Before printing this document, please be aware of its size!
Regarding the provisions quoted in the response below, as far as possible, hyperlinks to these provisions (in the respective language or, if available, in English) are set out in Document CESR/04-075 for each country.

IMPORTANT NOTICE

In the interest of transparency and to inform interested parties, CESR has published the following (together the "Tables"):

- *the Correspondence Tables on the CESR Standards for Investor Protection (Ref. CESR/03-416b to 423b, CESR/03-134/Country);*
- *the Correspondence Tables on the CESR Standards for Alternative Trading Systems (Ref. CESR/03-415b, CESR/03-135/Country);*
- *the Synthesis Tables (Ref. CESR/03-427b and CESR/03-432b);*
- *the List of Alternative Trading Systems currently operating in Member States[1] (Ref. CESR/03-497b);*
- *the explanatory notes and caveats attached to the Tables.*

The Tables were produced by the Members of CESR[1] within the constraints of and solely for the purposes of the CESR Review Panel process of monitoring the status of implementation of the CESR Standards for Investor Protection[2] and the CESR Standards for Alternative Trading Systems[3] in Member States.

The Tables have no legal effect; they do not present any interpretation of, or definitive position on, existing law or regulation in any jurisdiction. The Tables should not be relied upon for any purpose other than the purpose for which they were prepared. In particular, they should not be relied upon as a substitute for, or as guidance on, any aspect of the regulatory system of any Member State or as a defence in supervisory activities or enforcement proceedings; and they cannot be used to restrict competent authorities in taking regulatory or enforcement actions.

The information set out in the Tables is the response of each Member's self-assessment. For this reason, the content of the Tables regarding a particular Member State has been prepared solely by the relevant Member on a best-efforts basis. (In a next step, the CESR Review Panel is going to conduct a common and collective peer exercise in reviewing the responses from all Members.) In case of discrepancy between the tables containing the responses from all CESR Members and the tables containing the individual responses from a particular CESR Member, the latter should be referred to.

The Tables provide a "snap shot" and will be up-dated on a regular basis to take account of regulatory developments in Member States. Therefore, they cannot be considered as fully finalised or definitive reflections of regulatory provisions in Member States. The Tables should also be read in light of current and future developments in the formulation of the proposed Directive on Markets in Financial Instruments ("ISD2") and the future Level 2 implementing measures, and without prejudice to the position of any Member State in those developments.

For a more detailed account of the process, methodology and first, interim results, please see the "First Interim Report" by the Review Panel (Ref. CESR/03-414b).

---

[1] For reasons of simplicity, the term "Member" in this context refers to all participants in the Review Panel, i.e. CESR Members, CESR Observers, and the Polish securities regulators; this applies to the term "Member State" accordingly.
[2] "A European Regime of Investor Protection - The Harmonization of Conduct of Business Rules" (Ref. CESR/01-014d, April 2002) and "A European Regime of Investor Protection – The Professional and the Counterparty Regimes" (Ref. CESR/02-098b, July 2002).
[3] Ref. CESR/02-086b, July 2002.

CORRESPONDENCE TABLE ON STANDARDS FOR INVESTOR PROTECTION

(REF. CESR/01-014D AND CESR/02-098B)

UNITED KINGDOM

INTRODUCTION

These responses have been completed by the Financial Services Authority (**'FSA'**), which in almost every case is the implementing authority in the UK.

These responses focus on the FSA Handbook, as it applies to investment firms providing core investment services and (to the extent they are regulated in the United Kingdom) non-core investment services, within the scope of Council Directive 93/22/EEC (**"ISD"**).

The FSA Handbook contains special "light touch" regimes in relation to the undertaking of stock lending transactions and of corporate finance activities, under which some, but not all of the provisions referred to below are disapplied. These regimes, which reflect the particular characteristics of such activities, are not considered in detail below.

The various provisions of the FSA Handbook referred to in this questionnaire generally pre-date the April 2002 CESR paper on "A European Regime of Investor Protection: The Harmonization of Conduct of Business Rules" and therefore have not been drafted with the specific intention of implementing those rules.

The responses employ certain terms that are defined in the FSA Handbook. Where relevant, a brief summary of the meaning of these defined terms is set out below. The full definitions for these terms are contained in the FSA's Glossary of definitions, which can be accessed on the FSA's website via the following hypertext link: http://www.fsa.gov.uk/handbook/hbk_glossary.pdf.

Term	Summary of definition
APER	The Statements of Principle and Code of Practice for Approved Persons. This is the module of the FSA Handbook that contains (and provides guidance on) the high level principles that apply to individuals who perform specified "controlled functions" within an investment firm.
COB	The FSA Conduct of Business Sourcebook. This is the module of the FSA Handbook that contains the FSA's conduct of business rules.
Direct offer financial promotion	A direct offer financial promotion includes a financial promotion that: • does not allow for an inter-active dialogue with the recipient (such as an advertisement in writing); • contains an offer to enter into an agreement relating to the provision of an investment service with anyone who responds to the financial promotion or an invitation to anyone who responds to the financial promotion to make an offer to enter into such an agreement; and • specifies the manner of response or includes a form in which any response is to be made (for example, by providing a tear-off slip).
DISP	Dispute Resolution: Complaints Sourcebook, which is one of the modules of the FSA Handbook. Amongst other things, DISP contains the FSA's rules and guidance relating to the handling of complaints by firms.
Financial Promotion Order	Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (SI 2001/1335). The Financial Promotion Order expands on the

Term	Summary of definition
	provisions in FSMA dealing with financial promotion (i.e. marketing communications connected with investment services).
FSMA	The Financial Services and Markets Act 2000. This is the principle legislation dealing with the regulation of investment firms and investment services in the United Kingdom.
FSA Handbook	The FSA's Handbook of Rules and Guidance, which consists of a number of modules, some of which are referred to in this document. The FSA Handbook can be accessed on the FSA's website via the following hypertext link: http://www.fsa.gov.uk/vhb/
Inter-professional business	This concept is explained in the comments on the introduction to section C below.
MAR	Market Conduct Sourcebook. Amongst other things, this is the module of the FSA Handbook that contains (in chapter 3) the Inter-Professional Code, which regulates the conduct of inter-professional business.
ML	The Money Laundering Sourcebook. This is the module of the FSA Handbook that sets out rules and guidance relating to measures for the prevention of money laundering. These are regulatory provisions that apply in addition to the criminal provisions under the Money Laundering Regulations 1993 (which implement the Money Laundering Directive).
Packaged product	Within the scope of the ISD, the most relevant packaged products are regulated collective investment schemes (including UCITS that have been registered for public distribution in the United Kingdom) and investment trust saving schemes (i.e. savings schemes relating to certain close ended listed investment companies).
PRIN	The Principles of Business. This is the module of the FSA Handbook that sets out certain high level principles, that apply to investment firms. In many cases, more detailed rules in other modules of the FSA Handbook will supplement (but not replace) one or more of these principles.
SUP	The Supervision Manual. The module of the FSA Handbook dealing with the supervision of investment firms by the FSA.
SYSC	Senior Management Arrangements, Systems and Controls. This is the module of the FSA Handbook that sets out rules and guidance on the organisation and control of the affairs of an investment firm.
TC	Training and Competence. This is the module of the FSA Handbook that sets out requirements in relation to the training and competence of certain individuals involved in the business of investment firms.

A CONDUCT OF BUSINESS RULES FOR THE "RETAIL REGIME"

1. STANDARDS AND RULES OF GENERAL APPLICATION

1.1 GENERAL

Standard /Rule	Implementing authority (-ies)	Implementing measure[4]	Comments
1. An investment firm must at all times act honestly, fairly and professionally in accordance with the best interests of its customers and the integrity of the market.	FSA	FSA Handbook Principles: Principle 1 provides that a firm must conduct its business with integrity. Principle 2 provides that a firm must conduct its business with due skill, care and diligence. Principle 5 provides that a firm must observe proper standards of market conduct. Principle 6 provides that a firm must pay due regard to the interests of its customers and treat them fairly.	UK complies substantially with Standard 1. Principle 6 requires "due regard" and fair treatment of customers. We believe that this accords with customers' best interests.
2. An investment firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities, including back-up procedures and systems so as to reasonably ensure that investment services can be provided without interruption.	FSA	Para 4 of schedule 6 to FSMA (Adequate resources) provides that one of the threshold conditions for authorisation of a firm is that the resources of the firm must, in the opinion of the FSA, be adequate in relation to the investment services that the firm seeks to perform. COND 2.4.1 Resources must, in the opinion of the FSA, be adequate in relation to the regulated activities that the firm seeks to carry on or carries on. These include having effective means to manage risks. FSA Handbook Principle 4 (Financial prudence) provides that a firm must have adequate financial resources. SYSC 3.1.1R (Systems and Controls) provides that firms must take reasonable care to establish and maintain appropriate systems and controls given the nature, scale and complexity of business. SYSC 3.2 (Areas covered by systems and controls) incl. business continuity (at SYSC 3.2.19G). SYSC 3.2.19G states that firms should have arrangements to ensure that they can continue to function and to meet regulatory obligations in event of unforeseen interruption and update these arrangements regularly and test their effectiveness.	

[4] Any derogation to the application of the implementing measures should be mentioned.

3. An investment firm must ensure that any persons or entities with which it is undertaking authorisable investment business are authorised to conduct that business by the relevant regulator.	FSA	FSA Handbook: Principle 1 provides that a firm must conduct its business with integrity. Principle 2 provides that a firm must conduct its business with due skill, care and diligence.	There is no express equivalent of this requirement. The principles referred to would only be likely to apply where the firm actually is aware that its counterparty is acting in breach of an applicable regulatory restriction.
4. Investment firm that outsources functions retains full responsibility for the outsourced activity and must ensure that the providers of such outsourcing are able to perform these functions reliably, professionally and in the best interests of its customers. [5].	FSA	SYSC 3.2.2G provides that clear management responsibilities and reporting lines should be communicated as appropriated within the firm. SYSC 3.2.3G(2) and 3.2.4G(1) provide that a firm: • cannot contract out of its regulatory obligations where delegating functions within the firm or outsourcing; • must assess whether the service provider is suitable to carry out the delegated function or task, taking into account the degree of responsibility involved; and must put in place measures to supervise the discharge of the functions delegated to the service provider.	The precise meaning of outsourcing might need to be clarified to ensure consistency between CESR members' approaches. Does Standard 4 cover regulatory responsibilities only or regulatory and contractual responsibilities? SYSC 3.2 covers regulatory responsibilities only.

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

[5] This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

5. An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of customers are not adversely affected. For these purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate.	**FSA**	FSA Handbook Principle 8 (Conflicts of interest) requires investment firms to manage conflicts of interest between the firm and its customer and between one customer and others fairly COB 7.1.4 indicates that any one or more of the following four 'reasonable steps' can be used to manage conflicts of interest: • disclosure of the interest to the customer; • relying on a policy of independence; • the establishment of Chinese walls; and • declining to act for a customer. Guidance is provided on the circumstances in which each of these steps is appropriate.	In our view, "identify" and "prevent" are implicit in "manage". The emphasis in the FSA Handbook is to identify and make available to firms the reasonable steps that can be taken to manage customers' interests fairly. Work on this area is continuing in CESR, IOSCO and the EU Commission Forum Group on Analysts as well as in the FSA.
		COB 7.1 (Conflict of interest and material interest) COB 7.1.3, if a firm has: • a material interest in a transaction to be entered into with or for a customer; • a relationship that gives rise or may give rise to a conflict of interest in relation to such a transaction; • an interest in a transaction that is or may be in conflict with the interest of any of the firm's customers; or • customers with conflicting interests in respect of a transaction, it must not knowingly advise or deal in the exercise of a discretion in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the customer.	

7. Where conflicts of interest cannot be reasonably avoided or managed with the internal independence policy, an investment firm must not undertake business with or on behalf of a customer where it has directly or indirectly a conflicting interest, including any such interest arising from intra-group dealings, joint provision of more than one service or other business dealings of the investment firm or any affiliated entity, unless it has previously disclosed to the customer the nature and extent of its interest, either in writing or by telephone and recorded by the firm and the customer has expressly agreed to engage in such business with the investment firm. Where possible, this disclosure must be given at the beginning of the customer relationship; otherwise it must be given prior to the customer entering into any relevant transaction.	FSA	COB 7.1.4E indicates that one or more of the following four 'reasonable steps' can be used to manage conflicts of interest: • disclosure of the interest to the customer; • relying on a policy of independence; • the establishment of Chinese walls; and • declining to act for a customer. Guidance is provided on the circumstances in which each of these steps is appropriate. Where disclosure is used it should be made either orally or in writing before advising the customer or dealing on his/her behalf in exercise of discretion. The firm should be able to demonstrate that it has taken reasonable steps to ensure that customer does not object to the material interest or conflict.	We believe that COB 7.1 achieves an equivalent level of consumer protection even though it does not prioritise between use of a policy of independence, disclosure or Chinese walls in exactly the same way as the CESR Standards/Rules. COB does give guidance about the appropriate use of the four reasonable steps. In terms of disclosure, for example, COB allows oral disclosure of conflicts that do not take place by telephone. The requirement in 7., that the customer has "expressly agreed to engage in such business with the investment firm", is somewhat unclear. Does it depend on disclosure having been made already? Keeping a record is implicit in the demonstration requirement placed on firms.
		COB 4.2.15 E (13) provides that one of the matters to be provided for in an investment firm's terms of business or agreement with its customer is the manner in which the firm will ensure fair treatment, as required by COB 7.1.3, when a conflict of interest may or does arise.	
6. An investment firm, its members of the board, directors, partners, employees and tied-agents may offer or receive inducements only if they can reasonably assist the firm in the provision of services to its customers. Where inducements are received disclosure of such inducements must be made to the customer.	FSA	FSA Handbook: Principle 1 provides that a firm must conduct its business with integrity. Principle 6 provides that a firm must have due regard to the interests of its customers and treat them fairly.	FSA is consulting currently on policy aspects of inducements: FSA Consultation Paper 176, Bundled Brokerage and Soft Commission Arrangements.
		COB 2.2.3R requires a firm to take reasonable steps to ensure that it, or any person acting on its behalf, does not *inter alia* offer or accept an inducement that is likely to conflict to a material extent with any duty owed to its customers or any duty owed by a recipient firm to its customers.	
		COB 2.2.5 – 2.2.7 These provisions contain specific guidance on whether the provision of inducements in connection with the sale of packaged products is acceptable.	

		COB 2.2.8 - 15 R These provisions, which relate to so-called "soft commission agreements", set out a regime that allows investment firms to receive inducements in certain circumstances. An investment firm may accept goods and services under a soft commission agreement provided they are of direct relevance to, and used to assist in the provision of, certain specified services to the firm's customers. Disclosure on a prior and on a periodic basis: COB 2.2.8R.	See the comments below on CESR Rule 8 in relation to the disclosure of such arrangements.
8. Where inducements are permitted an investment firm must act in the best interest of the customer and inform the customer at the beginning of the relationship, which may give rise to conflicts of interest between itself and its customers, about the investment firm's policy on inducements and at least once a year in writing of the relevant details of such inducements.	FSA	FSA Handbook Principle 6 provides that a firm must have due regard to the interests of its customers and treat them fairly.	
		COB 2.2.16 provides that an investment firm must inform the customer in writing of the existence of the soft commission agreement and the firm's (or where relevant the group's) policy in relation to soft commission. This must be done before an investment firm enters into a client agreement authorising it to deal for a customer under a soft commission agreement entered into by the firm or where it knows (or reasonably ought to know) that another member of its group has such an agreement. COB 2.2.18 imposes a requirement in such circumstances to provide customers with information on soft commission arrangements on an annual basis.	The requirements for initial and periodic disclosure only apply in relation to customers and only apply where the soft commission regime has been triggered. For example, these requirements do not apply where an inducement is accepted in accordance with the guidance related to packaged products or otherwise where reasonable steps have been taken to ensure that the inducement will not give rise to a material conflict of interest.

1.3 COMPLIANCE AND CODE OF CONDUCT

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

9. An investment firm must take all reasonable measures to ensure that the firm and its members of the board, directors, partners, employees and tied-agents at all time act in accordance with the best interests of its customers and the integrity of the market by establishing and implementing adequate compliance policies and procedures, including an independent compliance function and an internal code of conduct.	FSA.	FSA Handbook: Principle 5 provides that a firm must observe proper standards of market conduct. Principle 6 provides that a firm must have due regard to the interests of its customers and treat them fairly.	There is no express requirement in the FSA Handbook to maintain an "internal code of conduct".
		SYSC 3.2.6R provides that firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards. A company acts through its directors and employees and a partnership can acts through its partners or employees. The systems and controls will therefore need to relate to these individuals. SYSC 3.2.7G states that it may be appropriate to have a separate compliance function, depending on nature, scale and complexity of the business. The organisation and responsibilities of a compliance function should be documented.	The requirements in rule 9 are conditioned by reasonableness. FSA does not require an independent compliance function in every case in order to comply. Much depends on the nature, scale and complexity of the business in question - what is reasonable and adequate in one case might not be in another.
	Parliament FSA	Section 39(4) of FSMA: in determining whether an investment firm has complied with SYSC 3.2.6, anything its tied agent has done or omitted as respects business for which the investment firm has accepted responsibility will be treated as having been done or omitted by the authorised person.	
11. The persons responsible for the compliance function must have the necessary expertise, resources, authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all persons and activities subject to their monitoring.	FSA	SYSC 3.2.7G (Compliance) states that an investment firm's compliance function should be staffed by an appropriate number of competent staff sufficiently independent to perform their duties objectively. The compliance function should be adequately resourced and should have unrestricted access to the firm's relevant records.	

12. A summary of the results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.	FSA	SYSC 3.2.7G & 8R (Compliance) The director or senior manager to whom the function of having responsibility for the oversight of the firm's compliance has been allocated is responsible for reporting to the investment firm's governing body in respect of their oversight of the firm's compliance. The firm's compliance function should have ultimate recourse to its governing body. SUP 15 (Notifications to the FSA).	A number of ad hoc requirements to notify the FSA of specific matters are imposed under SUP 15. There is no requirement to provide annual reports on compliance monitoring but firms are to give auditors a right of access to records and documents at all times under SUP 3.6.1
13. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.	FSA	FSA Handbook: Principle 11 (relations with regulators): This principle provides that an investment firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.	
		SUP 15.3.11 & 12 (Breaches of rules and other requirements in or under the Act) SUP 15.3.11 requires a firm to notify the FSA of *inter alia* a significant breach of any FSA Rule by the firm or any of its directors, officers, employees, tied agents or "approved persons". SUP 15.3.12 provides that significance should be determined for these purposes having regard to potential financial losses to customers or to the firm, frequency of the breach, implications for the firm's systems and controls and if there were delays in identifying and rectifying the breach.	We believe that these rules substantially meet the provisions of rule 13.
14. The compliance function must: - regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services; - provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services.	FSA	Under SYSC 3.1.2G (2), a firm should carry out a regular review of its systems and controls (including the compliance function) to enable it to comply with its obligations to maintain appropriate systems and controls.	The advisory assistance and support role is not expressly included in the description of the responsibilities of the compliance function. However, it is implicit in the general obligation to maintain the compliance function (SYSC 3.2.6R). See also comments on standard 9, above.

10. An investment firm must be able to demonstrate that it has not acted in breach of the conduct of business rules and the internal code of conduct and that its organization, policies and procedures facilitate such compliance.	FSA	SYSC 3.2.20R (Records) requires a firm to take reasonable care to make and retain adequate records of matters and dealings (including accounting records) which are the subject of requirements and standards under the regulatory system, which is broadly defined to include the conduct of business rules).	There is no requirement to be able to demonstrate compliance with the firm's internal code of conduct, because there is no requirement to maintain such a code. This general record keeping requirement is supplemented by numerous specific record-keeping requirements, which are listed in COB Schedule 1.
		SYSC 3.2.6R (Compliance) requires a firm to take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards.	There is no reversal of the burden of proof.
15. An investment firm must keep records relevant for the purpose of demonstrating compliance with the conduct of business rules, for a period of five years in order to enable the competent authority to verify compliance with these rules. Tape recording of orders must be kept for a period of one year.	FSA	SYSC 3.2.20R (Records) requires a firm to take reasonable care to make and retain adequate records of matters and dealings (including accounting records) which are the subject of requirements and standards under the regulatory system, which is broadly defined to include the conduct of business rules). SYSC 3.2.21G states that the general principle that records should be retained for a s long as is relevant for the purposes for which they are made. SYSC Schedule 1 states that records should be retained for an adequate period of time.	This general principle in SYSC 3.2.21G is supplemented by specific provisions on the retention of records in relation to the individual record keeping requirements referred to above. The FSA's approach is therefore targeted. The length of the document retention requirements and the date from which the retention requirement is calculated varies depending on the nature of the records in question. There are, for example, a number of requirements that are for 3 years, although some of these only start to run from the end of the relationship.
		SYSC 3.1.1 & 3.1.2 (Systems and controls) SYSC 3.1.1R requires a firm to take reasonable care to establish and maintain such systems and controls as are appropriate to its business. SYSC 3.1.2 G indicates that one of the factors to be taken into account in determining the nature and extent of the systems and controls a firm will need to maintain under the above rule is the volume and size of its transactions.	

		COB 7.12 (Customer order and execution records) requires a firm to ensure by the maintenance of appropriate procedures that it promptly records adequate information in relation to the receipt and execution of client orders and the execution of own account orders. COB 7.12.11R provides that these records should be retained for at least 3 years.	
16. An investment firm must keep a register of customer complaints related to the provision of the investment services and the measures taken for their resolution and must regularly verify whether complaints are adequately processed.	FSA	DISP 1.5.1R & 1.5.2G (Making and retaining records of complaints) DISP 1.5.1R requires firms to make and retain records of complaints. DISP 1.5.2G: such records should include any correspondence between the firm and the complainant, including details of any redress offered by the firm.	
		DISP 1.2.1 requires a firm to have in place and operate appropriate and effective internal complaint handling procedures for handling any expression of dissatisfaction received from or on behalf of complainants.	
		SYSC 3.1.1R and 3.1.2(2)G (Systems and Controls) SYSC 3.1.1R requires a firm to take reasonable care to establish and maintain such systems and controls as are appropriate to its business. SYSC 3.1.2(2)G provides that a firm should carry out a regular review of its systems and controls to enable it to comply with its obligation to maintain appropriate systems and controls.	
		DISP 1.5.4R (Reporting complaints to the FSA) Firms are required to provide a standard form report to FSA on complaints and complaints-handling twice per year. This report includes details of the time taken to close complaints.	
17. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:	FSA	Please see comments in standards 9 & 10.	There is no express equivalent to this requirement. The FSA sets a requirement for a compliance manual in a firm's application for Part IV permission but the requirement is not absolute. The FSA may decide whether or not to make this requirement from case-to-case.

a) the rules and procedure to meet the obligation to protect data of a confidential nature;		Principle 1 (Integrity) Principle 2 (Skill, care and due diligence) Obligations of confidentiality are generally imposed on investment firms under the general legal principles relating to the protection of confidential information. These requirements are reflected in Principle 1, which requires a firm to conduct its business with integrity and Principle 2, which requires a firm to conduct its business with due skill, care and diligence.	
		SYSC 3.2.6R (Compliance) requires a firm to take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards.	
		APER 2.1.2 (Statements of Principle) Individuals who are subject to the FSA's approved persons regime are subject to a requirement in APER 2.1.2 to act with integrity and due skill, care and diligence in carrying out their "controlled functions". Principle 1 and Principle 2 APER 4.1.10E (Statement of principle 1) indicates that deliberately misusing the confidential information will be a breach of this requirement.	APER does not apply to all employees and is a code imposed by the FSA.
b) the rules and procedures for carrying out personal transactions involving financial instruments;		COB 7.13.4R (Restrictions on personal account dealing) and 7.13.7E (Reasonable steps) Firms should ensure that restrictions on personal account dealing are included in a notice that forms part of the contract of employment or contract for services of all person acting as employees or whose services are placed at the disposal of the firm.	

c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information; d) the investment firm's policy on conflicts of interest and inducements.		SYSC 3.2.6R (Compliance) requires a firm to take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards.	See the comments on CESR Standard 5 and Rule 7 in relation to the FSA requirements concerning conflicts of interest and the comments on CESR Standard 6 and Rule 8 in relation to the FSA requirements concerning inducements. There are no express equivalents to these requirements.

1.4. COLD CALLING [6]

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
18. For the purpose of protecting customers from undue pressure to enter into a contract, cold calls can only be made to potential customers in accordance with the rules set out below.	FSA	COB 3 (Financial Promotion)	Please see further below.

[6] These rules are without prejudice to any provisions of EU law governing the means whereby or conditions under which an investment firm or its tied-agent may initiate unsolicited contacts with a prospective customer.

