated activity;

**buying**

includes acquiring for valuable consideration as specified in article 2 of the *RAO*;

**client money**

subject to the *client money rules*, *money* of any currency which, in the course of carrying on *designated investment business*, a *firm* holds in respect of any investment agreement entered into, or to be entered into, with or for a client or which a *firm* treats as *client money* in accordance with the *client money rules*;

**COBS**

Conduct of Business Sourcebook;

**Code of Market Conduct**

the code required to be prepared and issued by the FSA under section 110 of the *Act*;

**collective investment scheme (CIS)**

any arrangement with respect to property of any description, including *money*, the purpose or effect of which is to enable *persons* taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income, in accordance with section 210 of the *Act*, and which is not excluded by The Financial Services and Markets Act (Collective Investment Schemes) Order;

**communicate**

to communicate in any way, including causing a communication to be made in accordance with section 19(10) of the *Act*;

**Compensation Scheme**

the Financial Services and Markets Compensation Scheme

**core investment service**

a service listed in section A of the Annex to the *ISD* as specified in Schedule 2 to the *RAO*
corporate finance business (1) any designated investment business conducted with or for:

a) an issuer, holder or owner of designated investments relating to the offer, issue, underwriting, repurchase, exchange or redemption of, or the variation of the terms of, those investments, or any related matter;

(b) a market counterparty, or intermediate customer or any other company or partnership or supranational organisation which relates to the manner in which, or the terms on which, or the persons by whom, any business, activities or undertakings relating to it, or any associate, are to be financed, structured, managed, controlled, regulated or reported upon;

(c) any company in connection with:

(i) a proposed or actual takeover or related operation by or on behalf of, or involving investments issued by, that company or its holding company, subsidiary or associate; or

(ii) a merger, de-merger, re-organisation or reconstruction involving any investments issued by that company, its holding company, subsidiary or associate;

(d) any shareholder or prospective shareholder of a company established or to be established for the purpose of effecting a takeover or related operation in connection with that takeover or related operation;

(e) a person who, acting as a principal for his own account:

(i) is involved in negotiations or decisions relating to the commercial, financial or strategic intentions or requirements of a business or prospective business; or

(ii) (provided he is acting otherwise than solely in his capacity as an investor) assists the interests of another person with or for whom the firm, or another authorised or overseas person, is undertaking business as specified in (a), (b), (c) or (d) above, by himself undertaking all or part of any transactions involved in such business;

(f) a person undertaking business with or for a person as specified in (a), (b), (c), (d) or (e) in respect of activities described in those sub-paragraphs; and
(2) **designated investment business or associated business** carried on by a **firm** as a **principal** for its own account where such business is:

(a) in the course of, or arises out of, activities undertaken in accordance with (1) (a); and

(b) does not involve transactions with or for, or advice to, other **persons** who are **private customers** in respect of such business;

**credit institution**

an **undertaking** whose business is to receive **deposits** or other repayable funds from the public and to grant credits for its own account;

**customer**

**intermediate customer** or **private customer** (see consultative paper 43);

**deal or dealing**

a **dealing** transaction in accordance with paragraph 2 of schedule 2 to the **Act**;

**derivative**

**futures**, **options** or **contracts for differences** whose value derives from **commodities**, indices, **shares** or other assets underlying the financial instrument;

**designated investment**

the following investments as specified in the **RAO**:

(a) **long term insurance contracts** which are contractually based investments;

(b) **shares**;

(c) **instruments creating or acknowledging indebtedness**;

(d) **government and public securities**;

(e) **instruments giving entitlement to investments**;

(f) **certificates representing certain securities**;

(g) **units in a collective investment scheme**;

(h) **options**;

(i) **futures**;

(j) **contracts for differences**;

(k) **rights to or interests in investments** falling within (a) to (k);

but not deposits, general insurance contracts, Lloyd’s syndicate capacity and syndicate membership or pure protection contracts;
director  in relation to an unincorporated association or to a body corporate (whether constituted in the United Kingdom or under the law of a country or territory outside it), any person appointed to direct its affairs, including, in accordance with section 363(1) of the Act,

(a) a person occupying in relation to it the position of a director (by whatever name called); and

(b) a person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act;

employee an individual who:

(a) provides services to the firm, or to the firm's appointed representative, under a contract of service or a contract for services; or

