

## STATUS DISCLOSURE AND FSA LOGO INSTRUMENT 2008

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

### Commencement

- C. This instrument comes into force on 31 October 2008.

### Amendments to the Handbook

- D. The General Provisions (GEN) are amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

### Citation

- F. This instrument may be cited as the Status Disclosure and FSA Logo Instrument 2008.

By order of the Board  
25 September 2008

## Annex A

### Amendments to the General Provisions (GEN)

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

#### 4 Statutory status disclosure

##### 4.1 Application ~~and purpose~~

Who? What?

- 4.1.1 R This chapter applies to every *firm* and with respect to every *regulated activity*, except that:

...

- (5) ~~this chapter does not apply only~~ GEN 4.5 (Statements about authorisation and regulation by the FSA) applies in relation to *MiFID or equivalent third country business* and only where that *MiFID or equivalent third country business* is not business falling within paragraph 2 (Transactions between an MTF operator and its users), 3 (Transactions concluded on an MTF) or 4 (Transactions concluded on a regulated market) of Part 1 of *COBS 1 Annex 1 business or the equivalent business of a third country investment firm*.

Where?

...

- 4.1.4 R GEN 4.5 (Statements about authorisation and regulation by the FSA) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, provided that, in the case of the *MiFID business* of an *EEA MiFID investment firm*, it only applies to business conducted within the territory of the *United Kingdom*.

#### 4.2 Purpose

- 4.2.1 G The purpose of this chapter is to build upon ~~amplify~~ *Principle 7* (Communication with clients), which requires a *firm* to pay due regard to the information needs of its *clients*. This chapter requires the provision of appropriate minimum information about the identity of the regulator that authorised a *firm*. It also governs the way in which a *firm* may describe its regulation by the FSA ~~a *firm's* regulator in a way which is as consistent as practicable across the whole range of activities regulated by the FSA~~. This assists in the achievement of the *regulatory objectives* of consumer

protection, public awareness and market confidence.

4.2.1A G PRIN 1.1.3G, states that in applying the *Principles* with respect to *accepting deposits* and *issuing electronic money*, the *FSA* will proceed only in a *prudential context*. That limitation does not apply to this chapter.

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4.3 Letter disclosure

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4.3.1A G Where a letter covers both activities to which this ~~chapter~~ section applies and activities to which this ~~chapter~~ section does not apply, the *firm* should comply with the *rules* in this chapter in relation to the business to which it applies. An example would be where a letter covers business for which the *FSA* is the *competent authority* under the *Insurance Mediation Directive* and under *MiFID*.

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## **4.5 Statements about authorisation and regulation by the FSA**

### Application

4.5.1 R This section applies to a *firm*:

(1) communicating with a *customer*; or

(2) communicating or approving a *financial promotion* other than:

(a) a *financial promotion* that would benefit from an exemption in the *Financial Promotion Order* if it were *communicated* by an *unauthorised person*;

(b) a promotion of an *unregulated collective investment scheme* that would breach section 238(1) of the *Act* if made by an *authorised person* (*firms may not communicate or approve such promotions*).

4.5.2 G GEN 4.5.1R(1) does not apply to a *firm* when communicating with an *eligible counterparty*. However, misleading statements by a *firm* in such a communication may involve a breach of *Principle 7* (*Communications with clients*) or section 397 (*Misleading statements and practices*) of the *Act*, as well as giving rise to private law actions for misrepresentation.

### The duty

4.5.3 R A *firm* must not indicate or imply that it is authorised by the *FSA* in respect of business for which it is not so authorised.

4.5.4 R A *firm* must not indicate or imply that it is regulated or otherwise supervised

by the *FSA* in respect of business for which it is not regulated by the *FSA*.

- 4.5.5 G SUP 13A Annex 1 provides guidance on the application of the Handbook to an incoming EEA firm.
- 4.5.6 G (1) Neither an incoming EEA firm nor an incoming Treaty firm is authorised by the FSA when acting as such.
- (2) It is likely to be misleading for a firm that is not authorised by the FSA to state or imply that it is so authorised. It is also likely to be misleading for a firm to state or imply that a client will have recourse to the Financial Ombudsman Service or the FSCS where this is not the case.
- (3) As well as potentially breaching the requirements in this section, misleading statements by a firm may involve a breach of Principle 7 (Communications with clients) or section 397 (Misleading statements and practices) of the Act, as well as giving rise to private law actions for misrepresentation.