19. Cold calls may only be made by persons employed by, or appointed as tied-agent[7] by an investment firm. Responsibility for the competence and activities of such persons rests with the firm.	Parliament/ FSA	Section 21 of FSMA (Restriction on Financial Promotion) The Financial Promotion Order (esp Article 16(2) (Exempt Persons) in relation to tied agents). Section 39(4) of FSMA (Exemption of appointed representatives) TC in relation to the competence of employees (including individuals employed by tied agents).	No person other than an authorised person (including employees of authorised persons) can make a cold call unless an exemption in the Financial Promotion Order applies. (Under section 21(2)(b) of FSMA it is possible for someone who is not an investment firm to make a financial promotion, provided that the content of the financial promotion is approved by an authorised person. However, under COB 3.12.2R, an authorised person cannot approve a real time financial promotion.) ,
20. An investment firm cold calling customers may do so only between the hours of 9.00 a.m. and 9.00 p.m. Monday to Saturday (local time for the customer) and excluding local national holidays.	FSA	COB 3.8.22R (6)(a) and 3.8.23G. Firm must take reasonable steps to ensure that an individual making a real time financial promotion on the firm's behalf does not communicate at an unsocial hour, unless customer has agreed previously. Unsocial hour 'usually means' Sunday or before 9AM and after 9PM and other days/times that firm knows customer would not wish to be called.	COB allows a little more scope for the customer's view of the situation and his/her agreement/disagreement. Please see further 22, below.
21. The identity of the person making the cold call, the investment firm on whose behalf the person is acting, and the commercial purpose of the cold call must be explicitly identified at the beginning of any conversation with the consumer. The caller must also make reference to the frozen period (see par. 24) during which orders may not be executed.	FSA	COB 3.8.22R (3) covers the requirements of the first sentence (identity and purpose) though expressed in terms of the firm taking reasonable steps.	There is no requirement to mention the 'frozen period'.
22. The person making the cold call is also required to establish whether the potential customer wishes the cold call to proceed or not. An investment firm must abide by a request from the customer either to end the cold call and/or not to cold call again.	FSA	COB 3.8.22R (4) A firm must take reasonable steps to ensure that an individual who makes a real-time financial promotion on the firm's behalf - checks that the recipient wishes him to proceed and – terminates the communication if the recipient does not wish him to proceed.	.

[7] This is without prejudice to the applicability of professional requirements, imposed at national level.

23. An investment firm must not exert undue pressure on a potential customer during the course of a cold call and must be able to demonstrate that this is not the case, for example, by recording any such telephone calls.	FSA	Principle 1 provides that a firm must conduct its business with integrity. Principle 2 provides that a firm must conduct its business with due skill, care and diligence. Principle 6 provides that a firm must pay due regard to the interests of its customers and treat them fairly. COB 3.8.22R(1): A firm must take reasonable steps to ensure that individual making the promotion does so in a way that is clear, fair and not misleading. COB 3.8.25G and SYSC 3.2.20R: A firm must take reasonable care to make and retain certain records. These should include copies of any scripts used.	The FSA rules in this area do not involve a reversal of the burden of proof, nor do the record keeping requirements extend as far as this rule.

24. During the period for which the customer benefits from a right of withdrawal from the contract (as determined by Article 4.a of the Distance Marketing Directive), an investment firm shall not execute any customer orders in respect of financial instruments under the contract.	FSA/ Parliament	No implementing measure. There is nothing in COB that corresponds to this. However, the cross-reference (article 4a of the DMD) does not appear to be correct (the right of withdrawal under the DMD being conferred by article 6(1)). Further clarification is required.	We believe that this rule would be contrary to the Distance Marketing Directive (Directive 2002/65/EC) ("**DMD**"). Recital 13 to the DMD states "Member States should not be able to adopt provisions other than those laid down in this Directive in the fields it harmonises, unless otherwise specifically indicated in it." There is nothing in the DMD equivalent to this rule, nor anything indicating that this rule can be adopted. Articles 6(1), final sub-paragraph, 7(1) and 7(3) expressly contemplate performance of a contract (attracting the right to withdraw) before the withdrawal period has expired. (If the reference to "right of withdrawal" does not include those contracts and services included in article 6(2) and 6(3) of the DMD (which logic would suggest), even if there is no express provision in COB covering standard 24, the circumstances it describes would seem most unlikely to apply. The circumstance in which customer orders might be received during a withdrawal period would most likely be in respect of shares and units in collective investment schemes, which are expressly excluded from the right of withdrawal in the DMD under article 6(2)(a).)

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

2.1) BASIC REQUIREMENTS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

25. An investment firm must pay due regard to the information needs of its customers and communicate information to them that is fair, clear, and not misleading.	FSA	FSA Handbook Principle 7 (Communications with clients) provides that a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading. COB 2.13R states that where a firm communicates information to a customer, the firm must take reasonable steps to communicate in a way that is clear, fair and not misleading.	
27. The firm must ensure that information provided to customers is clear and comprehensible. The content and purpose of the information should be easily understood and key items should be given due prominence. The method of presentation of the information must not disguise, diminish or obscure important warnings or statements.	FSA	COB 3.8.5E(1)(f): a firm should take reasonable steps to ensure that the design, content or format of a non-real time financial promotion does not disguise, obscure or diminish the significance of any statement, warning or other matter which the financial promotion is required to contain under the relevant regulations. Please see also the comments on CESR Standard 25.	The general requirement in Principle 7 is supported by specific requirements in COB 2.1, 3.8.4R (1) and 3.8.22R(1).
26. An investment firm must supply its customers on a timely basis with the information that enables them to make informed investment decisions.	FSA	Principle 7 (Communications with clients) provides 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. COB 3.9.6R and 3.9.7R (direct offer financial promotions): a direct offer financial promotion must contain sufficient information to enable a person to make an informed assessment of the investment or service to which it relates. COB 5.4 (Customers' understanding of risk), e.g.,, COB 5.4.2G the purpose of this section is to ensure that a firm takes reasonable steps to ensure that a private customer understands the nature of the risks inherent in certain transactions.	There is no express principle that would require the provision of information in all cases. However, information requirements are imposed in certain specific circumstances where this is appropriate in view of the level of responsibility assumed by the firm to the customer and the nature of the financial instruments in question.

28. In supplying information on a timely basis the investment firm must take into consideration: a) the urgency of the situation and b) the time necessary for a customer to absorb and react to the information provided and c) the terms of business agreed with the customer.	FSA	Principle 7 (Communications with clients) applies - a firm must pay due regard to the information needs of its clients (as well as communicating information to them in a way that is clear, fair and not misleading)	Please see the comments on CESR Standard 26. There is no general rule according with CESR Standard 28 but there are numerous examples where firms are required to take into account time for customers to absorb information and the terms of business agreed. A prominent example is that a firm must not enter into a client agreement unless it has taken reasonable care to ensure that the private customer has had an opportunity to consider the terms: COB 4.2.7R.

2.2.) MARKETING COMMUNICATIONS [8]

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
29. If an investment firm provides information in a marketing communication it must be fair, clear and not misleading.	FSA	Please see 25-28, above. COB 2.1.3R (clear, fair and not misleading communications) COB 3.8.4R (non-real time financial promotions) COB 3.8.22R (real time financial promotions).	Generally, a firm must take reasonable steps to communicate in a way that is clear, fair and not misleading (COB 2.1.3R). For financial promotions, a firm must be able to show that it has taken reasonable steps to ensure that: (1) a non-real time financial promotion is clear, fair and not misleading; and (2) the individual making the real time financial promotion does so in a way which is clear, fair and not misleading.
30. The promotional purpose of marketing communications issued by an investment firm must not be disguised.	FSA	COB 3.8.5E(1)(a) provides that a firm should take reasonable steps to ensure that the promotional purpose of a non-real-time financial promotion, its promotional purpose is not in any way disguised or misrepresented. COB 3.8.22R(3) provides that a firm must take reasonable steps to ensure that an individual who makes a real time financial promotion on the firm's behalf makes clear the purpose of the financial promotion at the initial point of communications.	Please see comment on CESR standard 29. COB 3.8.5 and 3.8.22 only require the taking of reasonable steps. They also do not apply to exempt financial promotions. However, COB 2.3.1R and Principle 7 would apply to exempt financial promotions.

[8] This is without prejudice of EU or national provision requiring authorisation and/or other requirements affecting the provision of marketing services.

31. The information provided by an investment firm in a marketing communication must be consistent with the information it provides to its customers in the course of the provision of the investment services.	FSA	COB 3.8.4R (non-real time financial promotions) COB 3.8.22R (real time financial promotions). COB 2.1.3R (clear, fair and not misleading communications) Generally, a firm must take reasonable steps to communicate in a way that is clear, fair and not misleading. For financial promotions, a firm must be able to show that it has taken reasonable steps to ensure: non-real time financial promotions are clear, fair and not misleading; and an individual making a real-time financial promotion does so in a way which is clear, fair and not misleading.	(1) There is no specific consistency requirement in the same terms as CESR Rule 31. The need for consistency is implicit in the COB provisions – it would be misleading to give inconsistent information in a marketing communication to that given in the course of providing the investment service.
32. Any marketing communication must contain at least the information about the investment firm defined in points a) and b) of paragraph 36. In case of a cross border marketing communication, the information provided must in addition state that information about the firm can also be obtained from or through the competent authority of the Member State where the customer resides.	FSA	COB 3.8.2R COB 3.8.3G COB 3.8.22R COB complies with much of the substance of the standard but, for example, Re. Point a): a firm/appointed representative can leave either the firm's address or 'contact point' (e-mail, telephone, fax). Re. Point b): a firm is not required to name FSA as its regulator in a financial promotion which it communicates or approves – unless it is a direct offer financial promotion (COB 3.9.6R).	The COB provisions referred to in column 3 are not absolute requirements, but "reasonable steps" requirements.
33. An investment firm must not use the name of the competent authority in such a way that would indicate endorsement or approval of its services.	FSA	GEN 1.2.2R provides that unless required to do so under the regulatory system, a firm must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a client, expressly or by implication, that its affairs, or any aspect of them, have the approval of the FSA. This requirement does not apply to statements that explain, in a way that is fair, clear and not misleading that the firm is an authorised person or that the firm has permission to carry on a specific activity.	

34. Where a marketing communication refers to a financial instrument or an investment service it must contain at least the information referred to in points a) and d) of paragraph 40.	FSA	COB 3.8 (form and content of financial promotions) provides that the financial promotion must include a fair and adequate description of the nature of the investment or services, the financial commitment and the risks involved. 6.7.30R (Giving the customer notice of the right to cancel)	For financial promotions other than direct offer financial promotions, COB 3.8.8R(1) broadly addresses the points in paragraph 40(a) (although it does not go into quite as much detail). Paragraph 40(d) point is covered under COB 6.7.30R(1). However, under this provision, the customer must be given notice of his right to cancel before the agreement is concluded – rather than in the communication itself.
		COB 3.9 (direct financial promotions)	For direct offer financial promotions, COB 3.9.6R broadly addresses the points in paragraph 40(a) (although it does not go into as much detail). COB 3.9.21R addresses the point in CESR Rule 40(d).

2.3) INFORMATION ABOUT THE INVESTMENT FIRM

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
35. Before providing investment services an investment firm must supply adequate information about itself and the services it provides.	FSA	COB 4.2.5R (Requirement to provide terms of business), COB 5.5 (Information about the firm), esp. COB 5.5.3R (Information required to be disclosed). COB 4.2.5R (1) states that a firm must provide a customer with its terms of business where the firm intends to conduct investment business. The terms of business rules are at COB 4.2.15E and firms must cover in adequate detail the services it will provide. Where the firm conducts investment business, COB 5.5.3R addresses this requirement by stating that a firm must take reasonable steps to ensure that a private customer is given adequate information about the identity and business address of the firm.	COB 4.2.9R contains certain derogations from the ToB requirement – notably in relation to execution-only business and when a customer enters into a transaction as a result of a direct offer financial promotion.

36. An investment firm must provide customers with the following information prior to the commencement of provision of investment services: a) the identity of the investment firm, the (financial) group to which the investment firm belongs, its postal address and telephone number; b) the fact that the investment firm is authorised and/or registered and the name of the competent authority that has authorised and/or registered it; c) the functions that the investment firm performs so that the customer is able to assess the scope of the firm's responsibilities; d) the relevant compensation scheme(s); e) where such a procedure exists, a description of the mechanism(s) for settling disputes between the parties such as an out-of-court complaint and redress mechanism; f) an outline of the firm's policies in relation to conflicts of interest and inducements; g) the languages in which the customer can communicate with the investment firm.	FSA	COB 4.2 (Terms of business and client agreements with customers), especially 4.2.5R, 4.2.7R, 4.2.9R, 4.2.10R, COB 4.2.11E and COB 4.2.15E. 36a) - COB 5.5.3R covers firm identity and business address but not the group The requirements are generally addressed in the agreement contents requirements in COB 4.2. COB 4.2.15E: Covers 36b) at COB 4.2.15E (2) – firm's statutory status Addresses 36c) at COB 4.2.15E (4) and (5), at least on restrictions and services. Identifies the compensation scheme, as mentioned at 36d), at COB 4.2.15E (22) – availability of compensation from the Financial Services Compensation Scheme Identifies the Financial Ombudsman Service in relation to complaints at COB 4.2.15E (21) – covering 36e) – subsequent to complaints made to firms but describes process of complaint to the firm only. Specifies at COB 4.2.15E (13) how the firm will ensure fair treatment of the customer when material interest or conflict of interest may or does arise: re. 36f).	There are a number of derogations from this requirement in COB 4.2.9R, the most relevant of which are execution-only transactions and direct offer financial promotions (however see below in relation to direct offer financial promotions). Where the customer is not a private customer, COB 4.2.5E provides that the customer agreement need only be provided within a reasonable period of the firm beginning to provide investment services to the customer. There are no provisions in the FSA Handbook regarding the language(s) in which the customer can communicate with the firm.

2.4) INFORMATION ON FINANCIAL INSTRUMENTS AND INVESTMENT SERVICES

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
37. An investment firm must inform customers of the key features of investment services and financial instruments envisaged, according to the nature of	FSA	PRIN 7 (Communication with clients) requires a firm to have due regard to the information needs of its customers.	Please see also other areas of comment, above, such as comments on standards 31 & 34.

such instruments and services.			
		COB 4.2.5 (Requirement to provide terms of business to customer) and 4.2.10 (Adequate detail), 4.2.7 (Requirement to enter into a customer agreement) 4.2.15 (Table: Content of terms of business: general requirements), 4.2.16 (Table: Content of terms of business: managing investments on a discretionary basis) COB 4.2.15E applies to terms if business and client agreements. It specifies that ToBs/client agreements 'should, where relevant, include some provision about' 'the services the firm will provide' (5) and 'any restrictions on the types of designated investment in which the customer wishes to invest and the markets on which the customer wishes transactions to be executed; or that there are no such restrictions.' As to the nature of the instruments, further details may be provided, e.g., by risk warnings – COB 4.2.15E (16) and 5.4.3R.	COB 4.2 contains a general requirement that customers be provided with adequate information about the services which a firm will or may deliver. COB 4.2.15 and COB 4.2.16 set out in detail the kind of provisions which a firm's terms of business or customer agreement must generally include if it is to satisfy the overarching requirement that "adequate" information is given to the customer. Note: COB 4.2.9R(1) provides limited derogations from terms of business and client agreement requirements., e.g., in respect of execution-only transactions.
		COB 6.1 and 6.2 (Key Features for packaged products).	The Key Features requirements in COB 6 contain additional specific requirements relating to packaged products. Under COB 6.1.1 R, COB 6.1 to 6.5 generally only apply in where the customer is a private customer, a trustee of an occupational pension scheme or an operator of a stakeholder pension scheme.
40. The information provided to customers can be delivered using standard documentation but must include the following as a minimum:	FSA		The FSA's rules do not preclude the use of standard form terms of business and customer agreement provided that in any case adequate information is given about the firm and the services it will provide. In practice this means that firms may have to provide customers with additional items of

			information not included in a standard form document.
a) a description of the main characteristics[9] of the instrument/service, including the nature of the financial commitment, whether the instruments involved are traded on a regulated market or not and the risks involved;	FSA	COB 4.2.15E (4) & (5) (Content of terms of business provided to a customer: general requirements) COB 4.2.15E (4) refers to restrictions on the types of investments in which the customer may wish to invest and the markets on which transactions may be executed and COB 4.2.15E (5) refers to a description of the services a firm will provide. Firms will normally offer customers access to a restricted range of investments and markets and disclose their characteristics in terms of business or customer agreement in accordance with this provision. There are limited derogations from this requirement, for example, for execution-only business (COB 4.2.9R(1)).	We do not positively require firms to disclose the identity of the markets on which they may transact a customer's business.
		COB 5.4.3 (Requirements for risk warnings) - a firm must take reasonable steps to ensure that the customer understands the nature of the risks involved, before making a personal recommendation, acting as a discretionary manager, executing deals or engaging in stock lending. This general requirement is supplemented with specific requirements in the case of derivatives (5.4.6 – risk warnings in respect of derivatives) and illiquid investments (5.4.7 – risk warnings in respect of non-readily realisable investments).	
		COB 4.2.15 (Content of terms of business – general requirements) (16) –a firm may choose to provide the risk warnings which must be given under COB 5.4.3 by including adequate information in its terms of business or customer agreement – otherwise the relevant information must be given separately.	
		COB 6.5.13 (Nature of scheme) requires the key features document for a packaged product to include a description of the product and a description of the risk factors related	

[9] If the customer envisages undertaking transactions in derivatives, the information provided must include an explanation of their characteristics (especially the leverage effect, the duration of the contract, the liquidity and volatility of the market), a description of their underlying parameters (e.g. equities/interest rates/currencies), and the method to be used to execute the customer's transactions (in particular, whether on a regulated market or not).

		to it. COB 6.5.14 provides detailed guidance on matters that can be included in the description of the risk factors.	
b) price, including commissions, fees and other charges, relating to the transaction, the instrument or service;	FSA	COB 5.7.3 (Disclosure of charges) COB 4.2.15E (6) (Payments for services). These provisions set out requirements for customers to be provided with details of any payment for services payable by the customer to the investment firm whether or not any other payment is receivable by the firm (or to its knowledge by its associates) in connection with any transaction executed by the firm, with or for the customer, in addition to or in lieu of any fees.	There is derogation from the requirement in COB 4.2.15E (6) for execution only business etc in COB 4.2.9R(1). We assume that a stockbroker would for example view item (6) as including a reference to his own charges and the dealing costs which the customer may have to bear.
		COB 6.5.22 – 39 These provisions set out detailed requirements for the provision of information about the charges involved in packaged products.	Under COB 6.1.1 R, COB 6.1 to 6.5 generally only apply where the customer is a private customer, a trustee of an occupational pension scheme or an operator of a stakeholder pension scheme.
c) arrangements for payment and performance;	FSA	COB 4.2.15 (9) (Accounting) - arrangements for accounting to the customer for any transaction executed on its behalf.	There is derogation from this requirement in relation to, for example, execution only business in COB 4.2.9R(1).
		COB 6.5.40R (3)(d) & 4(f)(t) - details to be provided about the methods for disposing of shares or units in packaged products and how the disposal proceeds will be paid.	Under COB 6.1.1 R, COB 6.1 to 6.5 generally only apply where the customer is a private customer, a trustee of an occupational pension scheme or an operator of a stakeholder pension scheme.
d) details on any cancellation rights or rights of reflection that may apply.	FSA	COB 4.2.15 (10) (Right to withdraw) and (23) (Termination). COB 6.7.30 (Giving the customer notice of the right to cancel) These rules require information to be provided about cancellation rights (where applicable) and rights to terminate the customer's agreement with the investment firm.	There is derogation from the requirement in COB 4.2.15E (10) for execution only business in COB 4.2.9R(1).

38. An investment firm must communicate clearly and precisely to the customer all the charges relating to the services or instruments envisaged and how the charges are calculated.	FSA	Section 397 of FSMA (Misleading statements and Practices) Principle 7 (Communications with clients) COB 2.1.3 (Clear, fair and not misleading communication). COB 5.7.3 (Disclosure of charges) and COB 4.2.15E (6) (Payments for services) set out requirements for customers to be provided with details of any payment for services payable by the customer to the investment firm - whether or not any other payment is receivable by the firm (or to its knowledge by its associates) in connection with any transaction executed by the firm, with or for the customer, in addition to or in lieu of any fees.	These are the general overarching requirements as to the provision of adequate information and information which is clear, fair and not misleading. There is limited derogation from the requirement in COB 4.2.15E (6) for execution-only business, for example, in COB 4.2.9R(1).
41. The information to be disclosed to customers on commissions, charges and fees must contain: a) the basis or amount of the charges for transactions, products or services, detailing, where appropriate, the percentage or rate applicable, the frequency with which it is applied, any maximum or fixed minimum fees and, where the commission or fee must be paid in foreign currency, the currency involved;	FSA	COB 4.2.15E (6) (Content of terms of business – general) COB 5.7.3 (Disclosure of charges). Before a firm conducts investment business with a private customer it must disclose in writing the basis or amount of its charges for conducting that business and the nature or amount of any other income receivable by it or to its knowledge by its associate and which is attributable to that business.	
b) if various investment firms are to be involved in a transaction or service, an estimate of the other fees that will be payable.		COB 4.2.10 (Adequate detail) a firm must ensure that its terms of business, including a client agreement with a customer) set out in adequate detail the basis on which the investment business is to be conducted. Where a firm expected that the charges levied by another firm would be material then these general information requirements in COB would apply.	

42. In order to give a fair and adequate description of the investment service or financial instrument, an investment firm must avoid accentuating the potential benefits of an investment service or financial instrument without also giving a fair indication of the risks.	FSA	Section 397 of FMSA (Misleading statements and practices) Principle 7 (Communications with clients) COB 2.1.3 (Clear, fair and not misleading communication) COB 3.8.4 (Non-real time financial promotions: fair clear and not misleading; comparisons) COB 3.8.8 (Specific non-real time financial promotions: general requirements) and 3.8.9 (Guidance). COB 3.8.8 requires a promotion to include a fair description of the nature of the service or investment being promoted, the commitment from the customer it will require and the risks involved. COB 3.8.9 in guidance indicates that a *fair and adequate* explanation is one which avoids accentuating the benefits of the investment without also giving a fair indication of the risks. The FSA would expect this approach to apply whenever a firm gives information about its services or investments.	The general overarching requirements of Principle 7 and COB 2.1.3 require the same standard as that most clearly met in COB 3.8.8 and 3.8.9 Standard 42 may also be met in COB 4.215E and COB 5.4 (risk warnings).
43. The fair and adequate description of a compound product must contain all the relevant characteristics of the composite instruments including, for example, the different services involved, the duration of the product, whether the instrument involves credit, the interest due, etc.	FSA	Principle 7: requires a firm to have due regard to the information needs of its customers. COB 4.2.10 (Adequate Detail - in terms of business) COB 6.5.13R (Nature of a life policy or scheme or stakeholder pension scheme) imposes additional requirements in relation to life policies, regulated investment schemes and stakeholder pension schemes COB 7.9.3 (Restrictions on lending to private customers) contains some specific *prior* requirements applying where a firm arranges for a customer to draw on lines of credit where the firm is acting as an investment manager.	The FSA would expect adequate disclosure in a firm's terms of business of any particular features of investments or services of a compound or composite kind where the firm knew or ought reasonably to be aware that this would be of material significance for the customer.

44. The information on financial instruments and investment services must not state or imply that the performance of services or of the investment is guaranteed unless there is a legally enforceable arrangement to meet in full an investor's claim under the guarantee. Sufficient detail about the guarantor and the guarantee must be provided to enable the investor to make a fair assessment of the guarantee.	FSA	Principle 7. COB 2.3.1R COB 3.8.4 (Non –real time financial promotions to be fair clear and not misleading) COB 3.8.7 (Guidance on clear, fair and not misleading) (2), states that (except in the case of life policies and deposits) an investment should not be described as guaranteed unless this is supported by a legally enforceable agreement with a third party in which case sufficient information about the guarantee and the guarantor should also be given.	
45. When information provided refers to a particular tax treatment the investment firm must advise the customer that the tax treatment depends on his personal situation and is subject to change and that he may wish to obtain independent tax advice.	FSA	COB 2.3.1R. is of general application (fair, clear and not misleading). COB 3.9.19 and 3.9.20 (Taxation – direct offer financial promotions) a direct offer financial promotion must include a summary of the taxation of any investment to which it relates and the taxation consequences for investors generally.	COB 3.9.19R and COB 3.9.20R apply in the case of financial promotions which are capable of acceptance by the customer. This rule only applies in the case of direct offer financial promotions. It does not warn the customer to seek independent tax advice.

39. If information provided by an investment firm refers either to the past performance or to a forecast of the future performance of a financial instrument or investment service, this information must be relevant to the instrument or service being promoted and the source of the information must be stated.	FSA	COB 3.8.4 (Non-real time financial promotions: fair, clear and not misleading – and comparisons); Guidance on compliance with COB 3.8.4 COB 4 Annex 4 R (Table C – (2) Quoting out of date yields; (4) Running and redemption yields; Table G (3) High Income Products – quoting annualised rates of return COB 3.8.11 (Specific Non – real tine financial promotions: past performance COB 3.8.12 G (Guidance on the use of past performance information) COB 3.8.13 (past performance – packaged products); COB 3.8.17 (Specific Non – real time financial promotions: projections for life policies or schemes); COB 6.6 (Projections for packaged products)	The FSA's general rules on the use of past performance information in financial promotions necessarily require information to be relevant to the investment which is being promoted – see for example COB 3.8.12G(1) and (2). These provisions explain what is suitable/relevant information, i.e., that which prevents promotions from inducing belief that previous favourable performance will necessarily be repeated and warnings from firms that fit the fin prom itself and its intended audience. The FSA's rules in this area are subject to possible change with requirements for enhanced standardised information being introduced – see CP 183 (Standardising past performance) (May 2003). The FSA requires any projection of a future return in relation to packaged product to be given on a prescribed basis. The FSA has given specific guidance on the use of current and projected yield figures in corporate bonds and other similar offerings.
46. If a reference to historical performance of investment services or financial instruments is made, it must be clearly expressed that the figures refer to the past, and that they may not constitute reliable guidance as to the performance of these services and instruments in the future.	FSA	COB 3.8.11 (Specific Non-real time financial promotions: past performance) There must be "suitable text" in the specific non-real time financial promotion drawing attention to the fact that past performance will not necessarily be repeated, either in relation to specified investments or in relation to the firm.	These requirements are generally limited to non-exempt financial promotions.