(b) is a sole trader; or

(c) is a director of the firm if it is a body corporate; or

(d) is a partner in the firm if it is a partnership; or

(e) where the firm is an unincorporated association, is a member of its governing body, the secretary or the treasurer; or

(f) whose services are, under an arrangement between the firm and a third party, placed at the disposal of the firm, but who is not the firm's appointed representative;

European Economic Area (EEA) the free-trade area established by agreement signed at Oporto on 2 May 1992 which [at 1 March 2000] includes Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom;

financial promotion an invitation or inducement to engage in investment activity;

firm an authorised person;

First Banking Coordination Directive the European Council Directive of 12 December 1977 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (No 77/780/EEC);

friendly society a friendly society that is either incorporated under the Friendly societies Act 1992 or is registered under section 7(1)(a) of the Friendly societies Act 1974, or under any enactment that it replaced.

FSA the Financial Services Authority;
in relation to a person ‘A’, A and any person who is:

(a) a parent undertaking of A; or

(b) a subsidiary undertaking of A; or

(c) a subsidiary undertaking of a parent undertaking of A; or

(d) a parent undertaking of a subsidiary undertaking of A; or

(e) an undertaking in which A or an undertaking mentioned in (a)-(d) has a participating interest; or

(f) if A or an undertaking mentioned in (a) or (d) is a building society, an associated undertaking of the society; or

(g) if A or an undertaking mentioned in paragraph (a) or (d) is an incorporated friendly society, a body corporate of which the society has joint control within the meaning of section 13(9)(c) of the Friendly Societies Act 1992;

information and advice given by the FSA in accordance with the Act;

(a) in relation to a credit institution, the EEA State in which the credit institution has been authorised in accordance with the First Banking Co-ordination Directive;

(b) in relation to an investment firm,

(i) where the investment firm is a natural person, the EEA State in which his head office is situated;

(ii) where the investment firm is a legal person, the EEA State in which its registered office is situated or, if under its national law it has no registered office, the EEA State in which its head office is situated;

(c) in relation to an insurer with an EEA right, the EEA State in which the head office of the insurer is situated;

(d) in relation to a market, the EEA State in which the registered office of the body which provides trading facilities is situated or, if under its national law it has no registered office, the EEA State in which that body’s head office is situated;

(e) in relation to a Treaty firm, the EEA State in which its head office is situated in accordance with paragraph 1 of schedule 4 to the Act;

(a) in relation to an EEA firm, the competent authority (as defined in the relevant Single Market Directive) of a EEA State other than the United Kingdom in respect of the EEA firm concerned;

(b) in relation to an EU firm, the competent authority of the firm’s home state for the purpose of its authorisation under the law of its home state to carry on the regulated activity in question;
**incoming EEA firm**
an *EEA firm* which qualifies for *authorisation* in accordance with Part ii of Schedule 3 to the *Act*;

**incoming Treaty firm**
a Treaty firm which qualifies for authorisation by virtue of Schedule 4 to the *Act*;

**insurer**
a *firm* (other than a *friendly society*) that carries on *insurance business*.

**intermediate customer**
see CP43

**investment**
any property bought in the expectation of interest or profit, including any asset, right or interest;

**investment business**
(a) Establishing, operating or winding up a collective investment scheme;
(b) Acting as a trustee or depository of a collective investment scheme;
(c) Acting as the sole director of an OEIC;
(d) Making a market;
(e) buying with a view to selling;
(f) Regularly soliciting the public to deal in securities;
(g) Dealing as principal in contractually based investments;
(h) Dealing as agent
(i) Arranging deals for another
(j) Making arrangements enabling or facilitating deals;
(k) Providing safekeeping and administration of investments;
(l) Arranging safekeeping and administration of investments;
(m) sending dematerialised instructions;
(n) Causing dematerialised instructions to be sent;
(o) Managing investments;
(p) Investment advice (except on Pension Transfers and Opt Outs);
(q) Investment advice on Pension Transfers and Opt Outs;

**investment firm**
any legal *person* the regular occupation or *business* of which is the provision of *core investment services* for third parties on a professional basis, and any natural *person* included as an *investment firm* by his or its *home state*;
market abuse

behave (whether by one person alone or by two or more persons jointly or in concert)

(a) which occurs in relation to qualifying investments traded on a market to which section 95 of the Act applies;

(b) which satisfies any one or more of the conditions set out below: and

(c) which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market;

the conditions are that:

(i) the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected;

(ii) the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question;

