

PRINCIPLES FOR BUSINESSES INSTRUMENT 2001

- A. The Financial Services Authority makes the rules and gives the guidance in the Annex to this instrument ("PRIN") in the exercise of the powers listed in Schedule 4 to PRIN (Powers exercised).
- B. This instrument shall come into force at the beginning of the day on which section 19 (The general prohibition) of the Financial Services and Markets Act 2000 (the "Act") comes into force.
- C. The provisions of the Act relevant to making rules and listed in Schedule 4 to PRIN (Powers exercised) are specified for the purpose of section 153(2) of the Act (Rule-making instruments).
- D. This instrument may be cited as the Principles for Businesses Instrument 2001.
- E. The Annex to this instrument (including its Schedules) may be cited as the Principles for Businesses (or PRIN).

By order of the Board

21 June 2001

ANNEX



Principles for Businesses



Contents

Transitional provisions

Text of PRIN:

- 1 Introduction
- 2 The Principles
- 3 Rules about application

Schedule 1: Record keeping requirements

Schedule 2: Notification requirements

Schedule 3: Fees and other required payments

Schedule 4: Powers exercised

Schedule 5: Rights of action for damages

Schedule 6: Rules that can be waived

Derivations

Destinations

Handbook Modules

Transitional provisions

G

- 1 There are no transitional provisions in PRIN. However:
 - (1) GEN contains some technical transitional provisions that apply throughout the Handbook and which are designed to ensure a smooth transition to commencement;
 - (2) COB contains transitional provisions that apply throughout the Handbook relating to the treatment of clients classified by ex-SRO firms and ex-section 43 firms before commencement.

Chapter 1

Introduction



1.1 Application and purpose

Application

- 1.1.1** G_{/1} The *Principles* (see ■ PRIN 2) apply in whole or in part to every *firm*. The application of the *Principles* is modified for *incoming EEA firms*, *incoming Treaty firms* and *UCITS qualifiers*. ■ PRIN 3 (Rules about application) specifies to whom, to what and where the *Principles* apply.

Purpose

- 1.1.2** G_{/1} The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. They derive their authority from the FSA's rule-making powers as set out in the *Act* and reflect the *regulatory objectives*.

Accepting deposits, general insurance business and certain long-term insurance business

- 1.1.3** G_{/1} The *Principles* apply with respect to *regulated activities* generally, but, in applying the *Principles* with respect to *accepting deposits*, *general insurance business* and *long-term insurance business* involving *pure protection contracts* or reinsurance contracts, the FSA will proceed only in a *prudential context*. That is to say, in this context, the FSA would not expect to exercise the powers brought into play by a contravention of a *Principle* unless the contravention amounted to a serious or persistent violation which had implications for confidence in the *financial system*, or for the fitness and propriety of the *firm* or for the adequacy of the *firm's* financial resources.

Link to fit and proper standard in the threshold conditions

- 1.1.4** G_{/1} In substance, the *Principles* express the main dimensions of the "fit and proper" standard set for *firms* in *threshold condition 5* (Suitability), although they do not derive their authority from that standard or exhaust its implications. Being ready, willing and organised to abide by the *Principles* is therefore a critical factor in applications for *Part IV permission*, and breaching the *Principles* may call into question whether a *firm* with *Part IV permission* is still fit and proper.

Taking group activities into account

- 1.1.5** G_{/1} *Principles* 3 (Management and control), 4 (Financial prudence) and (in so far as it relates to disclosing to the FSA) 11 (Relations with regulators) take into account the activities of members of a *firm's group*. This does not mean that, for example, inadequacy of a *group* member's risk management systems or resources will automatically lead to a *firm* contravening *Principle* 3 or 4. Rather, the potential impact of a *group* member's activities (and, for example, risk management systems operating on a *group* basis) will be relevant in determining the adequacy of the *firm's* risk management systems or resources respectively.

Standards in markets outside the United Kingdom

- 1.1.6** G_{/1} As set out in ■ PRIN 3.3 (Where?), *Principles* 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control) apply to world-wide activities in a *prudential context*. *Principle* 5 (Market conduct) applies to world-wide activities which might have a negative effect on confidence in the *financial system* operating in the *United Kingdom*. In considering whether to take regulatory action under these *Principles* in relation to activities carried on outside the *United Kingdom*, the FSA will take into account the standards expected in the market in which the *firm* is operating. *Principle* 11 (Relations with regulators) applies to world-wide activities; in considering whether to take regulatory action under *Principle* 11 in relation to cooperation with an overseas regulator, the FSA will have regard to the extent of, and limits to, the duties owed by the *firm* to that regulator. (*Principle* 4 (Financial prudence) also applies to world-wide activities.)