47. The use of simulated returns is prohibited. If the information refers to actual returns based on past performance: a) the reference period must be stated and must not be less than one year; b) where returns relate to more than one year, they must either be reduced to a compound annual rate or stated separately as annual returns; c) where a compound annual return is presented for more than one year, a reference period of five years must be used provided the relevant data are available. If the relevant data are not available over a reference period of five years (e.g. because the financial instrument or the investment portfolio has not existed for such a period), the returns may be measured from the issue date or the date on which the portfolio was established; d) where a benchmark is used to compare returns, it must be identified and its reference period must be relevant, clear and sufficient to provide a fair and balanced indication of performance of the investment service or financial instrument being promoted; e) if the return figures are not denominated in local currency, the currency used must be stated and reference shall be made to the currency risk for the return in local currency; f) the information for the comparison should be based on net performances or if it is based on gross performances commissions, fees or other charges have to be disclosed.	FSA	COB 3.8.11 and COB 3.8.12 (Specific Non – real time financial promotions: past performance) COB 3.8.13 (past performance information for packaged products) COB 3.8.11R and 3.8.12G are not as prescriptive as Standard 47 but are instead based on providing "a fair and balanced indication of performance" and on firms meeting the general requirement to have taken reasonable steps to be "clear, fair and not misleading" (as stated in COB 3.8.4R(1)). COB Annex 4.	The FSA's rules on past performance are more specifically tuned to the CESR standard in relation to packaged products, particularly as to the periods over which performance should be illustrated. The FSA requirements are generally limited to non-exempt financial promotions. The FSA has issued a consultation paper on past performance - CP 183 (Standardising past performance) (May 2003). The COB provisions proposed in the CP 183 are more specific than the existing COB provisions but are not as prescriptive as the CESR standards.

48. The relevant provisions on actual returns shall apply to the method of calculating and presenting any future returns. Information on estimated future returns must state that these future returns are forecasts. Such forecasts must in turn be based on objective, realistic assumptions of investment returns.	FSA	COB 3.8.17 (Specific Non – real time financial promotions: projections for life policies or schemes) projections must comply with COB 6.6. 6.6 (Projections for packaged products) COB Annex 4.	The FSA's rules on the use of projections are specific to packaged products; guidance on the use of yields and expressions of future growth is given in COB 3 Annex 4 in relation to bonds. The FSA's control on the use of forecasts in relation to non-packaged products relies on the general requirements.
49. Any estimate, forecast or promise contained in the information on financial instruments and investment services must be clearly expressed, must state the assumptions on which it is based, must be relevant and must not mislead the customer.	FSA	COB 3.8.17 and COB 6.6 (Projections for packaged products); COB 3 Annex 4.	See comments above in relation to CESR Rule 48.
50. If information provided contains comparisons, the requirement of being fair, clear and not misleading means that the comparisons must: a) be based either on data from attributed sources or disclosed assumptions; b) be presented in a fair and balanced way; c) take reasonable steps not to omit any fact that is material to the comparison.	FSA	COB 3.8.4 (Non real – time financial promotions; fair clear and not misleading; comparisons). 50a) - COB 3.8.5E (1)(b): firm should take reasonable steps to ensure that, for a non-real time financial promotion, any statement of fact, promise or prediction is clear, fair and not misleading and discloses any relevant assumptions 50c) - COB 3.8.5E (1)(d): firm should take reasonable steps to ensure that, for a non-real time financial promotion, inter alia a comparison or contrast is presented in a fair and balanced way which is not misleading 50c) - COB 3.8.5E (1)(h): firm should take reasonable steps to ensure that, for a non-real time financial promotion, it does not omit any matters the omission of which causes the financial promotion to be clear, fair and not misleading	Note that these requirements are generally limited to non-exempt financial promotions.

2.5) RISK WARNINGS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

51. An investment firm must provide its customers with risk statements that warn of the risks associated with financial instruments and transactions having regard to the customer's knowledge, experience, investment objectives and risk profile.	FSA	Principle 7 (Communications with clients) requires a firm to 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. Principle 9 (Customers: relationships of trust) requires a firm to take reasonable care to ensure the suitability of its advice and discretionary decisions. COB 5.4.3 (Requirement for risk warnings) COB 5.4.6 (Risk warnings in respect of warrants and derivatives); COB 5.4.6A (Risk warnings in respect of retail securitised derivatives); COB 5.4.6 C (Risk warnings in respect of certain derivatives listed in other EEA states); COB 5.4.7 (Risk warnings in respect of non-readily realisable investments); COB 5.4.8 (Risk warnings in respect of penny shares); COB 5.4.9 (Risk warnings in respect of securities which may be subject to stabilisation);	COB 5.4.3R refers to a private customer's understanding of the nature of the risk involved. A firm that triggers the requirement (making a personal recommendation, acting as discretionary investment manager, etc) is subject to a reasonable steps requirement to ensure that the private customer understands the nature of the risk involved. The requirements in COB 5 to provide risk warnings are based on giving standard form warnings applicable to particular types of transactions or instruments (see under Implementing measures) rather than a customer's particular circumstances or situation. The rules do not specifically refer to having regard to the customer's knowledge, experience, investment objectives and risk profile but this is implicit on the basis of the requirement in Principle 9 to ensure suitability. Further, customer understanding is an amalgam of knowledge, experience, investment objectives and risk profile.
		COB 5.4.10 (Stock lending); COB 5 Annex 1 (Warrants and derivatives risk warning notice); COB 4.2.10 (Adequate detail in terms of business) COB 4.2.15 (16) customers understanding of risk (requirements for terms of business).	

53. An investment firm must provide its customers with risk warnings as appropriate. Instances where the type of instrument or transaction envisaged makes specific risk warnings necessary include: - financial instruments not traded on a regulated market; - transactions in illiquid financial instruments; - leveraged transactions; - financial instruments subject to high volatility in normal market conditions; - securities repurchase agreements or securities lending agreements; - transactions which involve credit, margin payments or the deposit of collateral; - transactions involving foreign exchange risk.	FSA	Please see the comments above in relation to CESR Standard 51. We consider appropriate circumstances to be personal recommendation, discretionary investment management arranging/executing deals in warrants/derivatives, stock lending: COB 5.4.3R. Firms remain subject to Principle 7 and Principle 9, as specified in relation to CESR Standard 51.	
53 ctd. The investment firm must also, where necessary, inform the customer of risks associated with: a) clearing house protections (e.g. that although the performance of a transaction is sometimes 'guaranteed' by the exchange or clearing house this guarantee will not necessarily protect the customer in the event of default by the investment firm or another counterparty); b) suspension of trading or listing (e.g. that under certain trading conditions it may be impossible to liquidate a position); c) insolvency (e.g. that in the event of default of an investment firm involved with the customer's transaction, positions may be liquidated automatically and actual assets lodged as collateral may be irrecoverable).		See the comments above on CESR Standard 53 and in relation to CESR Standard 51. COB 5 Annex 1 delivers each of these other than (c) but *only* in respect of warrants and derivatives accordingly the FSA would rely on its general requirements. Firms remain subject to Principle 7 and Principle 9, as specified in relation to CESR Standard 51.	
52. Risk warnings must be given due prominence. They must not be concealed or masked in any way by the wording, design or format of the information provided.	FSA	Principle 7 (Communications with clients) COB 5.4.3 (Requirements for risk warnings) COB 2.1.3 (fair, clear and not misleading communications) COB 3.8.5 (1) (f) (risk warnings should not be obscured or diminished)	Communications must be fair, clear and not misleading. COB 5.4.3 requires a firm to take reasonable steps to ensure that a private customer understands the nature of the risks involved. Firms may choose to fulfil COB 5.4.3R in their terms of business/client agreements in relation to warrants or derivatives; non-readily realisable investments; penny shares; securities which may be subject to stabilisation; stock lending activity - COB 4.2.15E (16).

54. Risk warnings about derivatives must disclose that the instrument can be subject to sudden and sharp falls in value. Where the investor may not only lose his entire investment but may also be required to pay more later, he must also be warned about this fact and the possible obligation to provide extra funding.	FSA	COB 5.4.3 (Requirements for risk warnings) COB 5.4.6 (Risk warnings in respect of warrants and derivatives – other than retail securitised derivatives and certain EEA listed derivatives) COB 5.4.6A (Risk warnings in respect of retail securitised derivatives) COB 5.4.6 C (Risk warnings in respect of certain derivatives listed in other EEA States) COB 5 Annex 1 (Warrant and derivatives risk warning notice), esp. at para. 9 (funding a deficit).	CESR Standard 54 is met in the COB provisions listed. The relevant rules in COB 5.4.6 refer to COB 5 Annex 1E. The substance of the warning is given in COB 5 Annex 1E at paragraph 9 and warns of potential loss of the investment, requirement to pay more later and the potential obligation for further funding.

2.6. CUSTOMER REPORTING

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

55. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.	FSA	COB 8.1.3R (Requirement to confirm a transaction) requires a firm that executes a sale or purchase of a financial instrument with or for a customer to promptly dispatch a written confirmation of the essential details of the transaction to the customer. COB 8.1.3R allows the information to be provided to the customer's agent.	There is scope for derogation from the requirement but on the basis that we believe sufficient protection is in place.. For example, COB 8.1.6R provides that the requirement in COB 8.1.3R does not apply: (2) in relation to saving schemes for regulated CISs and investment trusts; or (3) & (4) if the firm has agreed with the customer that individual confirmations are not required, provided the information is included in the periodic statement. In the case of an investment manager, it is only necessary to take reasonable steps to determine that separate confirmations are not required in relation to non-contingent liability financial instruments.
58. No later than the first business day following the execution of the transaction or receipt of confirmation of execution by a third party, an investment firm must send to the customer[10], by fax, mail or electronic means (provided the firm reasonably believes that the customer can store it on a permanent medium), a contract note or confirmation notice which includes the following information: a) the name of the firm; b) the name of the customer account; c) the time of execution, if available, or a statement that the time of execution will be supplied on request; d) date of execution; e) the type of transaction; e.g. buy, sell, subscription etc.; f) the market on which the transaction was carried out or the fact that it was carried out off-market; g) the financial instrument and the quantities involved in the transaction; h) the unit price applied and the total consideration;	FSA	COB 8.1.5E (Essential details and prompt despatch) and 8.1.15E (Content of a confirmation of transaction). COB 1.8.2G (Additional guidance in respect of electronic communication with or for customers) COB 8.1.4G allows confirmations to be posted to a secure website (although it is necessary to send a hard or soft copy of the confirmation directly to the customer if the website version is not accessed within 5 days). The guidance on the use of electronic media for communications does not require the firm to have a reasonable belief that the customer can store it in a permanent medium.	COB 8.1.15E sets out detailed contents requirements for confirmations and meets standard 58 a), b), c), d), e), g), h), i) (implicit), j), k) (customer's name/designation and account number, but not time limit or settlement procedure). Standard 58 f) – information on the market on which the transaction was carried out/off-market - does not appear to be met in COB 8.1.15E. COB 1.8.2G provides that if a firm wishes to use any form of electronic communication with a customer, the firm should be able to demonstrate the customer wishes to communicate with this form of media. COB 8.1.15 covers most of paragraphs a) – k) of CESR Rule 58. However, it does not fully address f), i) (in so far as it deals with "related parties") and k) (other than a requirement to state the due date for payment).

[10] The reference to "send to the customer" includes to a tied-agent, other than the firm, nominated by the customer in writing.

i) whether the customer's counterparty was the investment firm itself or any related party; j) the commissions and expenses charged; k) the time limit and procedure for the settlement of the transaction, e.g. details (name and number) of the bank account and securities account. If a transaction is not executed within one business day of receipt of the customer order, an investment firm must send a written confirmation of the order to the customer. The confirmation notice must include customer order details, date and time of reception and, where applicable, date and time of transmission.		Principle 7 (Communications with clients) COB 7.6.4R (Timely execution) COB 8.1.5E (Essential details and prompt despatch)	COB 7.6.4R requires timely execution of transactions – execution as soon as reasonably practicable – unless this would not be in the best interest of the customer. COB 8.1.5E provides that where a firm executes a transaction, it must generally despatch a confirmation on the business day following the day on which the transaction was executed. If a transaction is not executed within one business day, there is not a specific requirement that the firm must send a written confirmation of the order to the customer. We would expect firms to observe Principle 7 (Communications with clients) requiring a firm to 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. COB 8.1.5E allows the firm and the customer to agree a longer period for the delivery of the confirmation.
59. The investment firm must notify the customer immediately if it refuses to accept or transmit an order. The firm must inform customers as soon as possible if it is unable to transmit their orders.	FSA	Principle 7 (Communications with clients).	There is no express and specific equivalent to this requirement in CESR Rule 59. FSA Principle 7 provides that a firm must pay due regard to the information needs of its clients. We would expect firms to observe this principle and notify and inform customers in the circumstances envisaged in CESR Rule 59.

56. Where an investment firm has control of, or is holding assets belonging to a customer, it must arrange for proper identification and regular confirmation of such assets to the customer.	FSA	COB 9.1 (Client assets) contains detailed provisions concerning the obligations of a firm safeguards and administers its clients' financial instruments. These include requirements on: • the segregation of client assets from proprietary assets in the firm's records; • the registration and recording of dematerialised or immobilised financial instruments and the holding of certificates relating to financial instruments; • the assessment and terms of appointment of subcustodians; • the provision of statements to the client (or its nominated representative) in writing, as often as necessary or as often as agreed with the client, but in any event at least annually; and the performance of reconciliations between the records of the firm with the record of any other person that holds financial instruments for which the firm is accountable. COB 8.2.11E: a periodic statement is to set out the contents and value of a portfolio of designated investments. The statement must, promptly and at suitable intervals, provide the customer with a written statement of adequate information on the value and composition of the customer's account or portfolio at the end of the period covered: COB 8.2.4R.	CESR Standard 56 appears to go beyond safeguarding and administration of financial instruments (the activity that triggers COB 9.1). It also applies to firms that have "control" of customer assets. Control would appear to envisage the circumstances covered by COB 9.2 (Mandates). • However, the FSA rules do not impose "identification" requirements along the lines of CESR Standard 56 merely because a firm has "control" over assets. It is common for a client to directly appoint a custodian and to provide its investment manager with a mandate to control those assets for trading purposes. In such a case the manager's "confirmation" requirement would be covered by COB 8.2.11E.
		Client statements in writing must be sent at least annually or more frequently if so agreed with the client (COB 9.1.59R). COB 9.1.59R(2) provides that the statement may be provided to a representative nominated by the client. COB 9.1.61R(1) provides that a firm may, with the client's prior written agreement, retain the statements that are required to be sent to a client who is ordinarily resident outside of the United Kingdom.	

60. An investment firm must send to its customer at least once a year or as often as agreed with the customer a statement of all assets held in custody on behalf of each customer. The statement must also: a) identify assets which have been pledged to the firm or any third parties as collateral; b) identify assets which have been lent; c) clearly and consistently show movement of assets based on either trade date or settlement date.	FSA	COB 8.2.4R (Requirement for a periodic statement), 8.2.10E (Periodic statements – timing and content) and 8.2.12E (Periodic statements – additional information required for a discretionary managed portfolio). COB 9.1.59R (Production and despatch of client statements) and 9.1.64R (Content of client statements).	Under COB 8.2.4R, 8.2.10E and 8.2.12E, where a firm acts as a discretionary investment manager it must provide its client with periodic statements, at least annually. These periodic statements must include details of assets loaned or pledged and particulars of each transaction entered into for the portfolio during the period. Under COB 9.1.59R and COB 9.1.64R, where a firm safeguards and administers financial instruments for customers it must, at least annually, provide the customer with a statement in writing. These statements must identify any assets which are being used as collateral or have been pledged to third parties. CESR Rule 60 applies to assets held "in custody" and therefore would seem to apply to custodians. The specific information requirements in sub-paragraphs (a) to (c) are only partially covered by a custodian's reporting obligations under COB 9.1.64. However, they are covered by COB 8.2.12, which applies to portfolio managers.

57. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.	FSA	COB 8.2 (Periodic statements) provides that where a firm operates a customer's account containing uncovered open positions in contingent liability investments, it should supply the customer with a regular statement on a timely basis, providing information on the value and composition of the customer's portfolio. (COB 8.2.1R, 8.2.4R and 8.2.6R.)	An intermediate customer may ask not to receive a periodic statement. A firm need not send the statement if it has taken reasonable steps to establish that the intermediate customer does not wish to receive it.
61. Where an account includes uncovered open positions[11], an investment firm must send to its customer a monthly statement, which includes the following: a) information about the options contract, e.g. market price, date of exercise, exercise price, as well as any incidental costs connected with the exercise; b) each payment made by the customer as a result of the margin requirements in respect of the open positions and the amount of the unrealised profit or loss attributable to open positions; c) the resulting profit or loss arising from positions closed during the period.	FSA	COB 8.2.1R(2), 8.2.2G, 8.2.4R (Requirement for a periodic statement), 8.2.10E(2)(c) 61a) – COB 8.2.13E 4: option account valuations in respect of each open option contained in the account on the valuation date stating: market price, exercise price, trade price and date for opening transaction …and the investment involved. 61b) – in relation to each open position, periodic statement must include information on the unrealised profit or loss to the customer (before deducting or adding any commission which would be payable on closing out) COB 8.2.13E 2. 61c) – in relation to each transaction executed during the account period to close out a customer's position, the resulting profit or loss to the customer after deducting or adding any commission COB 8.2.13E 3. As an alternative, in COB 8.2.13E 2 & 3, the statement may show the net profit or loss in respect of the customer's overall position in each contract.	COB requires provision of a written statement containing adequate information on the value and composition of the customer's account – to be provided promptly and on a monthly basis when an account includes uncovered open positions in a contingent liability investment. The contents of the statement are at COB 8.2.13E and reflect those in CESR Rule 61. COB 8.2.13E does not require information to be given on the date of exercise. Under COB 8.2 the requirements concerning open positions only apply where they are in a contingent liability investment. However, the CESR obligations also cover short selling of cash instruments and investments (which are not covered by the FSA Rules because they do not involve contingent liability investments.)

[11] Examples of uncovered open positions include:
(1) short positions on cash instruments;
(2) selling a call option on an investment not held in the portfolio;
(3) unsettled sales of call options on currency in amounts greater than the portfolio's holding of that currency in cash or in readily realisable securities denominated in that currency;
(4) transactions having the effect of 'selling' an index to an amount greater than the portfolio's holdings of designated investments included in that index.

3. THE "KNOW-YOUR-CUSTOMER STANDARD" AND THE DUTY TO CARE

3.1 INFORMATION FROM THE CUSTOMER

Standard /Rule		Implementing measure	Comments
62. Prior to providing any investment service to a customer for the first time and throughout the business relationship, an investment firm must be in possession of adequate documentation on the identity of the customer, as well as the identity and legal capacity of any representative of the customer.	FSA	COB 5.2.5R: - narrower than Standard 62 - Before giving a personal recommendation to, or acting as an investment manager for, a private customer, a firm must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer that is relevant to the services that the firm has agreed to provide.	The United Kingdom legal and regulatory regime treats the identification of clients and their representatives as an aspect of the provisions dealing with anti-money laundering ("**AML**") measures. See below in relation to CESR Rule 64 for more detail.
In addition, prior to providing any investment service the investment firm must seek to obtain from the customer information enabling an investment firm a. *to determine whether the investment services envisaged are appropriate for the customer*[12] *and* b. *to meet any duties owing to the customer in respect of the services to be provided.*		Principle 9 (Customers: Relationship of Trust) states that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.	

12 This is not considered to be investment advice according to the definition of the paper.

		COB 5.2.5 (Requirement to know your customer) COB 5.3.5R (Requirement for suitability generally)	A firm must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer that is relevant to the services that the firm has agreed to provide. These steps must be taken before the firm: • gives a personal recommendation to a private customer; or • acts as an advisory or discretionary investment manager to a private customer. The KYC and suitability requirements only apply before a personal recommendation is provided or discretionary management takes place. What is suitable and what appropriate may be substantially the same. CESR Standard 62, however, applies when any investment service is provided. 62b) refers to information enabling a firm to meet any duties owing to the customer. COB 5.2.5R refers to information relevant to the services that the firm has agreed to provide. Arguably COB wording includes the substance of Standard 62b). This area is under consideration n relation to Article 18(4) of the draft ISD.

63. The "know-your-customer" standard applies to each investment firm having a direct business relationship with the customer with respect to investment services. However, where two or more investment firms are involved in providing an investment service and each has a direct relationship with the customer, an investment firm may rely on the information received from another of such investment firms.	FSA	COB 2.3 (Reliance on others) COB 2.3.3R allows a firm to obtain the information required under COB 5.2.5R from another person to the extent that the firm can show that it was reasonable for the firm to rely on information provided to it in writing by another person. COB 2.3.4E indicates that in relying on this rule, a firm should take reasonable steps to establish that the person providing the information is not connected with the firm and is competent to provide the information. COB 2.3.5(1)G indicates that a firm may generally rely on information provided to the firm in writing by an unconnected authorised person (which would include a UK established investment firm or an investment firm that has passported into the UK). COB 2.3 goes beyond the exemption provided for in CESR Rule 63, because it allows a firm to rely on information provided by somebody other than an investment firm, provided the firm can show that it was reasonable for it to do so.	The position is further complicated by COB 4.1.5R (Agent as client), which amongst other things achieves the same result as COB 2.3 by a different route. It might be implicit in CESR Rule 63 that for other purposes, a customer includes a person with whom the investment firm has an *indirect* relationship. However, under COB 4.1.5R, provided the relationship with the underlying "client" is maintained via an agent, that agent can be treated as a client unless COB 4.1.5(1)(b) applies.
64. An investment firm must obtain evidence of the identity of its customers in accordance with national laws and regulations implementing the provisions of Council Directive 91/308 on the prevention of the use of the financial system for the purpose of money laundering. Until such evidence is obtained, an investment firm must not provide any investment services to the customer concerned.	FSA UK Parliament	The Money Laundering Regulations 1993 (SI 1993/1933)	Directive 91/308 is implemented into United Kingdom law by the Money Laundering Regulations 1993. The FSA has set out a parallel set of rules in its Money Laundering Sourcebook ("ML"). ML creates a set of regulatory provisions for investment firms concerning anti money laundering issues. These apply in addition to the criminal provisions in the Money Laundering Regulations 1993. ML 3.2.2R sets out certain exemptions from the identification duty in ML 3.1.3R and certain cases in which evidence of identity may be regarded as sufficient. However, these are based on the provisions of the Money Laundering Regulations 1993.

		ML 3.1.3R (Identification of the client – the duty) requires a firm to take reasonable steps to find out who its client is by obtaining sufficient evidence of the identity of any client who comes into contact with it to be able to show that the client is who he claims to be. ML 3.1.8R (Identification of the client: timing) the identification obligation must be complied with as soon as reasonably practicable after it has contact with a client with a view to agreeing with the client to carry out an initial transaction or reaching an understanding with the client that it may carry out future transactions.	Under ML 3.1.8R, a firm can commence the provision of investment services before it has completed the identification checks, provided those checks are completed as soon as reasonably practicable. Even though this is in accordance with the Money Laundering Regulations 1993, and the JMSLG Guidance Notes indicate that the firm may only provide investment services before the information has been received in exceptional circumstances, this appears to be contrary to the last sentence of CESR Rule 64.
		ML 3.1.4G - the FSA will have regard to the JMSLG Guidance Notes in determining whether a firm has complied with its obligation to identify the client under ML 3.1.3R. Paragraph 4.38 of the Joint Money Laundering Steering Group's Guidance Notes for the Financial Sector: "Any occasion when business is conducted before satisfactory evidence of identity has been obtained must be in exceptional circumstances only and those circumstances justified with regard to the risk."	ML is currently under review as part of the implementation of the 2nd Money Laundering Directive. ML is currently under review as part of the implementation of the 2nd Money Laundering Directive.

		If the client does not supply evidence of identity as soon as reasonably practicable, the firm must discontinue the provision of any investment service and bring to an end any such understanding, unless the firm has informed the National Criminal Intelligence Service, which is the law enforcement agency with responsibility in this area.	ML 3.1.8R(2) goes further than Regulations 7(1) and (6) of the Money Laundering Regulations 1993 because the carve-out that allows the relationship to continue where NCIS has been notified is not limited to one off transactions. This is a more technical point. It appears reasonable that the relationship should not be terminated where the competent law enforcement agencies request that it continue.
65. An investment firm must seek to obtain information on the customer's knowledge and experience[13] in the investment field, his investment objectives and risk profile,[14] his financial situation/capacity and any trading restrictions applicable to the customer. The extent of the information required will vary according to the standards laid down in paragraph 62, second subparagraph.	FSA	COB 5.2.5 (Requirement to know your customer) A firm must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer that is relevant to the services that the firm has agreed to provide – before giving a personal recommendation to, or acting as an investment manager for, a private customer. COB 5.2.11G(1)(a) (Guidance on the collection of information about a private customer) - the information collected should, at a minimum, provide an analysis of a customer's personal and financial circumstances leading to a clear identification of his needs and priorities so that, combined with attitude to risk, a suitable investment can be recommended.	The meaning of "The extent of the information required will vary according to the standards laid down in paragraph 62, second subparagraph.." is not entirely clear. The requirements of COB 5.2.11G(1) are not as specific as the requirements in CESR Rule 65 and the corresponding footnote but, of course, the requirements in CESR Rule 65 themselves vary according to the standards in paragraph 62. Further, points like trading restrictions are addressed in COB 4.2.15E (4). Execution-only transaction exemption from personal or financial information requirements applies – see COB 5.2.2G – except where ML Sourcebook applies.
		COB 4.2.15E(3) & (4)	Please see the comments on CESR Rule 118 in relation to the requirement to include details of the customer's investment objectives and restrictions in the firm's agreement with the customer.

[13] Information on the customer's investment knowledge and experience includes the types of services, transactions and products the customer is familiar with and his trading history, i.e. the nature, volume, frequency and timeframe of his transactions.

