

**BANKING: CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT) AND
CONSEQUENTIAL AMENDMENTS INSTRUMENT 2009**

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 139(4) (Miscellaneous ancillary matters);
 - (3) section 145 (Financial promotion rules);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 2 of Annex C comes into force on 1 January 2010;
 - (2) the remainder of this instrument comes into force on 1 November 2009.

Amendments to the Handbook

- D. The modules of the FSA Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

| (1) | (2) |
|---|---------|
| Glossary of definitions | Annex A |
| General Provisions (GEN) | Annex B |
| Banking: Conduct of Business sourcebook (BCOBS) | Annex C |
| Conduct of Business sourcebook (COBS) | Annex D |
| Credit Unions sourcebook (CRED) | Annex E |
| Electronic Money sourcebook (ELM) | Annex F |

Notes

- E. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are intended for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Banking: Conduct of Business Sourcebook (Amendment) and Consequential Amendments Instrument 2009.

By order of the Board
24 September 2009

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

| | |
|------------------------------------|--|
| <i>distance selling contract</i> | (in <i>BCOBS</i>) has the same meaning as “distance contract” in the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334). |
| <i>excepted contract</i> | (in <i>BCOBS</i>) has the same meaning as in the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334). |
| <i>payment instrument</i> | (in <i>BCOBS</i>) any personalised device or personalised set of procedures agreed between the <i>banking customer</i> and the <i>firm</i> used by the <i>banking customer</i> to initiate an instruction or request by the <i>banking customer</i> to the <i>firm</i> to make a payment. |
| <i>payment routing information</i> | a combination of letters, numbers or symbols specified by a <i>firm</i> to be provided when instructing or requesting the <i>firm</i> to make a payment from an account of a <i>banking customer</i> for the purpose of routing the payment to the correct destination and intended recipient. |

Amend the following definitions as shown:

| | |
|----------------|--|
| <i>deposit</i> | (1) (except in <i>COMP</i>) the <i>investment</i> , specified in article 74 and defined in articles 5(2) and 5(3) of the <i>Regulated Activities Order</i> , which is in summary: a sum of money (other than one excluded by any of articles 6 to <u>9AB</u> of the <i>Regulated Activities Order</i>) paid on terms: <p style="text-align: center;">...</p> <p style="text-align: center;">...</p> |
|----------------|--|

Annex B**Amendments to the General Provisions (GEN)**

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

- 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. [deleted]

Annex C

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

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

Part 1: Comes into force on 1 November 2009

~~Modifications to~~ Limitations on the general application rule

- 1.1.2 R The general application *rule* is modified in the chapters of this sourcebook for particular purposes.
- 1.1.3 R Except as provided for in *BCOBS* 1.1.4R, this sourcebook does not apply to:
- (1) *payment services where Parts 5 and 6 of the Payment Services Regulations apply*; or
- ...
- 1.1.4 R (1) Chapters 2, 5 and 6 of *BCOBS* (except for *BCOBS* 5.1.11R to *BCOBS* 5.1.19R) apply to *payment services where Parts 5 and 6 of the Payment Services Regulations apply*.
- (2) Chapter 3 of *BCOBS* applies to *payment services where Parts 5 and 6 of the Payment Services Regulations apply* with the modifications set out in *BCOBS* 3.1.2R(2).
- (3) A *firm* will not be subject to *BCOBS* to the extent that it would be contrary to the *United Kingdom's* obligations under ~~the *Payment Services Directive*~~ a European Community instrument.
- 1.1.5 R *BCOBS* 5.1.13R does not apply to a credit union.

Exclusion of liability

- 1.1.6 R A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a banking customer unless it is reasonable for it to do so and the duty or liability arises other than under the regulatory system.
- 1.1.7 G The general law, including the *Unfair Terms Regulations*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a consumer.
- ...
- 2.3.8 R ~~If any information refers to a particular tax treatment or rate of interest payable, a *firm* must ensure that it prominently states that the tax treatment or the rate of interest payable depends on the individual circumstances of each banking~~

~~customer and may be subject to change in the future. If a communication or a financial promotion in relation to a retail banking service refers to a particular tax treatment or rate of interest payable, a firm must ensure that a prominent statement that the tax treatment or the rate of interest payable:~~

- (1) ~~depends on the individual circumstances of each banking customer; and~~
- (2) ~~may be subject to change in the future;~~

~~is either included in that communication or financial promotion, or provided to the banking customer on paper or in another durable medium in good time before the banking customer is bound by the contract for that retail banking service.~~

...