Consequences of breaching the Principles

- 1.1.7** G_{/1} Breaching a *Principle* makes a *firm* liable to disciplinary sanctions. In determining whether a *Principle* has been breached it is necessary to look to the standard of conduct required by the *Principle* in question. Under each of the *Principles* the onus will be on the FSA to show that a *firm* has been at fault in some way. What constitutes "fault" varies between different *Principles*. Under *Principle* 1 (Integrity), for example, the FSA would need to demonstrate a lack of integrity in the conduct of a *firm's* business. Under *Principle* 2 (Skill, care and diligence) a *firm* would be in breach if it was shown to have failed to act with due skill, care and diligence in the conduct of its business. Similarly, under *Principle* 3 (Management and control) a *firm* would not be in breach simply because it failed to control or prevent unforeseeable risks; but a breach would occur if the *firm* had failed to take reasonable care to organise and control its affairs responsibly or effectively.
- 1.1.8** G_{/1} The *Principles* are also relevant to the FSA's powers of information-gathering, to vary a *firm's Part IV permission*, and of investigation and intervention, and provide a basis on which the FSA may apply to a court for an *injunction* or restitution order or require a *firm* to make restitution. However, the *Principles* do not give rise to actions for damages by a *private person* (see ■ PRIN 3.4.4 R).
- 1.1.9** G_{/1} Some of the other *rules* and *guidance* in the *Handbook* deal with the bearing of the *Principles* upon particular circumstances. However, since the *Principles* are also designed as a general statement of regulatory requirements applicable in new or unforeseen situations, and in situations in which there is no need for *guidance*, the FSA's other *rules* and *guidance* should not be viewed as exhausting the implications of the *Principles* themselves.

1.2 Clients and the Principles

Characteristics of the client

- 1.2.1** **G**_{/1} *Principles 6 (Customers' interests), 7 (Communications with clients), 8 (Conflicts of interest), 9 (Customers: relationships of trust) and 10 (Clients' assets) impose requirements on firms expressly in relation to their clients or customers. These requirements depend, in part, on the characteristics of the client or customer concerned. This is because what is "due regard" (in Principles 6 and 7), "fairly" (in Principles 6 and 8), "clear, fair and not misleading" (in Principle 7), "reasonable care" (in Principle 9) or "adequate" (in Principle 10) will, of course, depend on those characteristics. For example, the information needs of a general insurance broker will be different from those of a retail general insurance policyholder.*

Approach to client classification

- 1.2.2** **G**_{/1} *Principles 6, 8 and 9 and parts of Principle 7, as qualified by ■ PRIN 3.4.1 R, apply only in relation to customers (that is, clients which are not market counterparties). The approach that a firm needs to take regarding classification of clients into customers and market counterparties will depend on whether the firm is carrying on designated investment business or other activities, as described in ■ PRIN 1.2.3 G and ■ PRIN 1.2.4 G.*

Classification: designated investment business

- 1.2.3** **G**_{/1} ■ COB 4.1.4 R (Requirement to classify) requires a firm to classify a client before conducting designated investment business with or for him, and that classification will be applicable for the purposes of Principles 6, 7, 8 and 9.

Classification: other activities

- 1.2.4** **G**_{/1} In relation to the carrying on of activities other than designated investment business, for example general insurance business or accepting deposits, only ■ COB 4.1.12 R and ■ COB 4.1.13 G (Large intermediate customer classified as a market counterparty) and ■ COB 4.1.14 R (Client classified as a private customer) in ■ COB 4.1 (Client classification) apply (see ■ PRIN 3.4.2 R).

- 1.2.5** **G**_{/1} A firm is therefore not required to classify its clients (because ■ COB 4.1.4 R does not apply) and may choose to comply with Principles 6, 7, 8 and 9 as if all its clients were customers. Alternatively, it may choose to distinguish between market

counterparties and *customers* in complying with those *Principles*. But, in that case, the *firm* would need to classify any *client* treated as a *market counterparty*. In doing this, the requirements in SYSC will apply, including the requirement to establish appropriate systems and controls ■ SYSC 3.1.1 R) and the requirement to make and retain adequate records ■ SYSC 3.2.20 R). In classifying its *market counterparties*, it would be open to such a *firm*, although not obligatory, to permit *intermediate customers* to opt up to *market counterparty* status in accordance with ■ COB 4.1.12 R. It would also have to treat a *market counterparty* as a *customer* if the *firm* had chosen to treat the *client* as a *private customer* in the circumstances set out in ■ COB 4.1.14 R.