[14] Information on the customer's investment objectives and risk profile includes the temporal horizon of the customer's future investments, as well as his preferences regarding risk-taking and recurrent income.

66. An investment firm shall be entitled to rely on the information provided by the customer, unless it is manifestly inaccurate or incomplete or the firm is aware that the information is inaccurate or incomplete. In this case paragraph 69 applies.	FSA	COB 5.3.5R (Requirement for suitability generally) COB 5.3.5R(1) and (2) provide that in determining suitability, a firm must have regard to the facts disclosed by the private customer, and other relevant facts about the private customer of which the firm is, or reasonably should be, aware. This requirement would prevent the firm from relying on information provided by the private customer in the circumstances envisaged by the second part of CESR Rule 66. Again, COB 5.3 applies in relation to personal recommendations and investment management only.	
67. An investment firm must take reasonable care to keep the customer profile under review, also taking into consideration the development of the relationship between the investment firm and the customer. The customer must be advised that he should inform the investment firm of any major changes affecting his investment objectives, risk profile, financial situation/capacity, trading restrictions, or the identity or capacity of his representative. Should the firm become aware of a major change in the situation previously described by the customer, it must request additional information.	FSA	Under COB 5.2.6G a firm that advises a private customer, or exercises discretion for a private customer, on a continuing basis should keep its information about that customer under regular review. A firm that acts for a private customer on an occasional basis should undertake such a review whenever the customer seeks advice.	.
			There is no express requirement to advise the customer that he should inform the investment firm of any major changes affecting the matters cited. However, such a warning would assist in establishing that a firm had taken reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer.

		COB 5.2.6G, combined with the obligations in: • COB 5.3.5R(1) and (2) to have regard to relevant facts of which the firm is, or reasonably should be, aware; and • COB 5.2.5R to take reasonable steps to ensure that it is in possession of sufficient personal and financial information about the customer, indicate that the firm should request additional information if it becomes aware of a major change in the situation previously described by the customer. There is no express equivalent of the requirement to request information if the firm becomes aware of a major change in the situation previously described by the customer. However, this may well be implicit in the rules cited here. Please see the comments in relation to CESR Standard 62 regarding the limited services to which COB 5.2 applies.	
68. An investment firm must draw up and implement appropriate written internal policies and procedures to keep and update all documents required for customer identification and profile, as well as records of customer addresses and telephone/fax numbers.	FSA	COB 5.2.9R (and COB 5.2.5R). A firm must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about the customer relevant to the services that the firm has agreed to supply. The firm must make and retain a record of a private customer's personal and financial circumstances.	COB requires firm to make and retain record of customer's personal and financial circumstances that it has obtained in satisfying COB 5.2.5R. See the comments in relation to CESR Standard 62 regarding the limited services to which COB 5.2 applies. Written internal policies and procedures on keeping & updating are not prescribed in COB but may be implicit in the substance of the COB rules.
69. An investment firm must warn the customer that any refusal to supply information may adversely affect the ability of the investment firm to act in the best interest of the customer. If a customer refuses to supply information the investment firm must warn him in writing that this may adversely affect the ability of the investment firm to act in his best interest.	FSA	COB 5.2.7G If a private customer declines to provide relevant personal and financial information, a firm should not proceed to give a personal recommendation to, or act as an investment manager for, a private customer without promptly advising the customer that the lack of such information may affect adversely the quality of the services which it can provide. This provision indicates that the firm should consider providing written confirmation of that advice.	The substance of the provisions in COB 5.2.7G is similar to CESR Standard 69. As with the other provisions in this area, the COB requirements only extend to the provision of investment management services and personal recommendations for private customers.

70. The customer should not be invited not to provide information.	FSA	Principle 1 (Integrity) & Principle 9 (Customers: Relationship of Trust) COB 5.2.5R.	There is no express equivalent to this CESR Rule. If a firm were to invite the customer not to provide information, it is likely that the firm would have acted contrary to: • Principle 1, which provides that a firm must conduct its business with integrity; and • Principle 9, which provides that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely on its judgement. It would also be difficult to reconcile such activity with COB 5.2.5R, which requires a firm to take reasonable steps to ensure that it is in possession of sufficient personal and financial information about the customer.

3.2 THE INVESTMENT FIRM'S DUTY TO CARE FOR THE CUSTOMER [15]

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
72. When an investment firm provides investment advice to the customer, it must have reasonable grounds to believe, in light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship, that this investment advice is suitable for him. The investment firm must communicate the reasons why the advice is considered to be in the best interest of the customers at the time the advice is given.	FSA	Principle 9 (Customers: Relationship of Trust) - a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its decisions. COB 5.3.5R (Requirement for suitability generally) - a firm must take reasonable steps to ensure that it does not make any personal recommendation to a private customer to buy or sell a financial instrument unless the recommendation or transaction is suitable for the private customer, having regard to the facts disclosed by him and other relevant facts about the private customer of which the firm is or reasonably should be aware.	The requirement to communicate the reason why the transaction is considered to be suitable for the customer only applies for certain types of transaction (for example in relation to certain pension schemes and collective investment schemes).

[15] After having obtained the information from the customer according to chapter 3.1., the extent of an investment firm's duty to care for the customer depends on the nature of the investment service to be provided: where the service to be provided is a full hand-holding service of transmission or execution of order par. 72-76 apply; where the service to be provided is the pure transmission or execution of orders (This implies that no investment advice is provided and that suitability will not be tested on a transaction-by-transaction-basis) par. 74, 76 and 77 apply.

73. Before accepting an order an investment firm must take reasonable care to verify that the order is suitable for the customer in light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship.	FSA	COB 5.3.5R (Requirement for suitability generally) – suitability test based on making a personal recommendation or effecting a discretionary transaction , the firm having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is, or reasonably should be, aware. Principle 6 (Customers' interests) states that a firm must pay due regard to the interests of its customers and treat them fairly.	Footnote 12, which replicates paragraph 71 of the CESR Standards, indicates that this provision does not apply where the service to be provided is the pure transmission or execution of orders. See the comments on CESR Standard 72 for a discussion of the suitability obligations that apply in relation to the making of personal recommendations. The effect of CESR Rule 73, when combined with paragraph 71 of the CESR Standards in the context of a relationship that is not pure execution only, appears to be that the suitability test should apply whenever transactions are effected, regardless of whether a personal recommendation is made. There is no express equivalent of this concept in the FSA Rules – although Principle 6 may have the same effect. The issue is likely to be affected by the on-going debate over Article 18(4) – (4b) of ISD 2.
75. Where an investment firm receives an order regarding a transaction that it considers – in the light of the information disclosed to it by the customer and the information available to it, including the information arising from the customer relationship – not suitable[16] for the customer, it must advise the customer accordingly and provide appropriate information on the transaction, including any necessary risk warning. The investment firm may transmit or execute the order only if the customer nonetheless confirms his intention to proceed with the transaction in writing or by telephone and recorded, and provided that such confirmation contains an explicit reference to the warning received.	FSA	Principle 6: a firm must pay due regard to the interests of its customers and treat them fairly. Principle 9: requires a firm to take reasonable care to ensure the suitability of its advice and discretionary decisions. COB 5.3.5R (1) if a firm thinks the transaction (personal recommendation or discretionary transaction) unsuitable, it must take reasonable steps to ensure it does not make or effect it in the course of business. What constitute reasonable steps will vary greatly and depend on the needs and priorities of the private customer, the investment or service offered, the relationship between firm and private customer and whether the firm is giving a personal recommendation or acting as a discretionary investment manager: COB 5.3.4G.	As with CESR Standard 73, there is no express equivalent of this concept in the FSA Rules. As CESR Rule 75 is extremely specific as to the action to be taken if the client wishes to proceed notwithstanding a determination that the transaction is not suitable. This is an area that is likely to be affected by the on-going debate over Article 18(4) – (4b) of ISD 2.

[16] A transaction may be considered unsuitable for a customer, *inter alia*, because of the instrument involved (e.g. derivatives), because of the type of transaction (e.g. sale of options), because of the characteristics of the order (e.g. size or price specifications) or because of the frequency of the customer's trading.

74. An investment firm must take reasonable care to verify that the customer has sufficient financial resources to settle the proposed transaction.	FSA	Principle 2:A firm must conduct its business with due skill, care and diligence . Principle 6; A firm must pay due regard to the interests of its customers and treat them fairly.	There is no precise equivalent of in the FSA Rules. If a firm were to allow settlement exposures to develop without ascertaining that the client has sufficient financial resources to settle the proposed transaction, it may, in significant cases, breach the principles that a firm must conduct its business with due skill, care and diligence and treat its customers fairly.
		COB 5.2.5R (Requirement to know your customer) et seq. A firm must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about the customer relevant to the services that the firm has agreed to provide – before the firm gives a personal recommendation etc..	In addition, in certain cases, the suitability requirements discussed in connection with CESR Standard 72 will apply.
		COB 7.9 (Restrictions on lending to private customers) provides that firms must not lend money or grant credit in course of or in connection with the provision of investment services without assessing private customer's financial standing based on latter's disclosure of information.	
76. An investment firm may accept an order without having taken reasonable steps to verify the immediate availability of the funds (securities) necessary for carrying out the related purchase (sale) only if an adequate credit facility has been agreed on beforehand.	FSA	Please see the response in relation to CESR Standard 74. Note COB 7.9 requires an assessment of a private customer's financial standing before granting the latter credit.	Please see the response in relation to CESR Standard 74.

77. Where the service to be provided is the pure transmission or execution of orders (either through a special distribution channel, in individual cases or generally) the customer must be made aware of this fact prior to the transaction taking place for the first time. On the basis of the information obtained from the customer on opening the account, the investment firm will define an appropriate service including investment parameters, i.e. types of instruments, types of transactions and types of orders, and inform the customer accordingly. Where the investment firm receives an order regarding a transaction, which is not in line with the defined investment parameters, it must warn the customer accordingly and provide appropriate information on the transaction, including any necessary risk warning(s). The investment firm may transmit or execute the order only if the customer nonetheless confirms his intention to proceed with the transaction in writing or by telephone and recorded, and provided that such confirmation contains an explicit reference to the warning received.	FSA	Principle 2 (Skill, care and diligence) provides that a firm must conduct its business with due skill, care and diligence. Principle 6 (Customers' interests) provides that a firm must pay due regard to the interests of its customers and treat them fairly. COB 3.9.12R (Execution-only dealing services): see comments column. COB 4.2.5R (1), 4.2.9R (1), 4.2.10R and 4.2.15E (4) & (5) (Terms of business and client agreements with customers) COB 5.3.5R COB 4.2 sets out terms of business requirements and the need for adequate detail. There should be some provision on investment objectives, the service(s) to be provided by the firm and on restrictions, if any, on types of investment. Execution-only transactions and direct offer fin proms are exceptions, however, to the terms of business requirement and to KYC requirements (save where ML sourcebook applies). Under COB 5.3.5R, a firm must take reasonable steps to ensure that it does not in the course of designated investment business make a personal recommendation or effect a discretionary transaction unless these are suitable. Equally, when making a personal recommendation or effecting a discretionary transaction, the firm must take reasonable steps to ensure that the private customer understands the nature of the risks involved: COB 5.4.3R.	There are no directly equivalent requirements under the FSA Handbook. COB 3.9.12R provides that a direct offer financial promotion relating to an execution-only dealing service must in particular, if it is the case, contain a clear statement that: • The firm's procedures are such that there may be a delay in the execution of a customer order, including the reason for and the normal maximum extent of any delay; and • Customer orders may on occasion be aggregated (in which case additional disclosure requirements apply).

4. CUSTOMER AGREEMENTS

4.1) BASIC CUSTOMER AGREEMENT

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

78. Prior to providing any investment service, an investment firm must enter into a signed written agreement with the customer setting out the rights and obligations of the parties, a description of the services to be provided, and all other items of information necessary for the proper understanding and performance of the agreement.	FSA	COB 4.2.5R (Accepting Customers)- a firm must provide a customer with its terms of business before conducting any designated investment business with or for a specific private customer. An intermediate customer must be provided with terms of business within a reasonable period of the firm beginning to conduct designated investment business with or for him. A signed written agreement in not required. COB 4.2.7 (Requirement to enter into a client agreement with a private customer) – where the firm intends to conduct with or for a private customer portfolio management, derivatives business or stock lending. Here a signed customer agreement is required. The agreement is signed by the client or consented to by the client in writing. There are exceptions to the terms of business and client agreement requirements. These are set out at COB 4.2.9R and include execution-only transactions and direct offer financial promotions.	The FSA's approach to the provision of adequate terms of business and entering customer agreements reflects the differing needs of customers who transact business essentially as purchasers of packaged products for which a full customer agreement model would not be appropriate and for example customers of investment firms for the purpose of portfolio management, derivatives and stock lending for which a signed customer agreement is needed. The structure of the FSA's rules also reflects the practical consideration that when a firm has first contact with a customer it may not be able to ascertain precisely what services it will provide or the customers needs and objectives. Accordingly certain requirements as to the delivery of appropriate information, for example as to the risk profile of certain kinds of investments or information about how or what basis the firm will deliver services. This structural point is illustrated in the location of rules about the provision of information in both COB 4.2 (Accepting customers) and COB 5 (Advising and selling). A similar approach applies in the case of custody services (COB 9).
79. The customer agreement must be clear and easily understandable by the customer.	FSA	Principle 7: 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. COB 2.1.3 When a firm communicates information to a customer, the firm must take reasonable steps to communicate in a way that is clear, fair and not misleading.	Principle 7 and COB 2.1.3 are the main provisions in relation to CESR Standard 79. Also, COB 4.2.7R (2) requires a firm to take reasonable care to ensure that the private customer has had a proper opportunity to consider the terms.

80. The customer agreement must contain the following items as a minimum: a) the identity, postal address and telephone number of each of the parties; b) the names of any persons authorised to represent the customer for the purposes of the agreement, in particular the names of the natural persons authorised to represent the customer who is a legal entity; c) the investment firm's general terms of business for investment services and any particular terms agreed between the parties concerning, e.g. margin requirements or potential obligations where securities may be purchased on credit d) a general description of the investment services, including custody, offered by the investment firm and the types of financial instruments to which such services relate; e) the types of orders and instructions that the customer may place with the investment firm, the medium/media for sending them (e.g. by telephone, E-mail or post) and the alternative medium to be used when normal media are unavailable; f) the information to be given by the investment firm to the customer regarding the performance of services including the medium/media for sending the information and the type, frequency and rapidity of the information to be given e.g. regarding order execution or portfolio evaluation; g) details of the investment firm's fees and prices for investment services, including information on how they are to be calculated, the frequency with which they are to be charged and the manner of payment; *h)* the name of the competent authority which has authorised the investment firm; *i)* the law applicable to the contract, as ascertained to the best of the knowledge of the firm or as agreed between the parties;	FSA	COB 4.2.5 (Requirement to provide a terms of business to a customer) COB 4.2.7 (Requirement to enter into a client agreement with a private customer) COB 4.2.10 (Adequate detail for terms of business) COB 4.2.15 (Content of terms of business – general) COB 4.2.16 (Content of terms of business provided to a customer: managing investments on a discretionary basis); COB 5.5.3 (Information to be disclosed).	Given the comments on Standard 78, above, the limited requirement in for terms of business (ToB) to take the form of a client agreement under COB 4.2.7R and the scope allowed for parties to agree terms between themselves (COB 4.2.11E (1)(b)), COB 4.2 and COB 5.5 meet Standard 80 as follows: 80 a) – COB 5.5.3R and COB 5.5.5E require the firm to disclose these details in any written communication. The customer must sign or consent in writing to the agreement. The customer's postal address and telephone number are not specified expressly but COB 4.2.10R requires a firm to set out adequate detail of the basis for conducting business. 80 b) – a firm may treat an agent as the customer if the firm is aware that the agent is acting as an agent for a client in respect of the investment business. The firm can, however, agree in writing with the agent to treat the customer as the customer: COB 4.1.5R. 80 c) – general terms are covered in COB 4.2.15E; margin requirements – before conducting a transaction with or for the customer, the firm must *notify* the customer of various points (COB 7.10.4G); granting credit - on the basis of prior written consent given by the customer for the credit in full knowledge of any resulting interest and fees (COB 7.9.3R). 80 d) –covered in COB 4.2.15E (4) and (5), addressing restrictions or lack of restrictions on investments and the services to be provided, respectively. 80 e) – see COB 4.2.15E (4) on types of investments that may be made; there is no requirement to explain means of communication. COB 1.8 deals with electronic communication and contingency arrangements- if a firm communicates electronically, it must be able to demonstrate that a customer wishes to communicate electronically. 80 f) – COB 4.2.15E (5) covers terms on services the firm will provide; COB 4.2.16E (2) covers periodic statements provision (incl. frequency and whether statements will some form of performance measurement), valuation basis. The medium is not addressed but see comments on 80 e), above. 80 g) – COB 4.2.15E (6) covers terms on payments for services, incl. where appropriate, the basis of calculation, frequency and manner of payment/collection. 80 h) – COB 4.2.15E (2) covers firm's statutory status disclosure, including the name of the competent authority.

81. Rather than containing all the above items itself, the contract may refer to other documents containing certain of them, e.g. the general terms of business, the types of investment services offered, the types of orders and information to be sent by the parties and the fee schedule, provided that all the contractual documents so referred to are provided to the customer prior to the signing of the contract.	FSA	COB 4.2.12R (firm's terms of business may comprise more than one document) – a firm's terms of business provided to a customer may comprise more than one document provided it is clear that collectively they constitute the terms of business and that this does not diminish the significance of any information the firm must give the customer or the ease with which this can be understood.. A firm must provide terms of business before conducting investment business with or for a private customer: COB 4.2.5R. When the terms take the form of a client agreement, the firm must give the private customer proper opportunity to consider the terms before the agreement can be entered into: COB 4.2.7R.	
82. Where a custody service related to the other services provided by the firm to the customer is provided, either directly by the investment firm party to the contract with the customer or indirectly by another investment firm, the contract must contain at least a brief indication of the rights and obligations of the parties, including the provisions relating to the exercise of voting rights attaching to the securities held.	FSA	COB 9.1.49 (Custody; client agreement) Before a firm provides safe custody services to a client the firm must notify the client as to the appropriate terms and conditions which apply to this service including, where applicable, notification of terms of business dealing with exercising voting rights. COB 9.1.69 (custodian agreement) Before a firm holds a safe custody investment for or on behalf of a client with a custodian, it must agree in writing appropriate terms and conditions with the custodian – including the claiming and receiving of entitlements accruing to the client.	
83. The contract must state that any modification of the agreement by the investment firm, e.g. regarding fees, requires the prior notification of the customer, and the contract must provide a sufficient opportunity for the customer to terminate the agreement.	FSA	COB 4.2.13R (Amendment of terms of business) provides for a prior notification period of at least ten business days unless this is impracticable - if terms of business allow a firm to amend the terms. There must be a statement in the terms of business/client agreement that the customer may terminate the terms of business by written notice to the firm and when this may take effect: COB 4.2.15E (23) (b).	There are certain exemptions from the requirement for the firm to provide terms of business or a customer agreement. Also, the requirement in COB 4.2.15E (23) (b) to set out certain information relating to the termination method is not linked to the provisions concerning unilateral amendment of the client contract in the same way as the CESR rule.

84. A copy of the agreement signed by the customer (and any related contractual documents) must be kept by the investment firm for the duration of the customer relationship and for at least five years after the end of the relationship; a copy must be provided to the customer immediately after signing, and at any time subsequently on request.	FSA	Principle 1: a firm must conduct its business with integrity Principle 7: a firm must pay due regard to the information needs of its clients and communicate information to them in a way that is fair, clear and not misleading. COB 4.2.14 (Record of terms of business) a firm must make a record of each terms of business it provides to a customer, and any amendment to them, as soon as the terms come into force.	The retention period is in most cases 3 not 5 years. (COB 4.2.14R.) There is no express requirement to provide copies to the customer, either on signing or on request. But there is a requirement to provide the ToB before conducting investment business with or for the customer (unless the customer has made an oral offer to enter into an investment agreement relating to an ISA …: COB 4.2.5R (1 and (2). It is therefore implicit in these rules that a copy of a client agreement, in signed form, should be provided to the customer .

4.2) CUSTOMER AGREEMENT INVOLVING TRADING IN DERIVATIVES

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
85. Prior to providing the services of reception/transmission and/or execution of orders involving derivatives, a customer agreement containing the relevant provisions of the basic customer agreement as well as certain additional provisions specific to trading in derivatives must be signed between the parties.	FSA	COB 4.2.7 (Requirements to enter into a client agreement with a private customer) requires a two-way customer agreement in the case of a *contingent liability transaction.* COB 4.2.10 (Adequate detail) a firm must ensure that its terms of business, including client agreements, set out adequate detail of the basis for conducting business. COB 4.2.15 (Content of terms of business: general requirements).	Please see response to CESR Standard 80, above.

86. In addition to the relevant items of the basic customer agreement, where the firm provides services involving derivatives, the customer agreement must contain: - the type(s) of instruments and transactions envisaged, - the obligations of the investment firm with respect to the transactions envisaged, in particular its reporting and notice obligations to the customer, - the obligations of the customer with respect to the transactions envisaged, in particular his financial commitments toward the investment firm and the time allowed for honouring such commitments, - an appropriate warning calling to the customer's attention the risks involved in the transactions envisaged.	FSA	COB 4.2.10 (Adequate detail in terms of business); COB 4.2.15 (Content of terms of business – general) COB 5.4.3 and 5.4.6 (requirement for risk warnings and risk warnings in respect of warrants and derivatives) COB 5 Annex 1 (Warrants and derivatives risk warning notice) COB 7.10 (Margin requirements).	Please see comments about the structure of COB made in response to CESR Standard 78, above. Types of instruments and transactions: COB 4.2.15E (4) refers to any restrictions on types of investments and markets on which transactions are to be executed – it's exclusive rather than inclusive; Obligations, reporting and notice: COB 4.2.15E (5) requires some provision on services the firm will provide; COB 4.2.10R requires firms to give adequate detail of basis of business conduct – reporting obligation implicit in this – and information on the period of account for which statements of the portfolio are to be provided: COB 4.2.15E (8). Terms of business/client agreements are to provide for arrangements for accounting to a customer for any transaction executed on his behalf: COB 4.2.15E (9). Financial commitments: payment for services – COB 4.2.15E (6); realisation of private customer's assets COB 4.2.15E (20) & COB 7.8.3R. Risk warning – COB 4.2.15E (16) firm may *choose* to include risk warning in terms of business/client agreement.
87. The contract must mention the types of transactions envisaged, in particular whether the customer intends to undertake transactions giving rise to contingent liabilities, the types of instruments envisaged, in particular whether they are traded on a regulated market or not, and it must refer to the documentation on such instruments provided by the investment firm to the customer for information purposes.	FSA	COB 4.2.10 (adequate detail in terms of business) requires a firm to give adequate detail of the basis for conducting investment business with the customer. COB 4.2.15E (4) (Content of terms of business – general) requires the firm to make provision in its terms of business/client agreements on any restrictions on types of investment and markets on which to execute transaction OR to provide that there are no such restrictions. In relation to contingent liability transactions, the terms of business/client agreement can allow the giving of risk warnings in the terms of business: COB 4.2.15E (16).	

88. The contract must provide for the immediate confirmation of derivatives transactions and the immediate notice to the customer of his payment obligations as they arise, as well as the procedures to be used for such confirmation and notice.	FSA	COB 8.1.3 (requirement to confirm a transaction) COB 8.1.15E 10 (total consideration and date on which it is due) COB 8.1.18 (Content of confirmation of a transaction relating to a derivative) COB7.10.3 (Provision of margin by a private customer) and 7.10.4.	The points in CESR Standard 88 are not raised expressly but the FSA rules may impose a direct regulatory requirement that transactions are confirmed promptly – this is actionable under section 150 of the FSMA. Prompt despatch of transaction confirmation is required under COB 8.1.3R . COB 7.10.4 provides *by way of guidance* that a firm should before conducting a transaction with a private customer notify the customer of circumstances in which the customer may be required to pay margin.
89. The contract, or the documentation referred to in the contract, must provide adequate information on any margin requirements or similar obligations, regardless of the source of such rules and requirements, e.g. an exchange or clearing house, or the investment firm itself. This document must indicate how margin will be calculated and charged, the assets (cash, securities, etc.) accepted as margin, the frequency of margin calls and the timetable for the delivery or payment of margin by the customer to the investment firm. The contract must require immediate notification to the customer of any change in margin rules.	FSA	COB 7.10.3 (Provision of margin by a private customer) COB 7.10.4 (Guidance on the provision of margin by a private customer). Notifying customer of margin requirements and the form in which it may be provided.	The form in which the margin may be provided – COB 7.10.4G (2) Circumstances in which customer may be required to provide any margin – COB 7.10.4 G (1). Change in margin rules: general provision at COB 4.2.13R: 10 business days' notice to customer before conducting business on amended terms. COB 7.10.3 does not stipulate that information about margin must be included in the customer agreement – but it is information that should be provided before the firm conducts any transaction with or a client. Minimum margin for an on-exchange transaction in a contingent liability investment is an amount or value equal to margin requirements of the relevant exchange or clearing house. COB 7.1.3R (2).
90. The warning given to the customer should reflect the transactions envisaged, in particular where potential losses may exceed the amounts invested, as well as the experience, knowledge and financial situation/capacity of the customer or type of customer involved, and should be given due prominence in the contract.	FSA	COB 4.2.15E (16) (Content of terms of business – customers understanding of risk) COB 5.4.3 (requirements for risk warnings) COB 5.4.6 (Risk warnings in respect of warrants and derivatives) COB 5 Annex 1 (Warrants and derivatives risk notice) see paragraph 8 (Contingent liability investment transactions).	The standard refers to the need for the "warning" to be tailored to the type of customer, the amount at stake etc. –the *general* requirement in COB 5.4.3 is that the firm should take reasonable steps to ensure that the customer understands the nature of the risks involved. The warning is spelled out at COB 5 Annex 1 – it may be given in the contract or elsewhere: COB 4.2.15E.