4.1.2 G ...

- (3) ~~Where a firm proposes to make a change to the terms and conditions or charges that apply to a retail banking service that will be to the disadvantage of a banking customer, it should provide reasonable notice to the banking customer before the change takes effect, taking into account the period of notice required by the banking customer to cancel the contract for the retail banking service.~~

~~Where a firm proposes to exercise a power to make:~~

- (a) ~~a change to any term or condition of the agreement;~~
- (b) ~~a change to any charge; or~~
- (c) ~~a material change to any rate of interest;~~

~~that applies to the retail banking service and that will be to the disadvantage of a banking customer, the firm should provide reasonable notice to the banking customer on paper or in another durable medium before the change takes effect, taking into account the period of notice required by the banking customer to terminate the contract for the retail banking service. Whether a change to a rate of interest is “material” should be determined having regard to the size of the balance of the account and the size of the change in the rate.~~

- (4) ~~Where a firm notifies a banking customer of a material change to a rate of interest that applies to a retail banking service and that will be to the disadvantage of a banking customer, this notification should, where applicable:~~
 - (a) ~~refer to the fact that the firm offers a comparable retail banking service for which the banking customer is eligible;~~
 - (b) ~~indicate that the banking customer may move to that retail banking service or a retail banking service provided by another~~

firm; and

(c) indicate that the *firm* will assist the *banking customer* to move to another *retail banking service* if he wishes to do so.

(5) Where, under a contract for a *retail banking service*, an introductory, promotional or preferential rate of interest applies to the *retail banking service* until a specified future date or the end of a fixed period, a *firm* should, where appropriate, provide notice of the expiry of the application of that rate of interest to the *banking customer* on paper or in another durable medium within a reasonable period before that rate of interest ceases to apply.

(6) In determining whether it is appropriate to provide the notice referred to in (5), a *firm* should consider:

(a) whether there is a material difference between the introductory or promotional rate of interest and the rate of interest that will apply to the *retail banking service* following the expiry of the introductory or promotional rate of interest;

(b) the size of the balance of the account; and

(c) the period of time that has elapsed since the *firm* last provided information to the *banking customer* in relation to the period for which the introductory or promotional rate of interest is applicable and the effect of its expiry.

(7) The general law, including the *Unfair Terms Regulations*, also limits the scope for a *firm* to use or rely on a variation clause in a contract with a *consumer*.

4.1.3 R Where a *rule* in this chapter requires information to be provided on paper or in another *durable medium* before a *banking customer* is bound by the terms and conditions of the contract, a *firm* may instead provide that information in accordance with the distance communication timing requirements (see *BCOBS 3.1.11R* and *BCOBS 3.1.12R*) (if applicable).

4.1.4 G The appropriate information *rule* applies before a *banking customer* is bound by the terms of the contract. It also applies after a *banking customer* has become bound by them. In order to meet the requirements of the appropriate information *rule*, information provided or made available by a *firm* to a *banking customer* should include information relating to:

...

(5A) the time at which any funds placed with or transferred to the *firm* for credit to the *banking customer*'s account will be made available to the *banking customer*;

(6) a *banking customer*'s rights to cancel ...

...

...

- 4.2.2 G A firm should consider indicating the rate or rates of interest that apply to a retail banking service in each statement of account provided or made available to a banking customer in respect of that retail banking service in accordance with BCOBS 4.2.1R.

...

Firm's liability for unauthorised payments

- 5.1.11 R (1) Where a banking customer denies having authorised a payment, it is for the firm to prove that the payment was authorised.
- (2) Where a payment from a banking customer's account was not authorised by the banking customer, a firm must, within a reasonable period, refund the amount of the unauthorised payment to the banking customer and, where applicable, restore the banking customer's account to the state it would have been in had the unauthorised payment not taken place.