4 Annex 1R Statutory status disclosure

	Type of firm	Required disclosure (Note 5)
...		
(2)	<i>Incoming firm without a top-up permission</i>	<p>(a) “Authorised by [name of <i>Home State regulator</i>] <del>and regulated by the Financial Services Authority for the conduct of UK business</del>”</p> <p>or</p> <p>(b) “Authorised by [name of <i>Home State regulator</i>] and subject to limited regulation by the Financial Services Authority. Details about the extent of our regulation by the Financial Services Authority are available from us on request”</p> <p>(Notes 1, 2, <u>2a</u> and 3)</p>
(3)	<i>Incoming firm with a top-up permission</i>	<p>“Authorised by [name of <i>Home State regulator</i>] and <u>authorised and subject to limited regulation by the Financial Services Authority. Details about the extent of our authorisation and regulation by the Financial Services Authority are available from us on request</u> <del>and by the Financial Services Authority; regulated by the Financial Services Authority for the conduct of UK business</del>” (Notes 1, 2 and 3)</p>

...		
...		
<p><u>Note 2a = An <i>incoming firm</i> without a <i>top-up permission</i> may make either disclosure (a) or disclosure (b) unless it otherwise indicates or implies to the <i>customer</i> that it is regulated or supervised by the <i>FSA</i>, in which case it must make disclosure (b).</u></p>		
<p>Note 3 = <u>An <i>incoming firm</i> may state the type of business that it conducts, for For example, that it is regulated by the Financial Services Authority for the conduct of investment business in the UK. If a <i>firm</i> offers to make details about the extent of its authorisation or regulation by the <i>FSA</i> available on request and a <i>customer</i> requests such details, it must provide those details in a way that is clear, fair and not misleading.</u></p>		
...		
<p>Note 5 = Any <i>firm</i> listed in this table is permitted to add words to the relevant required disclosure statement but only if the <i>firm</i> has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, remain fair, clear and not misleading <u>and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received.</u> For example, an authorised <i>professional firm</i> may wish to make it clear that it is also regulated by its professional body.</p>		
...		

## 5 The FSA logo and the keyfacts logo

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### The FSA logo

- 5.1.8     R     A *firm* must not use the FSA logo (and must take all reasonable steps to ensure that its *representatives* do not use the FSA logo) in any communication with a *client* other than in accordance with the general licence in GEN 5 Annex 1G or any individual licence granted by the *FSA* to the *firm* or its *representatives*.

TP 1 Transitional provisions

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1.3 (3) Transitional Provisions applying to GEN only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
11	<u>GEN 4.5</u>	<u>R</u>	<p>(1) <u>A firm is not required to comply with GEN 4.5.</u></p> <p>(2) <u>In relation to the regulated activity of accepting deposits, an incoming EEA firm may not rely on this transitional rule and must comply with GEN 4.5.</u></p>	<p><u>From 31 October 2008 to 30 September 2009.</u></p>	<p><u>31 October 2008.</u></p>
12	<u>GEN 4 Annex 1 R</u>	<u>R</u>	<p>(1) <u>A firm may comply with GEN 4 Annex 1 R as in force on 30 October 2008.</u></p> <p>(2) <u>In relation to the regulated activity of accepting deposits, an incoming EEA firm may not rely on this transitional rule and must comply with GEN 4.5.</u></p>	<p><u>From 31 October 2008 to 30 September 2009.</u></p>	<p><u>31 October 2008.</u></p>

## Annex B

### Amendments to the Supervision manual (SUP)

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

#### 13A Qualifying for authorisation under the Act

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Annex 1G Application of the Handbook to Incoming EEA Firms

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<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
...		
GEN	<p><i>GEN</i> applies (<i>GEN</i> 1.1, <i>GEN</i> 2.1, <i>GEN</i> 3.1, <i>GEN</i> 4.1, <i>GEN</i> 5.1 and <i>GEN</i> 6.1). However, (a) <i>GEN</i> 4 does not apply to the extent that the <i>firm</i> is subject to equivalent <i>rules</i> imposed by its <i>Home State</i> (<i>GEN</i> 4.1.1 R (3)), and (b) <i>GEN</i> 6 only applies to business that can be regulated under section 138 of the Act (General rule-making power). It does not therefore apply if, or to the extent that, responsibility has been reserved to an <i>incoming firm's Home State regulator</i> by a European Community instrument.</p> <p><u>Only <i>GEN</i> 4.5 does not apply applies</u> in relation to <i>MiFID</i> or <i>equivalent third country business</i> (see <i>GEN</i> 4.1.1 R).</p>	<p><i>GEN</i> 4 does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>. (see <i>GEN</i> 4.1.1 R)</p> <p>Otherwise, as column (2).</p>
...		