5.- DEALING REQUIREMENTS

5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
91. An investment firm must record and process customer orders in accordance with the customer's instructions and in such a way as to facilitate best execution.	FSA	The FSA Handbook areas relating to Systems and controls (SYSC) and Conduct of business (COB) cover this standard. Principle 6 requires a firm to pay due regard to the interests of its customers and to treat them fairly. COB 7.12.43R and COB 7.12.6E – a firm must ensure by the establishment and maintenance of appropriate procedures that it promptly records adequate information when a customer order arises and the firm executes it. COB 7.5.3R – a firm that executes a customer order in a designated investment must provide best execution (Exceptions in COB 7.5.4R).	Record keeping provisions are in both SYSC and COB. Standard 91 states that an investment firm must "record … in such a way as to facilitate as to facilitate best execution." COB 7 provides for the firm to ensure that it records adequate information promptly but does not expressly specify a specific way in which this is to be done. Processing and execution of orders are covered, in particular, by COB 7.4 (Customer order priority), COB 7.5 (Best execution), COB 7.6 (Timely execution), COB 7.7 (Aggregation and allocation), COB 7.12 (Customer order and execution records).

93. An investment firm must ensure that, prior to their transmission for execution, orders given by customers are clear and precise and include the following: a) the name of the customer and of any person acting on his behalf, b) the date and time of the order, c) the financial instrument to be traded, d) the size of the order, e) the nature of the order, e.g., subscription, buy, sell, exercise etc., f) any other relevant details and particular instructions from the customer for the order to be properly transmitted and executed, e.g. limit orders, validity period and market of execution; g) the account for which the order has to be executed.	FSA	Systems and controls requirements: SYSC 3.2.20 (Records) Conduct of business sourcebook: COB 7.12 applies inter alia where a firm receives and/or executes a customer order. COB 7.12.3 – 7.12.6 (Record keeping requirement). COB 7.12.6E (1) sets out minimum contents of customer order and execution records when a customer order arises. This covers CESR Standard 93 a)-g). In relation to 93 a), please see also the paragraph on intermediaries in the Comment column.	The FSA imposes a general obligation to make and retain records of dealings that are the subject of regulatory obligations. The FSA Rules require the "making of records" rather than checking that the order is "clear and precise" before execution. However, this achieves a similar result. The COB record keeping rules rely on who the customer is – where there is a further intermediary involved, this intermediary will be the customer and not the underlying consumer. But the record keeping requirements will bite on that initial intermediary. There are specific obligations in COB 7.12, which require a record of the matters mentioned in this standard to be made and retained by firms that receive orders from customers. In relevant circumstances a firm is obliged to make additional records if this is appropriate. 93 a) – g): see COB 7.12.6E (1) (a)-(f) and (2)
94. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.	FSA	Please see details in our response to CESR Rule 93, above.	The obligations in COB 7.12 require the record to be made promptly. It is not clear what is meant in CESR Standard 94 by "verifying all relevant items of proper execution". Presumably it contemplates recording of all details relevant to the customer's order so that execution can be carried out effectively but further clarification might be necessary.
95. An investment firm must keep a record of telephone orders on magnetic tape or an equivalent medium. Investment firms must duly inform the customer that the conversation will be recorded.	FSA Parliament	COB 7.12 (Customer order and execution records) requires that records are made and kept, but the form of the record is not mandated – it can be any means appropriate to the business.	Some exchanges require their members to maintain voice recording systems (eg London Stock Exchange, rule 4170-4171) Taping of a customer's telephone conversations is limited by other legislative requirements (eg the Regulation of Investigatory Powers Act). However, it is permitted if the customer consents. Some additional provisions allow businesses to record calls for limited business purposes (Telecommunications (Lawful Business Practice) (Interception of Communications) Regs 2000). This is consistent with the limited exception to the ban on taping in Directive 97/66/EC.

96. Before transmitting orders on behalf of several beneficiaries on an aggregated basis, an investment firm must pre-assign such orders in order to ensure that they can identify and match the orders with the relevant customer at any time.	FSA	COB 7.7.5R and 7.7.6E (Requirement for timely allocation) Prompt allocation is required of the firm.	COB specifies that when a firm aggregates and subsequently executes an order it should allocate the investments concerned fairly to the clients. Further clarification of the concept of pre-assignment might be necessary in order to assess the level of implementation.
		COB 7.12 provisions referred to above require orders to be recorded. Also COB 7.7.14. COB 7.7.5 – 7.7.6 and 7.7.9 require prompt and fair allocation of an aggregated order.	Firms are obliged to make records about whose orders are aggregated and the intended basis of allocation. COB 7.7.5R provides that where a firm has aggregated a customer order with the orders of other customers and part or all of the aggregated order has been filled, it must promptly allocate the designated investments concerned. COB 7.7.6E indicates that depending on the circumstances, such allocation must take place between one to five business days after the transaction takes place.
97. An investment firm must transmit orders promptly and sequentially and must take all reasonable care to transmit orders in a way to facilitate their best execution, taking into account all relevant details of the process of transmission, e.g. the size and characteristics of the order.	FSA	COB 7.4.3 (Dealing fairly and in due turn) A firm must execute orders fairly and in due turn. COB 7.6.4 – 7.6.5 (Achieving timely execution) – once a firm has agreed to execute a current customer order, it must do so as soon as reasonably practicable unless postponement is in the customer's best interests. COB 7.5.3 – 7.5.4 (Best execution) A firm that executes a customer order must provide best execution.	Customer orders are required to be executed promptly and in due turn unless postponement is in the best interests of customer. Every firm is required to deliver best execution unless the order is passed to another firm and the first firm has taken reasonable steps to ensure that the second firm provides best execution for the customer. There are exclusions for products not relevant under ISD, and for sophisticated customers to opt out in COB 7.5.4.
92. An investment firm must ensure that the firm and its members of the board, directors, partners, employees and tied-agents do not use the information they possess on customers orders to the disadvantage of customers' interest.	FSA	Principle 8 (Conflicts of interest) COB 7.1.3 (Fair treatment) COB 7.13.4 (Restrictions on personal account dealing): A firm must take reasonable steps to ensure that a personal account transaction in a designated investment undertaken by any of its employees does not conflict with the firm's duties to its customers under the regulatory system. COB 7.3.3 (obligation to postpone own account transactions) in relation to research publications	This sort of issue is treated in the same way as other conflicts of interest. The firm is obliged to provide fair treatment to customers. Firms are required to restrict dealings by their employees (which will include directors) and other individual agents so as not to disadvantage customers. Fair treatment might include cases where a customer has consented to the potential use of his or her information. If the firm is about to publish investment research it is required to give recipients an opportunity to act on it, unless certain exceptions apply. Personal account dealings are currently under review in the context of the review of conflicts and investment research (FSA Consultation Paper 171).

98. An investment firm must take all reasonable steps to refrain from transmitting orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter ("front running").	FSA	COB 7.4.3 (Dealing fairly and in due turn) COB 7.6.4 – 7.6.5 (Achieving timely execution) Also see rules referred to in relation to CESR Standard 92	Customer orders are required to be executed promptly and in due turn unless postponement is in the best interests of customer; and see comments in relation to CESR Standard 92. "Due turn" would appear to allow an own account order to be executed before a customer order, if the customer order is received later than the own account order. CESR Rule 98 does not appear to prevent this because Standard 98 is itself qualified by the taking of reasonable steps .
99. An investment firm, which aggregates orders, must pre-assign such orders prior to transmitting them.	FSA	Please see COB 7.12 provisions referred to in relation to CESR Standards 91 and 93, above. These require orders to be recorded. Also COB 7.7.14R requires that if a firm aggregates a number of client orders, the firm must make a record of the intended basis of allocation as soon as is practicable. COB 7.7.5 – 7.7.6 and 7.7.9 require prompt and fair allocation of an aggregated order.	Firms are obliged to make records about whose orders are aggregated and the intended basis of allocation. COB 7.7.5R provides that where a firm has aggregated a customer order with the orders of other customers and part or all of the aggregated order has been filled, it must promptly allocate the designated investments concerned. COB 7.7.6E indicates that depending on the circumstances, such allocation must take place between one to five business days after the transaction takes place. Further clarification of the concept of pre-assignment might be necessary in order to assess the level of implementation.
100. An investment firm may transmit orders for its own account and for its customers account on an aggregated basis when it is clearly in accordance with the best interest of the customer and provided that the best execution standard is respected.	FSA	COB 7.5.3 (when best execution is owed) – A firm that executes a customer order must provide best execution (subject to certain derogations, most of which do not relate to ISD). COB 7.7.4 (Aggregation) – A firm may not aggregate a customer order with an own account, or market counterparty, unless it is likely this would not work to disadvantage each customer and the firm has disclosed the adverse effect aggregation may have on some occasions.	Aggregation of customer and firm orders is only permitted if it is not likely to disadvantage any of the customers concerned. This might be a little more generous to firms than the approach in CESR Rule 100. There is also an obligation to disclose to customers. The obligation to deliver best execution is owed for every customer order, irrespective of aggregation.

101. In the case of orders in connection with public offers of securities, an investment firm may transmit such orders provided that they offer the relevant prospectus to the customer or informs the customer where it is available.	FSA Parliament	Principle 6 (Customers' interests) Principle 7 (Communications with clients) Sections 84 & 85 of FSMA Regulations 4 & 10 of the Public Offers of Securities Regulations 1995 (SI 1995/1537) ("POSRegs")	There is no specific COB provision on this point – but in most cases it may be more likely that the customer will make applications direct to the issuer and not through his own firm. The Principles referred to require a firm to pay due regard to customers' interests and their information needs. If provision of a prospectus is part of the services the firm has agreed to provide by contract, then the firm will be obliged to obtain copies of the relevant prospectuses for the customers as a result of general contract law principles. Sections 84 and 85 of FSMA provide for listing rules to require publication of prospectuses and that offers to the public are unlawful prior to publication. The POSRegs also require publication and registration (eg regulations 4 and 10).

5.2) EXECUTION OF ORDERS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

102. An investment firm must take all care to obtain the best possible result for the customer with reference to price, costs born by the customer, size, nature of the transactions, time of reception of order, speed and likelihood of execution and trading venue taking into account the state of the relevant market(s). The relevant market(s) shall be deemed to be the market(s) offering the most favourable trading conditions also in terms of transparency, liquidity and clearing and settlement arrangements in connection with the envisaged transaction. If the investment firm executes in another trading venue, it must be able to demonstrate to the customer that this was done in accordance with his best interest.	FSA	Principle 2 (Skill care and diligence) Principle 6 (Customers' interests) COB 7.5.3 – 7.5.6 (Best execution) A firm must provide best execution. It must take reasonable care to ascertain the best price available for the customer order in the relevant market at the time for transactions of the kind and size concerned. It must execute the order at a price no less advantageous to the customer, unless it has taken reasonable steps to ensure that it would be in the customer's best interests not to do so.	Please see also the response to CESR Rule 98, above. Firms are required to take reasonable care (the usual standard imposed by the general law) to obtain the best available price for the customer taking account of the relevant matters. If firms have access to more than one trading venue, they are to provide the best price available across those venues. Note that in FSA Consultation Paper 154, the FSA has been consulting on a new approach to the best execution rules. Under the current COB provisions on taking reasonable care, costs born by the customer should be disregarded where disclosed to the customer (charges/commission) and execution should be at best price available where the firm has access to prices displayed at different exchanges and trading platforms. SETS as best price benchmark. These are evidential provisions. CESR Standard 102 places a burden on the firm to demonstrate accordance with a customer's best interest if it executes on "another trading venue." A similar evidential burden can arise under COB 7.5.6E (1) (b) and (4) ("the firm must ensure that …").
104. An investment firm acting as principal in relation to a customer order must inform the customer accordingly beforehand and must be in a position to justify the price at which the transaction is executed, with reference to the prices and volumes in the relevant market(s), where appropriate, or the presumed value determined on the basis of objective elements, e.g. mark-to-market.	FSA	Principle 2 (Skill care and diligence) Principle 6 (Customers' interests) Principle 7 (Communications with clients) Principle 8 (Conflicts of interest) COB 7.1.3 (Fair treatment) COB 7.5.3 – 7.5.6 (Best execution)	Firms are obliged to deliver best execution for customers whether acting as principal or agent for the customer (see obligations described for CESR Standard 102). Under COB 7.1.3R , firms are also obliged to ensure fair treatment for customers when they have a material interest in a transaction, to manage conflicts of interests between themselves and customers and to have regard to the information needs of customers Fair treatment COB 7.1.3R is expressed in terms of taking "reasonable steps to ensure fair treatment for the customer" and disclosure is one of these (but only one) before advising, or dealing in the exercise of discretion, in relation to a transaction … Other steps are relying on a policy of independence, Chinese walls and declining to act for a customer.

105. An investment firm must take all reasonable steps to refrain from executing orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter ("front running").	FSA	COB 7.4.3 (Dealing fairly and in due turn) COB 7.6.4 – 7.6.5 (Achieving timely execution) Please see rules referred to in relation to CESR Standard 92	Please see comments in relation to CESR Rules 92 and 98. .
103. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.	FSA	Principle 2 (Skill care and diligence) Principle 6 (Customers' interests) COB 7.4.3 (Dealing fairly and in due turn), COB 7.6.4 (Timely execution)	Firms must act with due skill, care and diligence, pay due regard to customers' interests, execute orders from customers in a timely fashion (providing best execution) and do so fairly and in due turn. A firm is not under an absolute obligation at all times to accept an order but, if firms have agreed by contract to carry out an order, general principles of contract law will apply to oblige the firm to comply.
106. An investment firm must execute orders promptly and sequentially, unless the characteristics of the order and/or prevailing market conditions make this impossible or require otherwise in the interest of the customer.	FSA	COB 7.4.3 (Dealing fairly and in due turn) COB 7.6.4 – 7.6.5 (Achieving timely execution)	Customer orders are required to be executed promptly and in due turn unless postponement is in best interests of customer. Execution must be done as soon as reasonably practicable unless postponement is in the customer's best interests. One reason for postponement would be where there is a foreseeable improvement in the level of liquidity in the relevant investment that is likely to enhance the terms on which the firm executes the customer order.
107. Customer orders may be matched internally only if such offsetting is clearly in accordance with the best interest of the customers involved and provided that the best execution standard is respected.	FSA	Principle 2 (Skill care and diligence) Principle 6 (Customers' interests) Principle 7 (Communications with clients) Principle 8 (Conflicts of interest) COB 7.1.3 (Fair treatment) COB 7.5.3 – 7.5.6 (Best execution)	Firms are obliged to deliver best execution for customers whether acting as principal or agent for the customer (see obligations described for CESR Standard 102), and whether acting for more than one customer. COB rules do not operate in favour of executing at external venues as against internal matching and so CESR rule 107 might be understood to be more prescriptive than FSA rules. Firms are also obliged to ensure fair treatment for customers when they have a material interest in a transaction, to manage conflicts of interests between themselves and customers, and between customers, and to have regard to the information needs of customers

108. If an investment firm aggregates orders, it must pre-assign such orders prior to executing them.	FSA	Please see COB 7.12 provisions referred to in relation to CESR Standards 91and 93, above. These require orders to be recorded. Also COB 7.7.14R requires that if a firm aggregates a number of client orders, the firm must make a record of the intended basis of allocation as soon as is practicable. COB 7.7.5 – 7.7.6 and 7.7.9 require prompt and fair allocation of an aggregated order.	Please see comments in relation to CESR Rule 99: Firms are obliged to make records about whose orders are aggregated and the intended basis of allocation. COB 7.7.5R provides that where a firm has aggregated a customer order with the orders of other customers and part or all of the aggregated order has been filled, it must promptly allocate the designated investments concerned. COB 7.7.6E indicates that depending on the circumstances, such allocation must take place between one to five business days after the transaction takes place.
109. The price received or paid by the customer shall be identified separately from the fees and costs to the customer.	FSA	COB 8.1.3R, 8.1.5E and 8.1.15E 10. (Reporting to customers).	Firms are obliged to provide confirmation of transactions executed for customers. These confirmations must identify the total amount for the transaction, the unit price for the security traded, the remuneration of the firm, and fees and taxes applicable. These are required as separate pieces of information in the confirmation.
110. An investment firm must inform customers of relevant risks or impediments for the proper execution of the orders. If, due to market conditions, or for any other reason, an order cannot be executed according to the instructions given by the customer, an investment firm must ensure that the customer is duly informed as soon as possible.	FSA	Principle 6 (Customers' interests) Principle 7 (Communications with clients) COB 7.4.3 (Dealing fairly and in due turn) COB 7.6.4 – 7.6.5 (Achieving timely execution)	Customer orders must be executed promptly and in due turn, unless postponement is in best interests of customer. Although there is no direct information obligation in our rules, and no particular disclosure obligations for risks other than those inherent in particular products, firms are required to pay due regard to the information needs of their customers, which would (if appropriate) include provision of information about market conditions. Firms providing advice in conjunction with order execution facilities will be required to take reasonable care to provide appropriate advice and make suitable recommendations in all of the circumstances.

5.3) POST- EXECUTION OF ORDERS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

111. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.	FSA	COB 7.7.5 – 7.7.6, 7.7.16 – 7.7.17 (Aggregation of orders) COB 7.12.3 – 7.12.6 (Customer order and execution records)	Firms must allocate (when orders are aggregated) and record executed transactions promptly. The imperative nature of the COB provisions fit with the wording in Standard 111.
113. An investment firm must record the essential elements of transactions, including those carried out for its own account, immediately after their execution. An investment firm must record in an analogous manner the orders they give and the transactions they carry out for the purpose of remedying errors made in recording, transmitting or executing orders.	FSA	COB 7.12.3 – 7.12.6 (and please see provisions referred to in relation to CESR Rule 93)	Firms must make and keep records of appropriate details after executing transactions for customers or own account transactions. There is no explicit requirement regarding recording error correction, but this is implicit in the general record keeping requirements.
114. An investment firm must ensure that once a transaction is executed it is promptly allocated to the account of the relevant customer(s).	FSA	COB 7.12.3 – 7.12.6 A firm must ensure that it promptly records adequate information in relation to the execution of a customer order or an own account transaction. The firm must establish and maintain appropriate procedures to do this.	Firms are required to record appropriate details in their books and records after executing transactions. There is no general explicit requirement to allocate orders (other than aggregated orders). If the firm also provides safeguarding and administration services, it will be subject to additional requirements under the custody rules in COB 9.1. Please see the comments on CESR Standard 56.
112. Where orders for own and customer accounts have been aggregated, the investment firm must not allocate the related trades in any way that is detrimental to any customer. If such an aggregated order is only partially executed, allocation to customers must take priority over allocation to the investment firm.	FSA	COB 7.7.9R (Requirement for fair allocation): The allocation must not give unfair preference to the firm or to any of those for whom it dealt. Firm must give priority to satisfying customer orders if the aggregate total of all orders cannot be satisfied, unless the firm can demonstrate reasonably that without its own participation it would not have been able to execute those orders on such favourable terms or at all. COB 7.7.11R (Re-allocation): If the order is executed only partially, resulting in an uneconomic allocation to some customers, the firm may undertake a revised allocation of an aggregated order – taking reasonable steps to ensure it is done in the best interests of customers for whom the firm has dealt.	The COB approach might fit within the detriment test in Standard 112 – fairness, priority and favourable terms – but "must take priority" in Standard 112 appears to allow less scope for adapting to circumstances than COB does. However, "best interests" in COB appears to fit with the proportional approach required in Standard 115, second and third sentences.

115. Where an order has been executed in several tranches, the investment firm must inform the customer about the price of execution of each tranche, unless the customer requests an average price. If customer orders have been aggregated and such an aggregated order has been partially executed, the investment firm must allocate the related trade on a proportional basis, unless the firm has a different allocation policy and the customers involved have been informed accordingly prior to the execution. An investment firm must have procedures in place to prevent that reallocation of principal transactions executed along with customers transactions on an aggregated basis give unfair preference to the investment firm or to any of its customers for whom it deals.	FSA	Principle 2 (Skill care and diligence) Principle 6 (Customers' interests) Principle 7 (Communications with clients) COB 2.1.3 (Clear, fair and not misleading communications) COB 7.6.4 – 7.6.6 (Achieving timely execution) COB 7.7.9R and 7.7.11 (Requirement for fair allocation) COB 8.1.3 – 8.1.15 (Confirmation of transactions)	Firms are obliged to execute in timely fashion consistent with their obligations under the Principles and general law to act in the interests of their customers. In particular firms are expected to assess the timing of execution of a customer order when a series of partial executions will improve the terms on which the order as a whole is executed. Firms are obliged to provide information about the terms of the transactions executed for the customer, but are subject to an overriding obligation that communications with customers about these matters are to be fair, clear and not misleading. As a matter of general law customers and firms are able to agree by contract what information will be provided. The Handbook does not contain any rules about disaggregation of a customer's order into tranches. For retail customers the possibility is not high. Please see also comments on Standard 112, above, in relation to allocation on a proportional basis and the prevention of unfair preference. COB does not specify that a firm must have procedures in place to prevent unfair preference but does allow for firms to revise an allocation made in error provided the firm records the reason for the re-allocation and completes it within one business day of identification.

6. INDIVIDUAL DISCRETIONARY PORTFOLIO MANAGEMENT

In addition to the foregoing standards and rules, additional provisions apply to the service of individual portfolio management.

6.1. CUSTOMER AGREEMENTS FOR DISCRETIONARY PORTFOLIO MANAGEMENT

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

116. Prior to the provision of any discretionary portfolio management service, a customer agreement containing the relevant provisions of the basic customer agreement mentioned above, as well as certain additional provisions specific to portfolio management must be signed between the parties.	FSA	COB 4.2.5R (Requirement to provide terms of business to a customer) COB 4.2.7R (Requirement to enter into a client agreement with a private customer) COB 4.2.9R.	COB 4.2.5R requires a firm to provide a customer with an agreement setting out the basis on which the discretionary portfolio management service is to be provided to the customer. A signed agreement is required in respect of private customers. The agreement must be signed, or consented to in writing, by that customer. In the case of an intermediate customer, such agreement must only be provided within a reasonable period of the firm beginning to provide the portfolio management services to the customer. Certain derogations apply, including a derogation for bringing about execution-only transactions (except those in a contingent liability investment with or for a private customer).
		COB 4.2.10R (adequate detail) COB 4.2.15E (content of terms of business provided to a customer: general content) COB 4.2.16E. (content of terms of business provided to a customer: managing investments on a discretionary basis)	COB 4.2.10R provides that a firm must ensure that this agreement sets out in adequate detail the basis on which the portfolio management services are to be provided. COB 4.2.15E and 4.2.16E provide detailed non-exclusive guidance on the content of such agreements. This requirement does not apply where the client is a market counterparty.
118. Instead of the items referred to in paragraph 80.e) , the customer agreement must contain: a) the management objective(s) and any specific constraints on discretionary management, b) the types of financial instruments that may be included within the portfolio and the types of transactions that may be carried out in such instruments, including any related limits.	FSA	COB 4.2.15E (3) & (4) (Contents of terms of business provided to a customer: general requirements) COB 4.2.16E (1) (Contents of terms of business provided to a customer: managing investments on a discretionary basis)	COB 4.2.15E(3) & (4) & 4.2.16E (1) provide that the firm's agreement with the customer should, where relevant, include some provision on: • the customer's investment objectives; • any restrictions on the types of financial instrument in which the customer wishes to invest and the markets on which the customer wishes transactions to be executed, or that there are no such restrictions; and • the extent of the discretion to be exercised by the firm, including any restrictions on the value of any one investment and the proportion of the portfolio which any one investment or any particular kind of investment may constitute or that there are no such restrictions.

In addition to the above, the customer agreement must contain: c) without prejudice of paragraph 121, the benchmark against which performance will be compared,			There is no specific requirement to include a benchmark, but if the customer has agreed a benchmark, with the manager this would be included under COB 4.2.11E(1)(b).
d) the basis on which the instruments are to be assessed at the date of valuation,		COB 4.2.16E(3)	The agreement should include the basis on which assets comprised in the portfolio are to be valued.
e) details regarding the delegation of the management function where this is permitted.		Application of the general law doctrine of *delegatus non potest delegare*, which means that the management function cannot be delegated without authority from the customer.	There is no specific requirement to include details of delegation.
119. The contract must indicate the objectives and the level of risk agreed upon, and any particular constraints on discretionary management resulting from the customer's personal circumstances as referred to in paragraph 62 or his request to exclude certain types of investments (certain business sectors for example).	FSA	COB 4.2.15E (3) & (4) (Contents of terms of business provided to a customer: general requirements) COB 4.2.16E (1) (Contents of terms of business provided to a customer: managing investments on a discretionary basis).	Please see the comments on CESR Rule 118 above. There is no express mention of "level of risk" in COB but we consider this to be an implicit part of the customer's objectives.
120. If an investment firm is mandated to invest in any of the following types of instruments or to undertake any of the following types of transactions, the contract must state so explicitly and provide adequate information on the scope of the investment firm's discretionary authority regarding these instruments and transactions: - financial instruments not traded on a regulated market, - illiquid or highly volatile financial instruments, - leveraged transactions, - securities repurchase agreements or securities lending agreements, - transactions involving credit, margin payments or deposit of collateral, - transactions involving foreign exchange risk.	FSA	COB 5.4.3R & 5.4.4E (Requirements for risk warnings) COB 4.2.15E(4), (17) and (19) COB 4.2.16E(1) and (4) COB 4.2.10R COB 5.4.3E provides that a firm must not act as a discretionary investment manager for a private customer unless it has taken reasonable steps to ensure that the private customer understands the nature of the risks involved. COB 5.4.4E lists particular requirements for the provision of risk warnings in certain cases: Warrants and derivatives; non-readily realisable investments; penny shares; securities subject to stabilisation; stock lending activity.	The combination of COB 4.2 and 5.3 covers the majority of these requirements, although not necessary in the contract. There is nothing specific on foreign exchange risk, and some of the other requirements are addressed in a different way (e.g. instead of referring to highly volatile investments, COB refers to warrants, derivatives and penny shares). As indicated in the comments on CESR Rule 118, detailed agreement content requirements are imposed in relation to investment objectives and restrictions. COB 5.4.3R only applies where the client is a private customer.