(iii) a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question;

market counterparty

see consultative paper 43;

money

includes cheques or other payable orders;

on exchange

in relation to a transaction, a transaction which takes place under the rules of an exchange;
operator

(a) in the case of an authorised unit trust scheme, the manager;

(b) in the case of an ICVC, that company or, if applicable, the authorised corporate director;

(c) in the case of an unregulated collective investment scheme that is a unit trust scheme with a separate trustee, any person who, under the trust deed establishing the scheme, is responsible for the management of the property held for or within the scheme;

(d) in the case of any other unregulated collective investment scheme, any person who, under the constitution or founding arrangements of the scheme, is responsible for the management of the property held for or within the scheme; and

(e) in the case of an investment trust savings scheme, any person appointed, by those responsible for managing the property of the investment trust, to manage the investment trust savings scheme;

option

(1) investments as specified in article 32 of the RAO as options to acquire or dispose of:

(a) an investment as specified in any of articles 26 to 31, 32 and 34 or, so far as relevant to those articles, as specified in article 36 of the RAO;

(b) rights under a long term insurance contract which is a contractually based investment or, so far as relevant to such a contract, an investment as specified in article 36 of the RAO;

(c) currency of the United Kingdom or of any other country or territory;

(d) palladium, platinum, gold or silver; or

(e) an investment as specified in this paragraph by virtue of paragraph (a), (b), (c) or (d);

passported institution

an incoming EEA firm or an incoming Treaty firm;

permission

permission given by the FSA under Part IV of the Act, or resulting from any other provision of the Act, to carry on regulated activities in the United Kingdom;

permitted activity

a regulated activity which FSA has granted a firm permission to carry on;

person

a legal or natural person, including an individual, a body corporate, a partnership or an unincorporated association;
Principle

one of the Principles for Businesses;

principal

a person acting on his own account;

private customer

see Consultative Paper 43

Regulated Activity Order (RAO)

The Financial Services and Markets Act (Regulated Activities) Order 2000;

regulated activity

the following activities specified in the RAO:

accepting deposits;
effecting contracts of insurance;
carrying out contracts of insurance;
establishing, operating or winding up a collective investment scheme;
making a market;
buying with a view to selling; regularly soliciting the public to deal in securities;
dealing as principal in contractually based investments;
dealing as agent;
arranging deals for another; making arrangements;
enabling or facilitating deals; safeguarding and administering investments;
sending dematerialised instructions;
causing dematerialised instructions to be sent;
managing investments; certain investment advice;
advice on syndicate participation at Lloyd's Lloyd's managing agents;
agreeing to carry on certain regulated activities.

rule

a rule made by the FSA under the Act;
the following investments as more fully specified in the RAO:

(a) shares;
(b) instruments creating or acknowledging indebtedness;
(c) government and public securities;
(d) instruments giving entitlement to investments;
(e) certificates representing certain securities;
(f) units in a collective investment scheme; and
(g) rights to or interests in investments so far as relevant to any of those investments;

selling

in relation to a contractually based investment which is a long term insurance contract and in relation to an investment falling within any of articles 26 to 36, includes disposing of the investment for valuable consideration, and, for these purposes "disposing" includes -

a) in the case of an investment consisting of rights under a contract-
   i) surrendering, assigning or converting those rights; or
   ii) assuming the corresponding liabilities under the contract;

b) in the case of an investment consisting of rights under other arrangements, assuming the corresponding liabilities under the arrangements; and

c) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;

as specified in paragraph 2(1) of the RAO.

service company

see CPxx [Service Company Regime] [due to be published Summer 2000]

sole trader

an individual who is a firm;

UCITS qualifier

a firm which:

(a) for the time being is an operator, trustee or depositary of a recognised collective investment scheme seeking to carry on a regulated activity in the United Kingdom; and

(b) is an authorised person as a result of paragraph 1(1) of Schedule 5 to the Act,

and a reference to a firm as a UCITS qualifier applies in relation to the carrying on by it of activities for which it has permission in that capacity;
undertaking  a body corporate or an unincorporated association;

unit  1) a unit representing the rights or interests of a participant in a collective investment scheme, the unitholders in the AUT; and
2) a share in an ICVC;

United Kingdom  England and Wales, Scotland and Northern Ireland, but not the Channel Islands or Isle of Man;

UK domestic firm  a firm that has its registered office (or if it does not have a registered office, its head office) in the United Kingdom;