1.2.6

G

/1

If the *person* with or for whom the *firm* is carrying on an activity is acting through an agent, the ability of the *firm* to treat the agent as its *client* under ■ COB 4.1.5 R (Agent as client) will not be available. For example, if a general *insurer* is effecting a *general insurance contract* through a general insurance broker who is acting as agent for a disclosed *policyholder*, the *policyholder* will be a *client* of the *firm* and the *firm* must comply with the *Principles* accordingly.

Chapter 2

2

The Principles

2.1 The Principles

2.1.1 **R** Table The Principles

/1

1 Integrity	A <i>firm</i> must conduct its business with integrity.
2 Skill, care and diligence	A <i>firm</i> must conduct its business with due skill, care and diligence.
3 Management and control	A <i>firm</i> must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4 Financial prudence	A <i>firm</i> must maintain adequate financial resources.
5 Market conduct	A <i>firm</i> must observe proper standards of market conduct.
6 Customers' interests	A <i>firm</i> must pay due regard to the interests of its <i>customers</i> and treat them fairly.
7 Communications with clients	A <i>firm</i> must pay due regard to the information needs of its <i>clients</i> , and communicate information to them in a way which is clear, fair and not misleading.
8 Conflicts of interest	A <i>firm</i> must manage conflicts of interest fairly, both between itself and its <i>customers</i> and between a <i>customer</i> and another <i>client</i> .
9 Customers: relationships of trust	A <i>firm</i> must take reasonable care to ensure the suitability of its advice and discretionary decisions for any <i>customer</i> who is entitled to rely upon its judgment.

<p>10 Clients' assets</p>	<p><i>A firm must arrange adequate protection for clients' assets when it is responsible for them.</i></p>
<p>11 Relations with regulators</p>	<p><i>A 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.</i></p>



Chapter 3

Rules about application



3.1 Who?

- 3.1.1** **R** *PRIN* applies to every *firm*, except that:
- /1
- (1) for an *incoming EEA firm* or an *incoming Treaty firm*, the *Principles* apply only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the *firm's Home State regulator*;
 - (2) for an *incoming EEA firm* which is a *BCD credit institution* without a *top-up permission*, *Principle 4* applies only in relation to the liquidity of a *branch* established in the *United Kingdom*;
 - (3) for an *incoming EEA firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *United Kingdom*, the *Principles* do not apply;
 - (4) for a *UCITS qualifier*, only *Principles 1, 2, 3, 7 and 9* apply, and only with respect to the activities in **■ PRIN 3.2.2 R**(Communication and approval of financial promotions).
- 3.1.2** **G** **■** SYSC App 1 contains *guidance* on the reservation of responsibility to a *Home State regulator* referred to in **■ PRIN 3.1.1 R (1)**.
- /1
- 3.1.3** **G** **■** PRIN 3.1.1 R (2) reflects article 27 of the *Banking Consolidation Directive* which provides that the *Host State regulator* retains responsibility in cooperation with the *Home State regulator* for the supervision of the liquidity of a *branch* of a *BCD credit institution*.
- /1
- 3.1.4** **G** **■** PRIN 3.1.1 R (3) puts *incoming EEA firms* on an equal footing with *unauthorised overseas persons* who utilise the overseas persons exclusions in article 72 of the *Regulated Activities Order*.
- /1
- 3.1.5** **G** **■** PRIN 3.1.1 R (4) reflects section 266 of the *Act* (Disapplication of rules).
- /1

3.2 What?

3.2.1

R

PRIN applies with respect to the carrying on of:

/1

- (1) *regulated activities*;
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and
- (3) *ancillary activities* in relation to *designated investment business*.

3.2.2

R

PRIN also applies with respect to the *communication* and *approval* of *financial promotions* which:

/1

- (1) if *communicated* by an *unauthorised person* without *approval* would contravene section 21(1) of the *Act* (Restrictions on financial promotion); and
- (2) may be *communicated* by a *firm* without contravening section 238(1) of the *Act* (Restrictions on promotion of collective investment schemes).

3.2.3

R

Principles 3, 4 and (in so far as it relates to disclosing to the *FSA*) 11 (and this chapter) also:

/1

- (1) apply with respect to the carrying on of *unregulated activities* (for *Principle* 3 this is only in a *prudential context*); and
- (2) take into account any activity of other members of a *group* of which the *firm* is a member.