121. For information purposes with respect to the customer, the contract must indicate an appropriate benchmark, based on financial indicators produced by third parties and in common use, that is consistent with management objectives and against which the future results are to be compared. Where it is not feasible to establish such a benchmark in view of specific customer objectives, this must be stated clearly in the contract and an alternative measure of performance must be indicated.	FSA	COB 4.2.15E (3) & (4) (Contents of terms of business provided to a customer: general requirements) COB 4.2.16E (1) (Contents of terms of business provided to a customer: managing investments on a discretionary basis).	Please see the comments on CESR Rule 118 above.
122. The contract must state whether the financial instruments are to be valued at bid/ask or offer or mid-market price, including any relevant currency exchange rates, and, where relevant, by reference to indicators such as yield curves or other pricing models or the methodology to be used to value unlisted equities.	FSA	COB 4.2.16E (3) (Contents of terms of business provided to a customer: managing investments on a discretionary basis) requires the contract to state the basis on which assets comprised in the portfolio are to be valued.	
123. The contract must define a specific reporting requirement in the event of losses, defined as a marked-to-market decrease in the value of the portfolio as compared to the value of the portfolio as stated in the most recent periodic report (after neutralisation of any contributions or withdrawals). The contract must set a percentage threshold and a time period to warn the customer accordingly.	FSA	COB 8.2 (Periodic statements) sets out requirements for periodic reporting, but there is no specific requirement to notify losses between periodic reports.	
124. If the contract provides for a variable management fee based on the performance of the management service, the method of calculation must be clearly defined in the contract.	FSA	COB 4.2.15E (6) (Contents of terms of business provided to a customer: general requirements) provides that the agreement with the customer must set out details of the basis of calculation of any payment for services payable by the customer.	

125. The contract must provide: - that the customer may terminate the agreement with immediate effect, subject only to the completion of all transactions already commenced and the time necessary to liquidate the portfolio where this is required by the customer; - that the investment firm may terminate the agreement subject to a two-week notice, provided however that where the portfolio cannot be liquidated (where required by the customer) within this timeframe, the agreement may be extended for the necessary additional period, and provided that where the customer so agrees after being informed of the firm's intention to terminate, the agreement may be terminated in the timeframe agreed between the parties. In both cases, the termination must take place on terms that are fair and reasonable for both parties.	FSA	COB 4.2.15E (23) and (24) (Contents of terms of business provided to a customer: general requirements) Principle 6 (Customers' interests)	There is not an exact equivalent of CESR Rule 125 in the FSA Handbook. The agreement between the customer and the firm should include details of how the terms of business may be terminated and the way in which transactions in progress are to be dealt with upon termination. It is not uncommon for investment managers to agree that their clients may terminate contracts upon immediate notice. In certain cases there are commercial reasons to agree longer notices periods (for example, management agreements for investment trusts and agreements entered into in connection with the disposal of asset management companies).
117. Where the conditions for delegating management of the portfolio are met and the contract allows the investment firm to delegate this function, the contract must state that the delegator retains full responsibility for the protection of the customer's interests.	FSA	SYSC 3.2.4G (Organisation)	FSA Handbook states that a firm cannot contract out of its regulatory obligations when delegating them.

126. If an investment firm is mandated to delegate management of any or all of the customer's assets, this must be stated in the contract and adequate information must be supplied in this regard, both to the customer and to the competent authority. The contract must also provide that the customer will be informed prior to any significant change regarding delegation of portfolio management.	FSA	General law doctrine of *delegatus non potest delegare*, which means that the management function cannot be delegated without authority. Principle 11 (Relations with regulators) provides that a firm must disclose the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice. SUP 15.3.8G(1)(e) (Communication with the FSA in accordance with Principle 11) states that the FSA should be notified of a material outsourcing arrangement (i.e., an arrangement of such importance that weakness, or failure, of the services would case serious doubt upon the firm's continuing satisfaction of the threshold conditions for authorisation), rather than every case of delegation of management. COB 4.2.15E (8) sets out requirement on a firm, as an investment manger, to make some provision for information to the customer. The provision does not address delegation of management as a matter to be mentioned in the terms/agreement.	There is only an outsourcing if the services are customised. The SUP requirements would only be likely to apply in relatively extreme cases of delegation of investment advice. There is no requirement for the contract to provide that the customer will be informed prior to any significant change regarding delegation of portfolio management.

127. An investment firm may delegate the portfolio management function to another investment firm only if such delegatee firm is authorised in its home country to provide portfolio management services on an individual basis and is qualified and capable of undertaking the function in question. The mandate shall not prevent the effectiveness of supervision over the delegator, and in particular, it must not prevent the delegator from acting in the best interests of its customers. In no case the investment firm may delegate its functions to the extent that it becomes a letter box entity. Furthermore, it may so delegate to a non-EEA investment firm so authorised in its home country only if an appropriate formal arrangement between regulators enables them to exchange material information concerning both cross-border delegations and the delegatee.	FSA	SYSC 3.2.3G and 3.2.4G (organisation) Section 45(1)(b) of FSMA Principle 11 (Relations with regulators) SUP 15.3.8G(1)(e) SYSC 3.2.4G specifies that a delegator firm cannot contract out of its regulatory obligations so a mandate would not relieve the delegator from its obligations under FSA Principles and rules to conduct its business with integrity and in the interests of customers, treating the latter fairly.	The FSA would not normally regard a "letter box entity" as carrying on regulated activities in the UK, and section 45(1)(b) of FSMA would empower us to remove the firm's authorisation. As stated in the comments on CESR Rule 126, the FSA would expect to be notified of material outsourcing arrangements. When notified of a material delegation of management, the FSA would expect to take action if this prevented effective supervision (including if there were no arrangements for exchange of information with the local regulator). If CESR Rule 127 was to be implemented via level 2, the requirement regarding no delegation to firms in non-EEA States might be difficult to implement because of the doctrine of unauthorised sub-delegation. Furthermore, such a restriction would severely limit the ability of firms to offer management services in relation to a global range of investments. It is not uncommon for a manager to delegate specific portions of global portfolios to overseas managers. Such delegations would not necessarily need to be brought to the attention of the FSA. As mentioned above, many delegations of discretionary management functions would fall outside of the definition of a material outsourcing. However, delegations resulting in a firm becoming a letterbox entity would involve a material outsourcing.

128. The delegation agreement, in writing: a) must be revocable with immediate effect by the delegator; b) must provide for sufficient notice to be given to the delegator by the delegatee of termination of the agreement; c) must be in conformity with the indications contained in the customer agreement with the delegator; d) must require, where the execution of transactions is not subject to the prior consent of the delegator, the delegatee to observe the investment guidelines, including investment allocation criteria, laid down from time to time by the delegator; e) must be formulated so as to avoid conflicts of interest between the delegator and the delegatee; f) must provide for the delegator to receive a continuous flow of information on the transactions carried out by the delegatee permitting it to monitor effectively at any time the activity of the delegatee and to reconstruct the assets under management belonging to each customer of the delegator.	FSA	SYSC 3.2 (Organisation)	A firm cannot contract out of its regulatory responsibilities (SYSC 3.2.4G), so a firm would need to comply with (c) and (d) to meet its own responsibilities. SYSC 3.2 also states that: -the extent and limits of delegation should be made clear to all concerned - there should be arrangements to supervise and monitor discharge of the delegated functions and tasks, and to follow up any concerns that arise - a delegating firm should take steps to obtain sufficient information from the contractors to assess the impact of outsourcing on its systems and controls. There is no specific provision in the FSA Rules dealing with points (a), (b) and (e).

6.2 PERIODIC INFORMATION

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

129. An investment firm must send periodic statements to its portfolio management customers so as to enable them to assess the performance of the service.	FSA	Principle 7: A firm must pay due regard to the information needs of its clients and communicate to them in a way that is fair, clear and not misleading. COB 8.2.4 R (Requirement for a periodic statement) a firm must, promptly and at suitable intervals, provide the customer with a written statement containing adequate information on the value and composition of the customer's account and portfolio with the firm, as at the end of the period covered by the statement.	Firms are obliged to send out statements about the value and composition of the customer's portfolio at suitable intervals. There are limited derogations from COB 8.2.4R. One example is where the periodic statement would duplicate a statement to be provided by someone else.
130. Periodic statements for portfolio management customers must contain: a) a statement of the contents and valuation of the portfolio, including details of each investment held, its market value and the performance of the portfolio and the cash balance, at the beginning and at the end of the reporting period; b) a management report on the strategy implemented (to be provided at least yearly); c) the total amount of fees and charges incurred during the period and an indication of their nature; d) information on any remuneration received from a third party and details of its calculation basis; e) the total amount of dividends, interest and other payments received during the period.	FSA	COB 8.2.4, 8.2.10 – 8.2.13 (Periodic statements) COB 4.2.13R (Amendment of terms of business) COB 4.2.16E (Content of terms of business provided to a customer: managing investments on a discretionary basis)	Firms are obliged to provide information as at the end of the period concerned and to give particulars of discretionary transactions carried out on behalf of that customer during the period, dividends and other income, as well as fees etc chargeable in the same statement. For example, 130 a) is covered in COB 8.2.11E 1 and 2 while 130 c) & d) are covered by COB 8.2.12E 3. There is no specific obligation to cover investment strategy or to provide periodic reports on it. The extent of the firm's discretion (which will contemplate the strategy to be employed) and whether specific performance measures are to be used should be the subject of express terms in the contract with the customer. Firms may not alter those terms (including the extent of the discretion/strategy) without the agreement of the customer or providing 10 business days' notice.
131. If the basis for valuing any of the assets in the portfolio has changed with respect to the methods described in the portfolio management agreement, these changes must be indicated in the statement along with their impact on profits and/or losses.	FSA	COB 8.2.11E 2 (Periodic Statements – General information) COB 2.1.3 (Fair, clear and not misleading communications)	Firms are required to include a statement in the periodic statement that the basis for valuing has changed if it has changed. If necessary to ensure that the periodic statement is fair, clear and not misleading, an indication should be included of the impacts of the change on the portfolio valuation. There is no specific obligation to state the impact under the valuation statements in 8.2

132. Periodic statements must include full information on any remuneration received by the investment firm or the manager from a third party that is attributable to services performed for the customer by the manager of the portfolio.	FSA	COB 8.2.12E (3) (Periodic statements – additional information required for a discretionary managed portfolio) COB 2.2.18 (Periodic disclosure – soft commission arrangements)	Periodic statements must include information about commission or fees (or services) received from third parties in connection with transactions etc carried out for the portfolio, if not previously notified to the customer in writing. Further disclosures are required on a periodic basis in relation to soft commission arrangements.
133. In case the customer has elected – in derogation to rule 58 - not to receive information on each transaction in due course carried out by the portfolio manager, the periodic statement containing details of each transaction must be provided at least every three months. Where the details of each transaction are notified after each transaction to the customer, the periodic statement may be provided only every six months.	FSA	COB 8.1.6R (3) & 8.1.7R (Exceptions to the requirement to despatch a confirmation) COB 8.2.4R (Requirement for a periodic statement), COB 8.2.10E (2) (Periodic statements – timing and content)	Specific agreement is needed from the customer if transaction confirmations are not to be provided. Periodic statements must be sent at suitable intervals, subject to a normal minimum of six-monthly intervals if transaction confirmations are not sent. In these circumstances the periodic statement must include all the information which would have been included in the transaction confirmations. There is no provision referring to three monthly intervals. There are also freedoms for the customer to agree a longer period – up to 12 months.
134. Where the contract authorises a leveraged portfolio, the customer must receive a periodic statement at least once a month, including an assessment of the risks.	FSA	Principle 7 – communications with clients. COB 8.2.10(2)(c), 8.2.12, 8.2.13 Periodic statements COB 5.4.3 (Requirement for risk warnings) COB 5.4.6C E COB 5 Annex 1.	Firms are required to take steps to ensure that a customer understands the risks involved in derivatives before carrying out transactions of that sort. Appropriate risk warning statements must be given and in many cases written confirmation of understanding is required. Periodic statements are required to include information about loans and interest, and security provided to others. Periodic statements are required monthly for uncovered open positions in contingent liability investments only.

6.3. MANAGEMENT REQUIREMENTS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

135. An investment firm must take all reasonable steps necessary to ensure the independence of the portfolio management function and mitigate the risk of customers' interests being harmed by any conflict of interest, in particular by providing for the strict separation of functions within the investment firm and its group.	FSA	Principle 8 (Conflicts of interest)	Principle 8 requires investment firms to manage conflicts of interest between the firm and its customer and between one customer and others fairly. .
		COB 7.1 (Conflict of interest and material interest) COB 7.1.3: if a firm has: • a material interest in a transaction to be entered into with or for a customer; • a relationship that gives rise or may give rise to a conflict of interest in relation to such a transaction; • an interest in a transaction that is or may be in conflict with the interest of any of the firm's customers; or • customers with conflicting interests in respect of a transaction, it must not knowingly deal in the exercise of a discretion in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the customer. COB 7.1.4 indicates that any one or more of the following four 'reasonable steps' can be used to manage conflicts of interest: • disclosure of the interest to the customer; • relying on a policy of independence; • the establishment of Chinese walls; and • declining to act for a customer.	COB 7.1 does not expressly require the segregation of functions in the same way as the CESR Standards/Rules. There is, therefore, no strict requirement for the segregation of the portfolio management function. However, most firms do separate it to ensure compliance with FSA Rules and to protect themselves from civil and criminal claims under the general law (eg in relation to insider dealing, market abuse and breach of fiduciary duty). COB rules do not contain the same emphasis on the separation of functions apparent in CESR Standard 135
138. The structure of the investment firm, its policies and procedures must seek to ensure the independence of the portfolio management function.	FSA	COB 7.1 (Conflict of interest and material interest).	Please see the comments above in relation to CESR standard 135. COB rules do not contain the same emphasis on a policy of independence in management apparent in CESR rule 138.

136. An investment firm must define investment strategies for its portfolio management services and carry out transactions in accordance with such strategies, taking into account the terms of the customer agreement.	FSA	COB 4.2.15E (3) & (4) (Contents of terms of business provided to a customer: general requirements) COB 4.2.16E (1) (Contents of terms of business provided to a customer: managing investments on a discretionary basis) Principle 2 (Skill, care and diligence). COB 4.2.15E(3) & (4) & 4.2.16E (1) provide that the firm's agreement with the customer should, where relevant, include some provision on: • the customer's investment objectives; • any restrictions on the types of financial instrument in which the customer wishes to invest and the markets on which the customer wishes transactions to be executed, or that there are no such restrictions; and • the extent of the discretion to be exercised by the firm, including any restrictions on the value of any one investment and the proportion of the portfolio which any one investment or any particular kind of investment may constitute or that there are no such restrictions.	Where a firm fails to comply with the restrictions set out in its agreement, it will potentially breach Principle 2, which requires firms to conduct their business with due skill, care and diligence. A firm is not required to document its investment methodologies.
139. The investment firm must maintain records of its investment strategies, as well as the analyses and forecasts underlying them.	FSA	COB 4.2.14R	Firms are required to make a record of each agreement they enter into with a customer in relation to the provision of investment services. As indicated in the comments on CESR Standard 136, these agreements should include details of investment objectives and restrictions.
			There is no specific requirement under the Handbook to retain records of the analyses and forecasts underlying investment strategies. This requirement may be difficult to impose in practice as investment strategies are often imposed on the investment manager by the customer, rather than being devised by the investment manager.
137. The transactions carried out by the portfolio manager, both individually and as a whole, must be exclusively motivated by the interests of the customer and in accordance with agreed management objectives.	FSA	Principle 2 (Due skill, care and diligence) Principle 6 (due regard to customers' interests) provides that a firm must pay due regard to the interests of its customers and treat them fairly. Principle 8 (conflicts of interest) COB 7.1 (conflicts of interest and material interest)	As discussed in the comments on CESR Standard 135, Principle and COB 7.1 impose detailed obligations on firms in relation to the management of conflicts of interest. As discussed in the comments on CESR Standard 136, a firm's agreement with its customer relating to portfolio management services should include a provision dealing with the customer's investment objectives. Failure to comply with

		COB4.2.15E (3) (Contents of terms of business provided to a customer: general requirements)	such a provision may result in a breach of Principle 2, which requires a firm to conduct its business with due skill, care and diligence. See also the requirements relating to "suitability" discussed above in the comments relating to CESR Standard 72. There is no express "exclusively motivated" provision in the FSA Handbook. While such an obligation is an element of the implied duties of a fiduciary, such duties can be modified as a matter of contract law (although any such provisions would need to be consistent with the firm's regulatory obligations).
140. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:	FSA	COB 7.6 (Timely execution) requires the execution of a current customer order as soon as reasonably practicable unless the firm has taken reasonable steps to ensure that postponing the execution of that order is in the best interests of the customer.	The definition of a "current customer order" includes a decision by a portfolio manager to trade immediately or a decision by an investment manager to trade following the fulfilment of a condition, once that condition has been fulfilled.
a) orders issued are immediately recorded by the firm;		COB 7.12.3R (Record keeping requirement) provides that a firm must ensure by the establishment and maintenance of appropriate procedures that it promptly records adequate information in relation to its decision to execute orders when it acts as a portfolio manager. COB 7.12.6E (1) (Minimum content of customer order and execution records)	
b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible;		COB 7.12.3R (Record keeping requirement) also provides that a firm must ensure by the establishment and maintenance of appropriate procedures that it promptly records adequate information in relation to the execution of orders that it has decided to effect when acting as a portfolio manager. COB 7.12.6E (2) & (3) (Minimum content of customer order and execution records)	

c) the portfolios affected and the relevant amounts are determined, or objectively determinable, no later than the time at which the order is issued and cannot be changed, except for the purposes of rectifying an error, after the execution of the order, regardless of whether the order relates to one or more accounts.		COB 7.7.5R and 7.7.6E (Requirement for timely allocation) COB 7.7.5R provides that where a firm has aggregated a customer order with the orders of other customers and part or all of the aggregated order has been filled, it must promptly allocate the designated investments concerned. COB 7.7.6E indicates that depending on the circumstances, such allocation must take place between one to five business days after the transaction takes place. COB 7.7.11R allows scope for revising an allocation of an aggregated order where an error is identified in either the intended basis of allocation or the actual allocation.	

B. CONDUCT OF BUSINESS RULES FOR THE "PROFESSIONAL REGIME"

1. STANDARDS OF GENERAL APPLICATION

1.1 GENERAL

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
1. An investment firm must at all times act honestly, fairly and professionally in accordance with the best interests of its customers and the integrity of the market.	FSA	FSA Handbook: Principle 1 (Integrity) provides that a firm must conduct its business with integrity. Principle 2 (Skill, care and diligence) provides that a firm must conduct its business with due skill, care and diligence. Principle 5 (Market Conduct) provides that a firm must observe proper standards of market conduct. Principle 6 (Customers' interests) provides that a firm must pay due regard to the interests of its customers and treat them fairly.	Principle 6 requires "due regard" to client's interests rather than action "in accordance with client's best interests". We believe that this accords with customers' best interests. .
2. An investment firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities, including back-up procedures and systems so as to reasonably ensure that investment services can be provided without interruption.	FSA	Para 4 of schedule 6 to FSMA (Adequate resources) provides that one of the threshold conditions for authorisation of a firm is that the resources of the firm must, in the opinion of the FSA, be adequate in relation to the investment services that the firm seeks to perform. Principle 4 (Financial prudence) provides that a firm must have adequate financial resources. COND 2.4.1 (1) requires, as a threshold condition for authorisation, that a firm must have adequate resources in relation to the regulated activities it seeks to carry on or carries on. These include having effective means to manage risks. SYSC 3.1.1R (Systems and Controls) provides that firms must take reasonable care to establish and maintain appropriate systems and controls given the nature, scale and complexity of its business. SYSC 3.2 (Areas covered by systems and controls) incl. business continuity (at SYSC 3.2.19G). SYSC 3.2.19G	

		indicates that firms should have arrangements to function and to meet regulatory obligations in event of unforeseen interruption and update these regularly and test their effectiveness.	
3. An investment firm must ensure that any persons or entities with which it is undertaking authorisable investment business are authorised to conduct that business by the relevant regulator.	FSA	FSA Handbook: Principle 1 (Integrity) provides that a firm must conduct its business with integrity. Principle 2 (Skill, care and diligence) provides that a firm must conduct its business with due skill, care and diligence.	There is no express equivalent of this requirement. The principles referred to would only be likely to apply where the firm actually is aware that its counterparty is acting in breach of an applicable regulatory restriction.
4. Investment firm that outsources functions retains full responsibility for the outsourced activity and must ensure that the providers of such outsourcing are able to perform these functions reliably, professionally and in the best interests of its customers. [17].	FSA	SYSC 3.2.3G(2) and 3.2.4G(1) (Organisation) provide that a firm: • cannot contract of its regulatory obligations where delegating functions within the firm or outsourcing; • must assess whether the service provider is suitable to carry out the delegated function or task, taking into account the degree of responsibility involved; and must put in place measures to supervise the discharge of the functions delegated to the service provider.	The precise meaning of outsourcing might need to be clarified to ensure consistency between CESR members' approaches. Does Standard 4 cover regulatory responsibilities only or regulatory and contractual responsibilities? SYSC 3.2 covers regulatory responsibilities only.

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
5. An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are identified and then prevented or managed in such a way that the interests of customers are not adversely affected. For these	FSA	Principle 1 (Integrity) Principle 8 (Conflicts of interest) requires investment firms to manage conflicts of interest between the firm and its customer and between one customer and others fairly Principle 8 does not apply where the client is an MCP	Principle 8: • does not apply where the client is an MCP. • requires investment firms to manage conflicts fairly rather than 'take all reasonable steps'.

[17] This standard is not intended to interfere with relevant provisions on civil liability, applicable at national level.

purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate.		(please see further in Part D for MCPs).	In our view, "identify" and "prevent" are implicit in "manage". The emphasis in the FSA Handbook is to identify and make available to firms the reasonable steps that can be taken to manage customers' interests fairly. If a firm has a fiduciary relationship with its client (eg where it acts as an advisor or a manager or other agent), it will be subject to a prima facie fiduciary obligation to ensure that no conflict arises between its interests and those of its client. As a matter of general law, such obligations can be modified (for example, by agreement between the client and the firm). However, if these obligations are not modified and the firm contravenes them, it may also breach Principle 1, which requires the firm to conduct its business with integrity. Work on this area is continuing in CESR, IOSCO and the EU Commission Forum Group on Analysts and in the FSA.
Where conflicts of interest cannot be reasonably avoided or managed with the internal independence policy, the conflict of interest must be disclosed to the customer.	FSA	COB 7.1 (Conflict of interest and material interest). COB 7.1 only applies where: • there is a transaction to be entered into; and that transaction is to be entered into with or for a customer (as opposed to an MCP).	Under COB 7.1.3, if a firm has: • a material interest in a transaction to be entered into with or for a customer; • a relationship that gives rise or may give rise to a conflict of interest in relation to such a transaction; • an interest in a transaction that is or may be in conflict with the interest of any of the firm's customers; or • customers with conflicting interests in respect of a transaction, it must not knowingly advise or deal in the exercise of a discretion in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the customer . This provision does not apply where the client is an MCP.
		COB 7.1 (Conflict of interest and material interest) COB 7.1.4 indicates that any one or more of the following four 'reasonable steps' can be used to manage conflicts of interest: • disclosure of the interest to the customer; • relying on a policy of independence; • the establishment of Chinese walls; and	We believe that COB 7.1 achieves an equivalent level of consumer protection even though it does not prioritise the use of a policy of independence over disclosure or measures in the same way as the CESR Standards/Rules.

