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## *Status disclosure requirements for firms*

The information in this note is not guidance under the Financial Services and Markets Act 2000 (FSMA) but merely a reminder of some of the provisions on status disclosure, which we hope firms will find useful. Firms must refer to the Handbook of rules and guidance to comply with status disclosure rules and other matters. If you have any further questions on this note, please contact your firm's usual supervisor. The information reflects the Handbook of rules and guidance as at 7 June 2002.

On 29 May we published Consultation Paper 138 "Disclosure of status under the Financial Services and Markets Act 2000 and use of the FSA logo", which can be found on our website at <http://www.fsa.gov.uk/pubs/cp/138/>. This sets out proposals for a common framework for authorised firms to tell private customers about their status under the Financial Services and Markets Act and about complaints and compensation arrangements. We expect to make rules following consultation at the end of 2002 or early in 2003, to come into force 12 months later.

### **The Conduct of Business sourcebook (COB)**

COB chapters 3, 4 and 5 include the main provisions for firms to which COB applies, and for their appointed representatives. These provisions require these firms to disclose their regulatory status in:

- direct offer financial promotions;
- stationery; and
- terms of business letters (including customer agreements).

The relevant rules and guidance are in COB 3.9.6R and 3.9.7R (direct offer financial promotions), COB 4.2.5R, 4.2.7R and 4.2.10 R to 4.2.16E (terms of business) and COB 5.5 (information about the firm).

In particular:

(a) COB 5.5.3R requires a firm that conducts designated investment business to take reasonable steps to ensure that a private customer is given adequate information about the fact that the firm is regulated or authorised by us. COB 5.5.4E and COB 5.5.5E state that the reasonable steps should include a statement on relevant documentation, including business stationery, that the firm is 'regulated' or 'authorised' by 'the FSA' or 'the Financial Services Authority'.

(b) COB 5.5.3R does not prohibit a firm from adding to the required statement. For example, by referring to the type of regulated activity that the firm carries on, or stating that the regulated activity is carried on in the UK. A firm must, however, ensure that it complies with other parts of the Handbook. In particular, it must comply with COB 2.1 (Clear, fair and not misleading communication) and the Principles for Businesses. These include Principle 7, which states that 'a firm must pay due regard to the information needs of its clients, and communicate information to them in a way that is clear, fair and not misleading'. General Provisions (GEN) state in GEN 1.2.2 R that a firm must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a client, that its affairs, or any aspect of them, have the approval of the FSA, unless required to do so under the regulatory system. There are certain exceptions to this rule, such as a statement that explains in a clear, fair and not misleading way that the firm is an authorised person.

(c) Firms that are not within the scope of the COB rules mentioned above are not required to disclose that they are 'authorised' or 'regulated' by the FSA. Neither is there any specific rule that would prevent a bank, for example, stating (or continuing to state) that it is 'regulated by the FSA for deposit taking'. Any communication that a firm makes, however, must comply with the Handbook, including Principle 7 and GEN 1.2.2R (see above).

(d) An incoming EEA firm is an authorised person that is regulated by us for the conduct of regulated activities in the UK. Such a firm gains authorisation under Schedule 3 of the FSMA and not by being given our permission to carry on regulated activities. It would not be a true statement for such a firm to state that it is 'authorised by the FSA'.

(e) COB 3.9.6 R(2) requires a direct offer financial promotion to include the matters set out in COB 3.9.7 R. This includes adding a prominent statement that the firm communicating or approving the financial promotion is regulated or authorised by the FSA.

(f) COB 3.8.4 G(3) provides guidance that if in any other financial promotion the firm chooses to name us as its regulator and the financial promotion relates to matters that we do not regulate, the firm should make this clear.

## **Transitional provisions to COB**

Firms that carry on designated investment business and were authorised immediately before N2 (or exempted under section 43 of the Financial Services Act 1986) have been able to take advantage of transitional provisions to COB. These include:

(a) for COB 5 mentioned above, COB TR1 ETP 8R (Information about the Firm) and, for ex-RPB firms, COB TR4 ETP 3R – these allow a pre-N2 firm, ex-Section 43 firm or ex-RPB firm to continue to use any written material that it produced before N2, provided the firm can demonstrate that the material complies with the corresponding relevant rule of its previous regulator;

(b) for the rules in COB 3 mentioned above, COB TR1 ETP 1R ((Transitional relief) and, for ex-RPB firms, COB TR4 ETP 1R – these allow a pre-N2 firm, ex-Section 43 firm or ex-RPB firm to continue to communicate any financial promotion, provided the firm can show that the financial promotion complies with the corresponding rule of its previous regulator.

These transitional provisions run until 30 June 2002 (30 November 2002 for an ex-RPB firm or, for an ex-section 43 firm, in relation to COB TR1 ETP 8R) and prevent firms from having to withdraw or destroy relevant compliant written material which, for COB 5 requirements, was produced before N2.

COB TR1 ETP 8R(2) applies to authorised firms that were appointed representatives immediately before N2.

## **Other requirements**

This note only covers requirements on status disclosure. So, for example, it does not cover disclosure requirements on coverage by the Financial Services Compensation Scheme or the Financial Ombudsman Service. It also does not cover disclosure requirements under legislation other than the Financial Services and Markets Act 2000, for example under the Companies Act 1985.

## **Further questions**

If you have reviewed the contents of this note and considered how the Handbook applies to what your firm does or proposes to do, and have further questions, please contact your firm's usual supervisor (if your firm is supervised by Regulatory Events Department this is the contact centre - 0845 606 9966).