3.3 Where?

3.3.1

R
/1

Table Territorial application of the Principles

Principle	Territorial application
Principles 1, 2 and 3	<p>in a <i>prudential context</i>, apply with respect to activities wherever they are carried on;</p> <p>otherwise, apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> unless another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i>.</p>
Principle 4	<p>applies with respect to activities wherever they are carried on.</p>
Principle 5	<p>if the activities have, or might reasonably be regarded as likely to have, a negative effect on confidence in the <i>financial system</i> operating in the <i>United Kingdom</i>, applies with respect to activities wherever they are carried on;</p> <p>otherwise, applies with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i>.</p>
Principles 6, 7, 8, 9 and 10	<p>apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> unless another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i>.</p>
Principle 11	<p>applies with respect to activities wherever they are carried on.</p>

3.4 General

Clients and the Principles

3.4.1 **R** /1 Although *Principle 7* refers to *clients*, the only requirement of *Principle 7* relating to *market counterparties* is that a *firm* must communicate information to *market counterparties* in a way that is not misleading.

3.4.2 **R** /1 For the purposes of *PRIN*, the following provisions of **■ COB 4.1** (Client classification) also apply to a *firm* intending to carry on, or carrying on, activities other than *designated investment business*:

- (1) **■ COB 4.1.12 R** and **■ COB 4.1.13 G** (Large intermediate customer classified as a market counterparty); and
- (2) **■ COB 4.1.14 R** (Client classified as a private customer).

3.4.3 **G** /1 The whole of **■ COB 4.1** (Client classification) applies to a *firm* intending to conduct, or conducting, *designated investment business* and *ancillary activities* relating to *designated investment business*. Any *client* classifications established in relation to such business will be applicable for the purposes of *Principles 6, 7, 8* and *9*.

Actions for damages

3.4.4 **R** /1 A contravention of the *rules* in *PRIN* does not give rise to a right of action by a *private person* under section 150 of the *Act* (and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action).

Reference to "regulators" in Principle 11

3.4.5 **R** /1 Where *Principle 11* refers to regulators, this means, in addition to the *FSA*, other regulators with recognised jurisdiction in relation to *regulated activities*, whether in the *United Kingdom* or abroad.

Handbook Modules

Schedule1 Record Keeping Requirements

G

- 1 There are no record keeping requirements in PRIN.

Handbook Modules

Schedule2 Notification requirements

G

- 1 The aim of the guidance in the following table is to give the reader a quick over-all view of the relevant requirements for notification and reporting.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.
- 3 **Table**

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
Principle 11 (PRIN 2.1.1R)	Anything relating to the firm of which the FSA would reasonably expect notice	Appropriate disclosure	Anything relating to the firm of which the FSA would reasonably expect notice	Appropriate

Handbook Modules

Schedule3 Fees and other required payments

G

- 1 There are no requirements for fees or other payments in PRIN.

Handbook Modules

Schedule4 Powers Exercised

G

- 1 The following powers and related provision in the Act have been exercised by the FSA to make the rules in PRIN:
 - (1) Section 138 (General rule -making power)
 - (2) Section 145 (Financial promotion rules)
 - (3) Section 146 (Money laundering rules)
 - (4) Section 150(2) (Actions for damages)
 - (5) Section 156 (General Supplementary powers).

- 2 The following power in the Act has been exercised by the FSA to give the guidance in PRIN:
 - Section 157(1) (Guidance).

Handbook Modules

Schedule5 Rights of action for damages

G

- 1 The table below sets out the rules in PRIN contravention of which by an authorised person may be actionable under section 150 of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.
- 2 If a “Yes” appears in the column headed “For private person?”, the rule may be actionable by a “private person” under section 150 (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No 2256)). A “Yes” in the column headed “Removed” indicates that the FSA has removed the right of action under section 150(2) of the Act. If so, a reference to the rule in which it is removed is also given.
- 3 The column headed “For other person?” indicates whether the rule may be actionable by a person other than a private person (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of person by whom the rule may be actionable is given.

4 Table

Chapter/ Appendix	Section/ Annex	Paragraph	Right of Action		
			For private person?	Removed?	For other person?
All rules in <i>PRIN</i>			No	Yes PRIN 3.4.4R	No

Handbook Modules

Schedule6 Rules that can be waived

G

- 1 The rules in PRIN can be waived by the FSA under section 148 of the ACT (Modification or waiver of rules).

Principles for Businesses

Derivations

G

There is no table of derivations for *PRIN*.

Principles for Businesses

Destinations

G

There is no table of destinations for *PRIN*.