		• declining to act for a customer. Guidance is provided on the circumstances in which each of these steps is appropriate. Where disclosure is used it should be made either orally or in writing before advising the customer or dealing on his/her behalf in exercise of discretion. The firm should be able to demonstrate that it has taken reasonable steps to ensure that customer does not object to the material interest or conflict. These provisions do not apply where the client is an MCP.	
		COB 4.2.15 E (13) indicates that, when a conflict of interest arises, one of the matters to be included in an investment firm's agreement with its customer is the manner in which the firm will ensure fair treatment as required by COB 7.1.3. This provision does not apply where the client is an MCP.	There is a limited derogation from COB 4.2 in relation to, for example, bringing about any execution-only transaction or where a customer enters into a transaction as a result of a direct offer financial promotion: COB 4.2.9R.
6. An investment firm, its members of the board, directors, partners, employees and tied-agents may offer or receive inducements only if they can reasonably assist the firm in the provision of services to its customers. Where inducements are received disclosure of such inducements must be made to the customer on his request.	FSA	Principle 1 (Integrity) provides that a firm must conduct its business with integrity. Principle 6 (Customers' Interests) provides that a firm must have due regard to the interests of its customers and treat them fairly. Principle 6 does not apply where the client is an MCP.	If a firm has a fiduciary relationship with its client (eg where it acts as an advisor or a manager or other agent), it will be subject to a prima facie fiduciary obligation to ensure that no conflict arises between its interests and those of its client and not to make a secret profit. As a matter of general law, such obligations can be modified (for example, by agreement between the client and the firm). However, if these obligations are not modified and the firm contravenes them, it may also breach Principle 1, which requires the firm to conduct its business with integrity.
		COB 2.2.3R (Prohibition of inducements) requires a firm to take reasonable steps to ensure that it, or any person acting on its behalf, does not *inter alia* offer or accept an inducement that is likely to conflict to a material extent with any duty owed to its customers or any duty owed by a recipient firm to its customers.	
		COB 2.2.5 – 2.2.7 contain specific guidance on whether the provision of inducements in connection with the sale of packaged products is acceptable.	These provisions do not apply where the client is an MCP. However, as most packaged products (other than investment trust saving schemes) are not inter-professional investments, the IFA is likely to be an intermediate customer.
		COB 2.2.8 - 15 R	These provisions, which relate to so-called "soft commission agreements", set out a regime that allows investment firms to

			receive inducements in certain circumstances. An investment firm may accept goods and services under a soft commission agreement provided they are of direct relevance to, and used to assist in the provision of, certain specified services to the firm's customers. These provisions do not apply where the client is an MCP.
		COB 2.2.16 (Prior disclosure) and 2.2.18 (Periodic disclosure) COB 2.2.16 provides that before an investment firm enters into a client agreement authorising it to deal for a customer under a soft commission agreement entered into by the firm or where it knows (or reasonably ought to know) that another member of its group has such an agreement, it must inform the customer in writing of the existence of the soft commission agreement and the firm's (or where relevant the group's) policy in relation to soft commission. COB 2.2.18 imposes a requirement in such circumstances to provide customers with information on soft commission arrangements on an annual basis. These provisions do not apply where the client is an MCP.	The requirements for initial and periodic disclosure only apply where: • the client is not an MCP; and • the soft commission regime has been triggered. For example, these requirements do not apply where an inducement is accepted in accordance with the guidance related to packaged products or otherwise where reasonable steps have been taken to ensure that the inducement will not give rise to a material conflict of interest.

1.3 COMPLIANCE AND CODE OF CONDUCT

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
7. An investment firm must take all reasonable measures to ensure that the firm and its members of the board, directors, partners, employees and tied-agents at all time act in accordance with the best interests of its customers and the integrity of the market by establishing and implementing adequate compliance policies and procedures, including an independent compliance function and an internal code of conduct.	FSA	Principle 5 (Market Conduct) provides that a firm must observe proper standards of market conduct. Principle 6 (Customers' Interests) provides that a firm must have due regard to the interests of its customers and treat them fairly. Principle 6 does not apply where the client is an MCP.	There is no express requirement in the FSA Handbook to maintain an "internal code of conduct".

		SYSC 3.2.6R & 3.2.7G (Compliance) SYSC 3.2.6R provides that firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards. A company acts through its directors and employees and a partnership acts through its partners or employees. The systems and controls will therefore need to relate to these individuals. SYSC 3.2.7G indicates that it may be appropriate to have a separate compliance function, depending on nature, scale and complexity of the business. The organisation and responsibilities of a compliance function should be documented.	The requirements in CESR rule 7 are conditioned by reasonableness. FSA does not require an independent compliance function in every case in order to comply. Much depends on the nature, scale and complexity of the business in question – what is reasonable and adequate in one case might not be in another.
	Parliament/FSA	Section 39(4) of FSMA: in determining whether an investment firm has complied with the aforementioned requirement under SYSC 3.2.6, anything its tied agent has done or omitted as respects business for which the investment firm has accepted responsibility will be treated as having been done or omitted by the authorised person.	
8. An investment firm must be able to demonstrate that it has not acted in breach of the conduct of business rules and the internal code of conduct and that its organization, policies and procedures facilitate such compliance.	FSA	SYSC 3.2.20R (Records) requires a firm to take reasonable care to make and retain adequate records of matters and dealings (including accounting records) which are the subject of requirements and standards under the regulatory system, which is broadly defined to include the conduct of business rules).	There is no requirement to be able to demonstrate compliance with the firm's internal code of conduct, because there is no requirement to maintain such a code. The record-keeping required does not go so far as to require the reversal of the burden of proof as regards COB compliance.
			This general record-keeping requirement is supplemented by numerous specific record keeping requirements, which are listed in COB Schedule 1.
		SYSC 3.2.6R (Compliance) requires a firm to take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards.	There is no reversal of the burden of proof.
9. The persons responsible for the compliance function must have the necessary expertise, resources, authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all persons and activities	FSA	SYSC 3.2.7G (Compliance) states that an investment firm's compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively. The compliance function should be adequately resourced and should have unrestricted access to the firm's relevant	

subject to their monitoring.		records.	
		SYSC 3.2.8R (Compliance) requires an investment firm to allocate to a director or a senior manager the function of having responsibility for the oversight of the firm's compliance.	
10. A summary of the results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.	FSA	SYSC 3.2.7G & 8R (Compliance) The director or senior manager to whom the function of having responsibility for the oversight of the firm's compliance has been allocated is responsible for reporting to the investment firm's governing body in respect of their oversight of the firm's compliance. The firm's compliance function should have ultimate recourse to its governing body. SUP 15 (Notifications to the FSA)	A number of ad hoc requirements to notify the FSA of specific matters are imposed under SUP 15. There is no requirement to provide annual reports on compliance monitoring, but firms are to give auditors a right of access to records and documents at all times under SUP 3.6.1.
11. An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers.	FSA	Principle 11 Relations with regulators) provides that an investment firm must deal with its regulators in an open and co-operative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.	
		SUP 15.3.11 & 12 (Breaches of rules and other requirements in or under the Act). SUP 15.3.11 requires a firm to notify the FSA of *inter alia* a significant breach of any FSA Rule by the firm or any of its directors, officers, employees, tied agents or "approved persons". SUP 15.3.12 provides that significance should be determined for these purposes having regard to potential financial losses to customers or to the firm, frequency of the breach, implications for the firm's systems and controls and if there were delays in identifying and rectifying the breach.	SUP 15.3.12 refers to potential financial losses to customers rather than clients, and therefore does not refer to financial losses suffered by MCPs.
12. The compliance function must:	FSA	SYSC 3.1.2(2) (Systems and controls) a firm should carry	The advisory assistance and support role is not expressly

- regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services; *- provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services.*		out a regular review of its systems and controls (including the compliance function) to enable it to comply with its obligations to maintain appropriate systems and controls.	included in the description of the responsibilities of the compliance function. However, it is implicit in the general obligation to maintain the compliance function (SYSC 3.2.6R).
13. An investment firm must keep records relevant for the purpose of demonstrating compliance with the conduct of business rules, for a period of five years in order to enable the competent authority to verify compliance with these rules. Tape recording of orders must be kept for a period of one year.	FSA	SYSC 3.2.21G states that the general principle is that records should be retained for as long as is relevant for the purposes for which they are made. SYSC 3.2.20R A firm must take reasonable care to make and retain adequate records of matters and dealings that are the subject of requirements and standards under the regulatory system. SYSC Schedule 1: These records must be kept for an adequate period of time.	This general principle is supplemented by specific provisions on the retention of records in relation to the individual record keeping requirements referred to above. The FSA's approach is therefore targeted. The length of the document retention requirements and the date from which the retention requirement is calculated varies depending on the nature of the records in question.
		SYSC 3.1.1 & 3.1.2 (Systems and controls) SYSC 3.1.1R requires a firm to take reasonable care to establish and maintain such systems and controls as are appropriate to its business. SYSC 3.1.2 G indicates that one of the factors to be taken into account in determining the nature and extent of the systems and controls a firm will need to maintain under the above rule is the volume and size of its transactions.	
		COB 7.12 (Customer order and execution records)	

		COB 7.12.3R requires a firm to ensure by the maintenance of appropriate procedures that it promptly records adequate information in relation to the receipt and execution of client orders and the execution of own account orders. COB 7.12.11R provides that these records should be retained for at least 3 years.	
14. An investment firm must keep a register of customer complaints related to the provision of the investment services and the measures taken for their resolution and must regularly verify whether complaints are adequately processed.	FSA	DISP 1.5.1R & 1.5.2G (Making and retaining records of complaints) DISP 1.5.1R requires firms to make and retain records of complaints. DISP 1.5.2G indicates that such records should include any correspondence between the firm and the complainant, including details of any redress offered by the firm.	DISC 1.1.7 allows a firm to opt out of the requirements of DISP 1.2 – 1.7 in certain circumstances if it does not conduct business with eligible complainants and has no reasonable prospect of doing so.
		DISP 1.2.1R (Requirement to have internal complaint handling procedures) DISP 1.2.1 requires a firm to have in place and operate appropriate and effective internal complaint handling procedures for handling any expression of dissatisfaction received from or on behalf of complainants.	
		SYSC 3.1.1R and 3.1.2(2)G (Systems and Controls) SYSC 3.1.1R requires a firm to take reasonable care to establish and maintain such systems and controls as are appropriate to its business. SYSC 3.1.2(2)G provides that a firm should carry out a regular rule of its systems and controls to enable it to comply with its obligation to maintain appropriate systems and controls.	
		DISP 1.5.4R (Reporting complaints to the FSA) Firms are required to provide a standard form report to FSA on complaints and complaints-handling twice per year. This report includes details of the time taken to close complaints	.
15. An investment firm must establish a code of conduct for members of the board, directors, partners, employees and tied-agents. The code of conduct must contain:	FSA		There is no express equivalent to this requirement.
a) The rules and procedure to meet the obligation to protect data of a confidential nature;		Principle 1 (Integrity) requires a firm to conduct its	Obligations of confidentiality are generally imposed on investment firms under the general legal principles relating to

		business with integrity. Principle 2 (Skill, care and due diligence) requires a firm to conduct its business with due skill, care and diligence.	the protection of confidential information.
		SYSC 3.2.6R (Compliance) requires a firm to take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards.	
		APER 2.1.2 (Statements of Principle) Principle 1 and Principle 2 APER 4.1.10E (Statement of principle 1)	In addition, individuals who are subject to the FSA's approved persons regime are subject to a requirement in APER 2.1.2 to act with integrity and due skill, care and diligence in carrying out their "controlled functions". APER does not apply to all employees and is a code imposed by the FSA. APER 4.1.10E indicates that deliberately misusing the confidential information will be a breach of this requirement.
b) the rules and procedures for carrying out personal transactions involving financial instruments;		COB 7.13.4R (Restrictions on personal account dealing) and 7.13.7E (Reasonable steps) Firms should ensure that restrictions on personal account dealing are included in a notice that forms part of the contract of employment or contract for services of all person acting as employees or whose services are placed at the disposal of the firm.	Under COB 7.13.4, the rules and procedures concerning personal account dealing are only required as part of the firm's obligations to take reasonable steps to avoid conflicts with the firm's duties to its "customers" and therefore not to avoid conflicts with the firm's duties to MCP's.
c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information; *d) the investment firm's policy on conflicts of interest and inducements.*		SYSC 3.2.6R (Compliance) requires a firm to take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards.	See the comments on paragraphs 5 and 6 in relation to the FSA requirements concerning conflicts of interest and inducements. There are no express equivalents to these requirements.

2. INFORMATION TO BE PROVIDED TO CUSTOMERS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
16. An investment firm must pay due regard to the information needs of its customers and communicate information to them that is fair, clear, and not misleading.	FSA	Principle 7 (Communications with clients) provides that a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading. PRIN 3.4.1 R (Clients and the principles)	PRIN 3.4.1 R modifies the effect of principle 7 where the firm's client is an MCP, so that it only operates as a requirement that the firm must communicate information to the MCP in a way that is not misleading. The modification of principle 7 by PRIN 3.4.1R does not appear to be consistent with the CESR standards.
17. If an investment firm provides information in a marketing communications it must be fair, clear and not misleading.	FSA	Principle 7 (Communications with clients). COB 2.1.3R (clear, fair and not misleading communications).	Generally, a firm must take reasonable steps to communicate in a way that is clear, fair and not misleading. While COB 2.1.3R does not apply where the firm's client is a market counterparty, principle 7 (modified as discussed in the comments on paragraph 16) would apply in such a case. COB 3 generally does not apply to communications with professional investors because COB 3.2.4 & 5R (1) provides that most of COB 3 will not apply where a communication is only made to MCPs or intermediate customers. However, COB 3.8.4R (1) will still apply.
18. An investment firm must ensure that a customer is provided promptly with the essential information concerning the execution of his order.	FSA	COB 8.1.3R (Requirement to confirm a transaction) requires a firm that executes a sale or purchase of a financial instrument with or for a customer to promptly dispatch a written confirmation of the essential details of the transaction to the customer. COB 8.1.3R allows the information to be provided to the customer's agent. COB 8.1.3R does not apply where the client is an MCP.	There is scope for derogation from the requirement but on the basis that we believe sufficient protection is in place. COB 8.1.6R provides, inter alia, that the requirement in COB 8.1.3R does not apply: (2) in relation to saving schemes for regulated CISs and investment trusts; or (3) & (4) if the firm has agreed with the customer that individual confirmations are not required, provided the information is included in the periodic statement. In the case of an investment manager, it is only necessary to take reasonable steps to determine that separate confirmations are not required in relation to non-contingent liability financial instruments.

19. Where an investment firm has control of, or is holding assets belonging to a customer, it must arrange for proper identification and regular confirmation of such assets to the customer.	FSA	COB 9.1 (Client assets) COB 9.1 contains detailed provisions concerning the obligations of a firm to safeguard and administer its clients' financial instruments. These include requirements on: • the segregation of client assets from proprietary assets in the firm's records; • the registration and recording of dematerialised or immobilised financial instruments and the holding of certificates relating to financial instruments; • the assessment and terms of appointment of subcustodians; • the provision of statements to the client (or its nominated representative) in writing, as often as necessary or as often as agreed with the client, but in any event at least annually; and the performance of reconciliations between the records of the firm with the record of any other person that holds financial instruments for which the firm is accountable.	This CESR provision appears to go beyond safeguarding and administration of financial instruments (the activity that triggers COB 9.1). It also applies to firms that have "control" of customer assets. Control would appear to envisage the circumstances covered by COB 9.2 (Mandates). However, the FSA rules do not impose "identification" requirements along the lines of Paragraph 19 merely because a firm has "control" over assets. It is common for a client to directly appoint a custodian and to provide its investment manager with a mandate to control those assets for trading purposes. In such a case the manager's "confirmation" requirement would be covered by COB 8.2.11E (unless the client is an MCP, in which case this provision will not apply).
20. An investment firm that operates customer accounts, which include uncovered open positions, must provide regular statements of such positions.	FSA	COB 8.2 (Periodic statements) provides that where a firm operates a customer's account containing uncovered open positions in contingent liability investments, it should supply the customer with a regular statement on a timely basis, providing information on the value and composition of the customer's portfolio. COB 8.2.1R, 8.2.4R and 8.2.6R.	An intermediate customer may ask not to receive a periodic statement. A firm need not send the statement if it has taken reasonable steps to establish that the intermediate customer does not wish to receive it. Under COB 8.2 the requirements concerning open positions only apply where they are in a contingent liability investment. However, the CESR obligations also cover short selling of cash instruments and investments (which are not covered by the FSA Rules because they do not involve contingent liability investments.) COB 8.2 does not apply where the client is an MCP.

3. THE "KNOW-YOUR-CUSTOMER STANDARD" AND THE DUTY TO CARE

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

21. Prior to providing any investment service to a customer for the first time and throughout the business relationship, an investment firm must be in possession of adequate documentation of the identity of the customer, as well as the identity and legal capacity of any representative of the customer.	FSA		The United Kingdom legal and regulatory regime treats the identification of clients and their representatives as an aspect of the provisions dealing with anti-money laundering ("**AML**") measures. See the comments above in relation to CESR Rule 64 of the Conduct of Business Rules For The Retail Regime for more detail on these requirements.
In addition, prior to providing any investment service the investment firm must seek to obtain from the customer information enabling an investment firm a) to determine whether the investment services envisaged are appropriate for the customer and b) to meet any duties owing to the customer in respect of the services to be provided.		Principle 9 (Customers: Relationship of Trust) states that a firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.	Principle 9 only applies in relation to the provision of advice or the making of discretionary decisions. Paragraph 21 applies when any investment service is provided. Principle 9 does not apply if the client is an MCP.
22. When an investment firm provides investment advice to the customer, it must have reasonable grounds to believe, in light of the information disclosed to it by the customer and the information available to it, including the information from the customer relationship, that this investment advice is suitable for him.	FSA		See the comments in relation to paragraph 21 above.

4. CUSTOMER AGREEMENTS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

23. Prior to providing any investment service, an investment firm must enter into a signed written agreement with the customer setting out the rights and obligations of the parties.	FSA	Principle 7 (Communications with clients) provides that a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading. PRIN 3.4.1 R (Clients and the principles)	PRIN 3.4.1 R modifies the effect of principle 7 where the firm's client is an MCP, so that it only operates as a requirement that the firm must communicate information to the MCP in a way that is not misleading.
		COB 4.2.5 (Requirement to provide terms of business to a customer) COB 4.2.10 (Adequate detail in terms of business) COB 4.2.15 (Contents of terms of business – general). MAR 3.4.10 (guidance on Clarity of role for business between market-counter-parties)	The requirement to enter into a two-way customer agreement is restricted to business done with private customers. We nevertheless regard *terms of business* as evidencing (where this is appropriate) a contractual relationship between the firm and the customer. Firms find it difficult to ensure that customers return a signed copy of an agreement. Firms would face criticism from customers were they to delay in transacting business whilst they awaited a signed copy. This comment applies with particular force to inter-professional business

5.- DEALING REQUIREMENTS

5.1) RECEPTION AND TRANSMISSION OF CUSTOMER ORDERS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

24. An investment firm must record and process customer orders in accordance with the customer's instructions and in such a way as to facilitate best execution.	FSA	The modules relating to Systems and controls (SYSC) and Conduct of business (COB) cover this standard. Record keeping provisions are in both SYSC and COB. Processing and execution of orders are covered, in particular, by COB 7.4 (Customer order priority), COB 7.5 (Best execution), COB 7.6 (Timely execution), COB 7.7 (Aggregation and allocation), COB 7.12 (Customer order and execution records). The above-mentioned requirements do not apply where the client is an MCP.	Intermediate customers can opt out of the requirement for the firm to provide best execution.
25. An investment firm must ensure that the firm and its members of the board, directors, partners, employees and tied-agents do not use the information they possess on customers orders to the disadvantage of customers' interest.	FSA	Principle 1 (Integrity) Principle 8 (Conflicts of interest) COB 7.1.3 (Fair treatment) COB 7.13.4 (Restrictions on personal account dealing) A firm must take reasonable steps to ensure that a personal account transaction in s designated investment undertaken by any of its employees does not conflict with the firm's duties to its customers under the regulatory system. COB 7.3.3 (obligation to postpone own account transactions) in relation to research publications.	This sort of issue is treated in the same way as other conflicts of interest. The firm is obliged to provide fair treatment to customers. Firms are required to restrict dealings by their employees (which will include directors) and other individual agents so as not to disadvantage customers. Principle 8 does not apply where the client is an MCP. If a firm has a fiduciary relationship with its client (eg where it acts as an advisor or a manager or other agent), it will be subject to a prima facie fiduciary obligation to ensure that no conflict arises between its interests and those of its client. As a matter of general law, such obligations can be modified (for example, by agreement between the client and the firm). However, if these obligations are not modified and the firm contravenes them, it may also breach Principle 1, which requires the firm to conduct its business with integrity. If the firm is about to publish investment research it is required to give recipients an opportunity to act on it, unless certain exceptions apply. Personal account dealings are currently under review in the context of the review of conflicts and investment research (FSA Consultation Paper 171).

26. An investment firm must record orders immediately, documenting and verifying all relevant items of proper execution.	FSA	Systems and controls requirements: SYSC 3.2.20 (Records) imposes a general obligation to make and retain records of dealings that are the subject of regulatory obligations. Conduct of business sourcebook: COB 7.12.3 – 7.12.6 (Record keeping requirement) specific record keeping obligations require a record of matters related to orders to be made and retained by firms which receive orders from customers. In relevant circumstances a firm is obliged to make additional records if this is appropriate. The records are to be made promptly. COB 7.12 does not apply where the client is an MCP.	
27. An investment firm must keep a record of telephone orders on magnetic tape or an equivalent medium. Investment firms must duly inform the customer that the conversation will be recorded.	FSA Parliament	COB 7.12 (Customer order and execution records) requires that records are made and kept, but the form of the record is not mandated – it can be any means appropriate to the business. COB 7.12 does not apply where the client is an MCP. Also MAR 3.6.1 – 3.6.11 (Taping) in relation to inter-professional conduct.	Some exchanges require their members to maintain voice recording systems (eg London Stock Exchange, rule 4170-4171). Taping of a customer's telephone conversations is limited by other legislative requirements (eg the Regulation of Investigatory Powers Act). However, it is permitted if the customer consents. Some additional provisions allow businesses to record calls for limited business purposes (Telecommunications (Lawful Business Practice) (Interception of Communications) Regs 2000). This is consistent with the limited exception to the ban on taping in Directive 97/66/EC.

5.2) EXECUTION OF ORDERS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

28. An investment firm must take all care to obtain the best possible result for the customer with reference to price, costs born by the customer, size, nature of the transactions, time of reception of order, speed and likelihood of execution and trading venue taking into account the state of the relevant market(s). The relevant market(s) shall be deemed to be the market(s) offering the most favourable trading conditions also in terms of transparency, liquidity and clearing and settlement arrangements in connection with the envisaged transaction. If the investment firm executes in another trading venue, it must be able to demonstrate to the customer that this was done in accordance with his best interest.	FSA	Principle 2 (Skill care and diligence) Principle 6 (Customers' interests) COB 7.5.3 – 7.5.6 (Best execution) A firm must provide best execution. It must take reasonable care to ascertain the best price available for the customer order in the relevant market at the time for transactions of the kind and size concerned. It must execute the order at a price no less advantageous to the customer, unless it has taken reasonable steps to ensure that it would be in the customer's best interests not to do so.	Please see also Retail Standard 98, above. Firms are required to take reasonable care (the usual standard imposed by the general law) to obtain the best available price for the customer taking account of the relevant matters. If firms have access to more than one trading venue, they are to provide the best price available across those venues. The above-mentioned requirements do not apply where the client is an MCP. In addition, intermediate customers can opt out of the requirement for the firm to provide best execution. The FSA has, in its Consultation Paper 154, been consulting on a new approach to the best execution rules.
29. An investment firm acting as principal in relation to a customer order must inform the customer accordingly beforehand and must be in a position to justify the price at which the transaction is executed, with reference to the prices and volumes in the relevant market(s), where appropriate, or the presumed value determined on the basis of objective elements, e.g. mark-to-market.	FSA	Principle 2 (Skill care and diligence) Principle 6 (Customers' interests) Principle 7 (Communications with clients) Principle 8 (Conflicts of interest) COB 7.1.3 (Fair treatment) COB 7.5.3 – 7.5.6 (Best execution)	Firms are obliged to deliver best execution for customers whether acting as principal or agent for the customer (see obligations described in relation to paragraph 28 above). Where the client is not an MCP, firms are also obliged to ensure fair treatment for customers when they have a material interest in a transaction, to manage conflicts of interests between themselves and customers and to have regard to the information needs of customers.
30. An investment firm must ensure that orders are executed in accordance with the instructions from the customer.	FSA	Principle 2 (Skill care and diligence) Principle 6 (Customers' interests) COB 7.4.3 (Dealing fairly and in due turn), COB 7.6.4 (Timely execution)	Firms must act with due skill, care and diligence. If firms have agreed by contract to carry out an order, general principles of contract law will apply to oblige the firm to comply. In addition, where the client is not an MCP, firms are required to pay due regard to customers' interests, execute orders from customers in a timely fashion (providing best execution) and do so fairly and in due turn.
31. An investment firm takes reasonable steps to refrain from executing orders for its own account or the account of its members of the board, directors, partners, employees and tied-agents before those of customers in identical or better conditions than the latter ("front running").	FSA	COB 7.4.3 (Dealing fairly and in due turn) COB 7.6.4 – 7.6.5 (Achieving timely execution) Also see rules referred to in relation to paragraph 25, above.	Customer orders are required to be executed promptly and in due turn unless postponement is in the best interests of customer. These requirements do not apply where the client is an MCP. See also the comments in relation to paragraph 25, above. There is provision for sophisticated customers to opt out in COB 7.5.4.

5.3) POST- EXECUTION OF ORDERS

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
32. An investment firm must ensure the proper and speedy recording, allocation and distribution of executed transactions.	FSA	COB 7.7.5 – 7.7.6, 7.7.16 – 7.7.17 (Aggregation of orders) COB 7.12.3 – 7.12.6 (Customer order and execution records)	Firms are obliged to allocate (when orders are aggregated) and record executed transactions promptly. These requirements do not apply where the client is an MCP.
33. Where orders for own and customers accounts have been aggregated, the investment firm must not allocate the related trades in any way that is detrimental to any customer. If such an aggregated order is only partially executed, allocation to customers must take priority over allocation to the investment firm.	FSA	COB 7.7.9R (Requirement for fair allocation) COB 7.7.11R (Re-allocation)	The allocation must not give unfair preference to the firm or to any of those for whom it dealt. Firm must give priority to satisfying customer orders if the aggregate total of all orders cannot be satisfied, unless the firm can demonstrate reasonably that without its own participation it would not have been able to execute those orders on such favourable terms or at all. If the order is executed only partially, resulting in an uneconomic allocation to some customers, the firm may undertake a revised allocation of an aggregated order – taking reasonable steps to ensure it is done in the best interests of customers for whom the firm has dealt. These requirements only apply where the client is an MCP.

6. INDIVIDUAL DISCRETIONARY PORTFOLIO MANAGEMENT

In addition to the foregoing standards and rules, additional provisions apply to the service of individual portfolio management.

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
34. Prior to the provision of any discretionary portfolio management service, a customer agreement containing the relevant provisions of the basic customer agreement mentioned above, as well as certain additional provisions specific to portfolio management must be signed between the parties.	FSA	COB 4.2.5R (Requirement to provide terms of business to a customer) requires a firm to provide a customer with an agreement setting out the basis on which the discretionary portfolio management service is to be provided to the customer. COB 4.2.10R (Adequate detail) provides that a firm must ensure that this agreement sets out in adequate detail the basis on which the portfolio management services are to	In the case of an intermediate customer, such agreement must only be provided within a reasonable period of the firm beginning to provide the portfolio management services to the customer. A signed agreement is only required for private customers. The requirement in COB 4.2.5R does not apply where the client is an MCP. However, see the comments in relation to paragraph 23 above in relation to agreement requirements for

		be provided. COB 4.2.15E (Content of terms of business provided to a customer: general content) and COB 4.2.16E (Content of terms of business provided to a customer: managing investments on a discretionary basis) provide detailed non-exclusive guidance on the content of such agreements.	MCPs.
35. An investment firm must take all reasonable steps necessary to ensure the independence of the portfolio management function and mitigate the risk of customers' interests being harmed by any conflict of interest, in particular by providing for the strict separation of functions within the investment firm and its group.	FSA	Principle 1 (Integrity) Principle 8 (Conflicts of interest) requires investment firms to manage conflicts of interest between the firm and its customer and between one customer and others fairly	Principle 8 does not apply where the client is an MCP. However, as a matter of general law, a portfolio manager will have a fiduciary relationship with its client and will therefore be subject to a prima facie fiduciary obligation to ensure that no conflict arises between its interests and those of its client. As a matter of general law, such obligations can be modified (for example, by agreement between the client and the firm). However, if these obligations are not modified and the firm contravenes them, it may also breach Principle 1, which requires the firm to conduct its business with integrity. There is no strict requirement for the segregation of the portfolio management function. However, most firms do separate it to ensure compliance with FSA Rules and to protect themselves from civil and criminal claims under the general law (eg in relation to insider dealing, market abuse and breach of fiduciary duty).

		COB 7.1 (Conflict of interest and material interest) Under COB 7.1.3, if a firm has: • a material interest in a transaction to be entered into with or for a customer; • a relationship that gives rise or may give rise to a conflict of interest in relation to such a transaction; • an interest in a transaction that is or may be in conflict with the interest of any of the firm's customers; or • customers with conflicting interests in respect of a transaction, it must not knowingly deal in the exercise of a discretion in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the customer. COB 7.1.4 indicates that any one or more of the following four 'reasonable steps' can be used to manage conflicts of interest: • disclosure of the interest to the customer; • relying on a policy of independence; • the establishment of Chinese walls; and • declining to act for a customer. COB 7.1 does not apply where the client is an MCP.	COB 7.1 only applies where there is a transaction to be entered into with or for a customer. COB 7.1 does not expressly require the segregation of functions in the same way as the CESR Standards/Rules. In practice, most investment managers will rely on segregation and Chinese walls to separate their investment management functions from other functions (such as corporate finance and proprietary trading). They do this to take advantage of the rules on control of information in COB 2.4.4 in the context of restrictions on the misuse of information (market abuse and insider dealing) and because of the general law on fiduciary obligations and Chinese walls.
36. An investment firm must send periodic statements to its portfolio management customers so as to enable them to assess the performance of the service.	FSA	Principle 7 (Communications with clients). COB 8.2.4 (Requirement for a periodic statement)	Firms are obliged to send out statements about the value and composition of the customer's portfolio at suitable intervals. COB 8.2.4 does not apply where the client is an MCP.
37. The investment firm must ensure that its orders are executed as efficiently as possible and in particular that:	FSA	COB 7.6 (Timely execution) COB 7.6.4R requires the execution of a current customer order as soon as reasonably practicable unless the firm has taken reasonable steps to ensure that postponing the execution of that order is in the best interests of the	The definition of a "current customer order" includes a decision by a portfolio manager to trade immediately or a decision by an investment manager to trade following the fulfilment of a condition, once that condition has been

		customer.	fulfilled. COB 7.6.4R does not apply where the client is an MCP.
a) orders issued are immediately recorded by the firm;		COB 7.12.3R (Record keeping requirement) provides that a firm must ensure by the establishment and maintenance of appropriate procedures that it promptly records adequate information in relation to its decision to execute orders when it acts as a portfolio manager. COB 7.12.6E (1) (Minimum content of customer order and execution records)	COB 7.12 does not apply where the client is an MCP.
b) transactions executed are recorded and the portfolios affected are adjusted as quickly as possible;		COB 7.12.3R (Record keeping requirement) provides that a firm must ensure by the establishment and maintenance of appropriate procedures that it promptly records adequate information in relation to the execution of orders that it has decided to effect when acting as a portfolio manager. COB 7.12.6E (2) & (3) (Minimum content of customer order and execution records)	COB 7.12 does not apply where the client is an MCP.
c) the portfolios affected and the relevant amounts are determined, or objectively determinable, no later than the time at which the order is issued and cannot be changed, except for the purposes of rectifying an error, after the execution of the order, regardless of whether the order relates to one or more accounts.		COB 7.7.5R and 7.7.6E (Requirement for timely allocation) COB 7.7.5R provides that where a firm has aggregated a customer order with the orders of other customers and part or all of the aggregated order has been filled, it must promptly allocate the designated investments concerned. COB 7.7.6E indicates that depending on the circumstances, such allocation must take place between one to five business days after the transaction takes place.	COB 7.7 does not apply where the client is an MCP.

C. CORE STANDARDS FOR THE "COUNTERPARTY RELATIONSHIP"

1. The "counterparty relationship"

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
A « counterparty relationship » is typical of trading between investment firms and banks within themselves or with other entities which are not holding themselves out as providers of investment services but are market participants directly active in the financial market for proprietary trading. It is characterised by the absence of a "client relationship" (i.e. without any provision of service). In particular, it covers the following situations: - transactions executed in regulated markets or other trading venues (which do not give rise to any provision of investment service to the customer) between any member admitted to trade in these markets; - transactions executed directly (over-the-counter) between investment firms or credit institutions, authorised to provide the service of dealing, and dealing either as principal or as agent; - transactions executed directly (over-the-counter) between investment firms or credit institutions and other authorised or regulated financial intermediaries, including non-ISD firms, such as commodity dealers, insurance companies, but not including collective investment schemes and management companies of such schemes, pension funds and management companies of such funds.	FSA	MAR 3	The scope of the inter-professional code is significantly wider than the scope of the CESR counterparty regime: • it applies to execution of orders on behalf of clients, reception and transmission of orders and other arranging and related advice; under the rules concerning the classification of another firm or an overseas financial services institution in COB 4.1.7R (2), the rebutable presumption within the scope of the inter-professional code is that a firm or an overseas financial services institution is an MCP. The FSA's equivalent to the core standards for the "counterparty relationship" is the inter-professional code, which applies to "inter-professional business". Broadly speaking, inter-professional business relates to: • dealing on own account; • execution of orders on behalf of clients; • receiving and transmitting orders or otherwise arranging transactions; • giving advice in connection with any of the above activities or agreeing to do so, PROVIDED THAT: • such activities relate to financial instruments that, broadly speaking, fall within paragraphs 1(a), 2, 3, 4, 5 or 6 of Schedule B of the Annex to the ISD; and • the firm's client is a market counterparty. See the comments on paragraph 10 of section D below for a discussion of the provisions concerning the classification of customers as MCPs or intermediate customers.

CESR Members are free to allow companies to be treated as "counterparties" and to define the appropriate quantitative thresholds. In case of cross-border business, if the company is located in a jurisdiction where the "counterparty regime" is not applicable to companies, the professional regime will apply to that relationship.	FSA		There is no such agreement requirement under the FSA Handbook.
Transactions entered into by these entities and effected through the offices of an authorised intermediary would be, by default, subject to the « professional regime ». Only those transactions undertaken by these entities for which they are direct "counterparties" and for which a specific choice to enter into a "counterparty relationship" has been made, are liable to operate subject to such a regime.	FSA		
The entities meeting one of the above mentioned criteria and willing to enter into a « counterparty relationship » have to reciprocally confirm in the contract that the transaction is executed under a « counterparty relationship ». This confirmation may be given in master agreements, where applicable to a series of transactions of the same nature.	FSA		There is no such agreement requirement under the FSA Handbook.

1. The "counterparty regime"

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

The firm must at all times act honestly, fairly and professionally in accordance with the integrity of the market.	FSA	Principle 1 (Integrity) provides that a firm must conduct its business with integrity. Principle 2 (Skill, care and diligence) provides that a firm must conduct its business with due skill, care and diligence. Principle 5 (Market Conduct) provides that a firm must observe proper standards of market conduct.	
The firm must have and must employ effectively the resources and procedures that are necessary for the proper performance of its business activities.	FSA	SYSC 3.1.1R (Systems and Controls) provides that firms must take reasonable care to establish and maintain appropriate systems and controls given the nature, scale and complexity of business. Para 4 of schedule 6 to FSMA (Adequate resources) provides that one of the threshold conditions for authorisation of a firm is that the resources of the firm must, in the opinion of the FSA, be adequate in relation to the investment services that the firm seeks to perform. Principle 4 (Financial prudence) provides that a firm must have adequate financial resources. SYSC 3.2 (Areas covered by systems and controls) incl. business continuity (at SYSC 3.2.19G). SYSC 3.2.19G indicates that firms should have arrangements to function and to meet regulatory obligations in event of unforeseen interruption and update these regularly and test their effectiveness.	
The firm must establish an independent compliance function, aimed at ensuring that its directors, partners, employees and agents behave in accordance with the integrity of the market.	FSA	Principle 5 (Market Conduct) provides that a firm must observe proper standards of market conduct.	There is no express requirement in the FSA Handbook to maintain an "internal code of conduct". An "independent compliance function" is not required by the FSA Handbook in all circumstances. Much depends on the nature, scale and complexity of the business in question .

		SYSC 3.2.6R & 3.2.7G (Compliance) SYSC 3.2.6R provides that firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards. SYSC 3.2.7G indicates that it may be appropriate to have a separate compliance function, depending on nature, scale and complexity of the business. The organisation and responsibilities of a compliance function should be documented.	A company acts through its directors and employees and a partnership acts through its partners or employees. The systems and controls will therefore need to relate to these individuals.
Executive directors/senior management must take reasonable measures to ensure that the firm establishes and implements adequate compliance policies and procedures.	FSA	Statement of principle 7 for approved persons provides that an approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.	See the comments in relation to the previous paragraph. Significant influence functions include executive directors and senior management below board level where the firm is of sufficient size. SYSC 3.2.8R (Compliance) requires an investment firm to allocate to a director or a senior manager the function of having responsibility for the oversight of the firm's compliance. However, for the purpose of this rule, "compliance" means compliance with conduct of business rules and with rules governing the operation of regulated collective investment schemes, where relevant. Therefore, this provision does not cover compliance with all of the standards.
The firm must be able to demonstrate that it has not acted in breach of standards of market integrity and that its organisation, policies and procedures facilitate such compliance.	FSA	Principle 5 (Market Conduct) provides that a firm must observe proper standards of market conduct.	
		SYSC 3.2.6R (Compliance) requires a firm to take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards.	There is no reversal of the burden of proof.

		SYSC 3.2.20R (Records) requires a firm to take reasonable care to make and retain adequate records of matters and dealings (including accounting records) which are the subject of requirements and standards under the regulatory system, which is broadly defined to include the conduct of business rules).	The record keeping required does not extend to requiring reversal of the burden of proof as regards COB compliance.
The firm must keep records of all transactions executed for a period of five years.	FSA	SYSC 3.2.20R (Records)	Please see the comment in the previous row about SYSC 3.2.20 R. There does not appear to be any express record-keeping requirement in the context of inter-professional business. MAR 3.6.11 states that "The FSA does not expect tapes to be kept for the full period required by the general record-keeping requirement, except where a firm relies upon voice recordings to comply with record-keeping requirements, in which case it should retain those recordings in accordance with the relevant requirements." However, there do not appear to be any such "relevant requirements" because COB 7.12 only applies to "customer orders" and "own account transactions" and because COB 1.3.4R indicates that COB 7.12 does not apply to inter-professional business.
The firm must keep record of telephone conversations concerning the transactions executed on a counterparty relationship.		MAR 3.6 (Taping) MAR 3.6.3G provides that 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 or records.	Tape recording is specified as one of a non-exhaustive list of alternate media that can be used for this purpose.
The firm must adopt and take all reasonable steps to ensure compliance with an appropriate internal code of conduct.		SYSC 3.2.6R (Compliance) provides that firm must take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards.	A company acts through its directors and employees and a partnership acts through its partners or employees. The systems and controls will therefore need to relate to these individuals. There is no express requirement to have an appropriate internal code of conduct.

The information provided in a marketing communications must be clear and not misleading.		Principle 7 (Communications with clients) provides that a firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading. PRIN 3.4.1 R (Clients and the principles) modifies the effect of principle 7 where the firm's client is an MCP, so that it only operates as a requirement that the firm must communicate information to the MCP in a way that is not misleading. MAR 3.4.10G (Clarity of Role) provides that a firm should take reasonable steps to ensure that it is clear to its MCP whether it is acting on its own account, as agent or as arranger before it enters into a transaction.	

D. CRITERIA FOR DEFINING PROFESSIONAL INVESTORS

Professional investors are those who may be deemed to possess the experience, knowledge and expertise to make their own investment decisions and properly assess the risks they incur.

1. Categories of investors who are considered to be professionals

Standard /Rule		Implementing measure	Comments
10. a) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a European Directive, entities authorised or regulated by a Member State without reference to a European Directive, and entities authorised or regulated by a non-Member State:	FSA	COB 4.1 Glossary	The FSA Handbook adopts a three-stage approach to classification. The FSA classifies "clients" as either: (1) private customers (similar to retail investors under the CESR regime); (2) intermediate customers (similar to professional investors under the CESR regime); and (3) market counterparties (MCPs). This approach: • generally provides more grounds than the CESR regime for determining that a client is a professional (i.e. intermediate customer or higher); • means that within COB itself (as opposed to the inter-professional code) additional derogations are provided where the client is an MCP; and • means that the inter-professional code has wider scope than the CESR counterparty regime, which only applies to proprietary trading.
• Credit institutions • Investment firms • Other authorised or regulated financial institutions			In the FSA Handbook, credit institutions, investment firms, other authorised or regulated financial institutions and insurance companies will either be:

• Insurance companies			• "*firms*" - persons who are authorised by the FSA pursuant to FSMA or who have exercised the freedom to provide services or of establishment under the ISD, Banking Consolidation Directive or the Life or Non-Life Insurance Directive or under the Treaty; or • *"overseas financial services institutions"* (institutions authorised in an EEA State other than the UK by a competent body or in another country/territory by a regulatory body.)
		COB 4.1.7R (Classification of another firm or an overseas financial services institution). COB 4.1.7R (1): If the firm's client is a firm or an overseas financial services institution, it will be an MCP, unless one of the following applies (in which case it will be an intermediate customer): COB 4.1.7R (2): where the activity carried on by the firm is potentially inter-professional business (as explained in the introduction to section C above), the client is acting for an underlying customer and the firm and the client have agreed that the firm should classify the client as an intermediate customer; or COB 4.1.7R (3): where the activity carried on by the firm is not potentially inter-professional business and the client has not indicated that it is acting on its own behalf in relation to that activity or is a long-term insurer acting on behalf of its life fund.	COB also provides that if a firm is aware of a person (A) acting as agent for another person (B), A is to be treated as the client if, for example, A is another firm or an overseas financial services institution, subject to an agreement to the contrary between the firm and A (COB 4.1.5R). This is consistent with paragraph 3 of the Introduction to CESR's paper on the Implementation of Article 11 of the ISD: Categorisation of Investors for the Purpose of Conduct of Business Rules, October 2001 (Ref. CESR/01-015).
• Collective investment schemes and management companies of such schemes		COB 4.1.7R (4) & (5)	Collective investment schemes are classified as intermediate customers. There are no special provisions dealing with the classification of management companies of collective investment schemes. Their classification depends on their characteristics, such as whether they are domestically regulated.

• Pension funds and management companies of such funds		Definition of "intermediate customer" in the Glossary.	The classification of pension funds will depend on their legal status. An occupational pension scheme or a stakeholder pension scheme established in the form of a trust, will be a private customer, unless it has (or at any time during the previous two years has had) at least 50 members and assets under management of at least £10 million. All other pension funds will be classified in accordance with their legal status (eg as insurance companies, foundations or other vehicles). There are no special provisions dealing with the classification of management companies of pension funds. Their classification depends on their characteristics, such as whether they are domestically regulated.
• Commodity dealers.			There are no special provisions dealing with the classification of commodity dealers. Their classification depends on their characteristics, such as whether they are domestically regulated. The United Kingdom regulatory regime currently applies to activities relating to certain commodity derivatives that currently fall outside of the ISD.
b) Large companies ([18]) and other institutional investors:		Definition of "intermediate customer" in the Glossary. A body corporate will be an intermediate customer if: its shares have been listed or admitted to trading on any exchange in the EEA or the primary board of any IOSCO member country official exchange.	The FSA test differs from the CESR test in that: • listing or trading of relevant securities is sufficient - the CESR standards require trading to take place; • it only applies to shares - the CESR standards envisage that the trading of any equity or non-equity instruments is sufficient; • listing or trading on a much wider range of markets is taken into account – the CESR test only refers to markets that are "regulated markets" for the purposes of the ISD.
• large companies and partnerships meeting two of the following size requirements on a company basis: • balance sheet total : EUR		A body corporate will be an intermediate customer if: • it (or any of its holding companies or subsidiaries) has (or has had at any time during the previous two years) called up share capital or net assets of at least	The FSA test differs from the CESR test in that: • the thresholds are significantly lower and sterling denominated; • the tests can be determined by reference to values in the

([18]) Whilst CESR acknowledges that issuers of listed financial instruments, i.e. entities whose securities (equity instruments or other) are traded on a regulated market (within the meaning of article 1.13 of the ISD), should be treated as professional investors, Members are free to implement the categorisation of these issuers in line with the thresholds applicable to large companies and partnerships.

20.000.000, • net turnover : EUR 40.000.000, • own funds: EUR 2.000.000.		£5 million.	last two years; • the test considers the assets or capital of the client's holding company or subsidiaries; and • the tests are based on called-up share capital or net assets, rather than any two of balance sheet, net turnover and own funds.
• Other institutional investors whose corporate purpose is to invest in financial instruments.		A partnership or unincorporated association that has (or has had at any time within the previous two years) net assets of at least £5 million.	The FSA rules on the classification of professionals that are neither firms nor bodies corporate do not depend on whether the corporate purpose of the relevant entity is to invest in financial instruments.
		A trustee of a trust (other than an occupational pension scheme or stakeholder pension scheme – in relation to which, see above) that has (or has had at any time within the previous two years) assets of at least £10 million (calculated by aggregating the value of the cash and financial instruments forming part of the trust's assets but before deducting its liabilities).	
		COB 4.1.8AR (Classification of an exchange of clearing house)	Regulated or designated markets and clearing houses can be categorised as MCPs or intermediate customers.
National and regional governments, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.		Definition of "market counterparty" in the glossary. COB 4.1.12R (large intermediate customer classified as a market counterparty)	These entities will generally be categorised as MCPs. However, in the case of "regional governments" the FSA Handbook distinguishes between: • local authorities, which are intermediate customers; and • properly constituted governments of any territory, which are market counterparties. The FSA definition of an MCP also includes: • quasi-governmental bodies and government agencies; • national monetary authorities, state investment bodies and bodies charged with, or intervening in, the management of the public debt that are not central banks; • associates of firms or of an overseas financial institution, if the firm or institution consents; and

			• certain larger companies and entities who would otherwise be intermediate customers, where the firm has provided a written notice of its intent to re-classify the client and of the protections the client will loose under the regulatory system as a result and the client has not notified the firm that it objects to this re-classification. This re-classification mechanism does not apply where the client is a firm or an overseas financial services institution.
11. The entities mentioned in §10 are considered to be professionals. They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the customer of an investment firm is a company or a partnership referred to in §10, the investment firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the customer is deemed to be professional investor, and will be treated as such unless the firm and the customer agree otherwise. The firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.	FSA	COB 4.1.14R (client classified as a private customer)	Notwithstanding any of the rules concerning classification that are referred to above, this rule provides that a firm may classify as a private customer any client who would otherwise be an intermediate customer or a market counterparty. The words "They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection" imply that it is open to the firm to refuse to re-classify the client, which is the position under COB 4.1.14R. This is supported by the statement in the penultimate sentence that the customer will be treated as a professional customer "unless the firm and the customer agree otherwise". Classification as a private customer pursuant to this rule will not provide a customer with access to the UK's Financial Ombudsman Service or Financial Services Compensation Scheme where they would not otherwise have been so entitled. There are no equivalent under the FSA Handbook of the information requirements under the last two sentences of paragraph 11 where a company or partnership is classified as an intermediate customer under the general classification provisions. It may make no difference that the FSA rule does not refer to the customer's right to "request non-professional treatment" because a client can always "request" anything it wants.
12. It is the responsibility of the client considered to be a professional investor to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.	FSA		There is no express provision to this effect in the FSA Handbook, which deals with the responsibilities of firms rather than clients. However, this is implicitly the position, because there is no provision imposing such a requirement on the firm.
13. This higher level of protection will be provided when an investor who is considered to be a professional enters into a written agreement with the investment firm to the effect that it shall not be treated as a professional for the purposes of the	FSA		Please see the comments in relation to paragraph 11 above. There is no requirement for the firm and the client to enter into a written agreement.

applicable conduct of business regime. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.			

2. Categories of investors who may be treated as professionals on request

2.1. Identification criteria

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments
14. The members of CESR consider that investors other than those mentioned in § 10, including public sector bodies [19] and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules. Investment firms should therefore be allowed to treat any of the above investors as professionals provided the relevant criteria and procedure mentioned below are fulfilled. These investors should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in §10.	FSA	COB 4.1.9R (Expert private customer classified as an intermediate customer).	This rule allows a firm to re-classify a customer who would otherwise be a private customer as an intermediate customer if it follows the procedure referred to in the comments on paragraphs 15 & 16 below. A private customer who is reclassified as an intermediate customer under COB 4.1.9R will be treated in the same way as any other intermediate customer in relation to the matters for which they have been re-classified.

[19] It should be noted that public sector bodies are subject to specific regulations that might prevent them from entering into certain types of transactions or opting for the professional conduct of business regime.

15. Any such waiver of the protection afforded by the standard conduct of business regime shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved. The fitness test applied to managers and directors of entities licensed under European Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to the above assessment should be the person authorised to carry out transactions on behalf of the entity.	FSA	COB 4.1.9R - 4.1.11G (Expert private customer classified as an intermediate customer).	The re-classification referred to in the comments on paragraph 14 may only be made if the firm has taken reasonable care to determine that the client has sufficient experience and understanding to be classified as an intermediate customer (detailed guidance is given on the factors the firm should take into account in reaching this determination). These factors include: • the client's knowledge and understanding of the relevant designated investments, markets and risks involved; • the length of time that the client has been active in these markets, frequency of his dealings and the extent of his reliance on the firm's advice; • client's financial standing; • the size and nature of transactions that have been undertaken for the client in these markets.
16. In the course of the above assessment, as a minimum, two of the following criteria should be satisfied: • The investor has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters; • The size of the investor's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds 0,5 million Euro; • The investor works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.	FSA		Please see the comments on 15, above. These matters would all be relevant in determining whether the client has sufficient experience and understanding to be classified as an intermediate customer. However, no minimum quantitative tests of this nature are imposed under the FSA Rules.

2.2. Procedure

Standard /Rule	Implementing authority (-ies)	Implementing measure	Comments

17. The investors defined above may waive the benefit of the detailed rules of conduct only where the following procedure is followed: a) they must state in writing to the investment firm that they wish to be treated as a professional investor, either generally or in respect of a particular investment service or transaction, or type of transaction or product; b) the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose; c) they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.	FSA	COB 4.1.9R - 4.1.11G (Expert private customer classified as an intermediate customer). CIOB 4.1.9R (1): provides that before re-classifying a private client as an intermediate client pursuant to the procedure referred to in the comments on paragraph 14, the firm must: • give a written warning to the client of the protections under the regulatory system that he will lose; and • give the client sufficient time to consider the implications of being classified as an intermediate customer; and • obtain the client's written consent to being classified as an intermediate customer or be otherwise able to demonstrate that informed consent has been given.	The FSA procedure does not: • require the written consent of the client to be provided in all cases; and • does not require the client to acknowledge in a separate document that they are aware of the protections they are loosing.
18. Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional investor meets the relevant requirements stated in Section II.1 above. However, if investors have already been categorised as professionals under parameters and procedures similar to those above, it is not intended that their relationships with investment firms should be affected by any new rules adopted pursuant to this paper.	FSA		Please see the comments in relation to paragraph 15 above.
19. Firms must implement appropriate written internal policies and procedures to categorise investors.	FSA	SYSC 3.2.6R & 3.2.7G (Compliance)	There is no express requirement that the systems and control should involve written internal policies and procedures, although this is implicit. Further, SYSC 3.2.6R requires firms to take reasonable care to establish and maintain effective systems and controls for compliance with applicable regulatory requirements and standards.

Professional investors are responsible for keeping the firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the investor no longer fulfils the initial conditions, which made him eligible for a professional treatment, the investment firm must take appropriate action.			There is no direct equivalent of this provision in the FSA Handbook. However, where: • a private customer has been re-classified as an intermediate customer; or • an intermediate customer has been re-classified as a market counterparty, the firm must review that classification at least annually to ensure that it remains appropriate to amongst other things the investment services the firm provides to, and the investment activities the firm performs with, that client.