Banking customer's liability for unauthorised payments

- 5.1.12 R (1) Subject to (2) and (3), a firm may, in an agreement for a retail banking service, provide for a banking customer to be liable for an amount up to a maximum of £50 for losses in respect of unauthorised payments arising:
- (a) from the use of a lost or stolen payment instrument; or
- (b) where the banking customer has failed to keep the personalised security features of the payment instrument safe, from the misappropriation of the payment instrument.
- (2) A firm may, in an agreement for a retail banking service, provide for a banking customer to be liable for all losses in respect of unauthorised payments:
- (a) where a banking customer has acted fraudulently; or
- (b) (subject to (3)) where a banking customer has intentionally, or with gross negligence, failed to comply with his or her obligations under the agreement for the retail banking service in relation to the issue or use of the payment instrument or to take all reasonable steps to keep its personalised security features safe.
- (3) Except where a banking customer has acted fraudulently, a firm must not, in an agreement for a retail banking service, seek to make a banking customer liable for any losses in respect of unauthorised payments where:
- (a) the unauthorised payment arises after the banking customer has notified the firm of the loss, theft, misappropriation or unauthorised

use of the *payment instrument*;

(b) the *firm* has failed to ensure that appropriate means are available at all times to enable the *banking customer* to notify it of the loss, theft, misappropriation or unauthorised use of a *payment instrument*; or

(c) the *payment instrument* has been used in connection with

(i) a *distance contract*; or

(ii) a *distance selling contract* other than an *excepted contract*.

(4) Except as provided in (1) to (3), a *firm* must not, in an agreement for a *retail banking service*, seek to make a *banking customer* liable for any consequential loss in respect of an unauthorised payment.

Value date

5.1.13 R (1) The reference date used by a *firm* for the purpose of calculating interest on funds credited to an account of a *banking customer* held with it must be no later than:

(a) the *business day* on which the funds are credited to the account of the *firm*; or

(b) in the case of cash placed with a *firm* for credit to a *banking customer's* account in the same currency as that account, immediately after the *firm* receives the funds.

(2) Paragraph (1) does not apply to funds credited to a *banking customer's* account by means of a paper cheque.

Non-execution or defective execution of payments

5.1.14 R (1) Where a *banking customer* claims that a payment has not been correctly executed, it is for the *firm* to prove that the payment was authenticated, accurately recorded, entered in the *firm's* accounts and not affected by a technical breakdown or some other deficiency.

(2) In paragraph (1) “authenticated” means the use of any procedure by which a *firm* is able to verify the use of a specific *payment instrument*, including its personalised security features.

5.1.15 R (1) Where a payment from an account of a *banking customer* is executed in accordance with the *payment routing information* provided in respect of that payment, it shall be treated as correctly executed by each *firm* involved in executing the payment.

(2) Where incorrect *payment routing information* has been provided to a *firm* in respect of a payment:

(a) *BCOBS* 5.1.16R and *BCOBS* 5.1.17R do not apply in relation to that payment; and

(b) the firm must make reasonable efforts to recover the funds involved in the transaction.

(3) A firm and a banking customer may agree on a charge for taking the steps referred to in (2)(b). Any such charge must reasonably correspond to the firm's actual costs.

5.1.16 R (1) Where a banking customer instructs or requests a firm to make a payment from his or her account and the payment is not correctly executed, the firm must, without undue delay:

(a) refund to the banking customer the amount of the non-executed or defective payment; and

(b) where applicable, restore the banking customer's account to the state in which it would have been had the defective payment not taken place;

unless:

(c) the firm can prove that the amount of the payment was received by another firm (referred to in this rule as "firm B") with which the relevant account of the intended recipient is held.

(2) Where (1)(c) applies, firm B must:

(a) immediately make available the amount of the payment to the intended recipient; and

(b) where applicable, credit the corresponding amount to the intended recipient's account.

5.1.17 R Where:

(1) an instruction or request for a payment to be made from a banking customer's account is given by the intended recipient of that payment to a firm;

(2) that firm can prove that it correctly transmitted the instruction or request to the firm with which the relevant account of the banking customer is held (in this rule referred to as "firm A"); and

(3) the payment is not correctly executed;

firm A must, as appropriate and without undue delay:

(4) refund to that banking customer the amount of the payment; and

(5) restore that banking customer's account to the state in which it would have been had the defective payment not taken place.

5.1.18 R Where a *firm* is required to give a refund or take other remedial action under BCOBS 5.1.16R or BCOBS 5.1.17R, it must also refund:

- (1) any charges for which a *banking customer* is responsible; and
- (2) any interest which a *banking customer* must pay;

as a consequence of the non-execution or defective execution of the payment.

5.1.19 R Where the non-execution or defective execution of a payment by a *firm* is due to abnormal and unforeseeable circumstances beyond the *firm*'s control, the consequences of which would have been unavoidable despite all efforts to the contrary, BCOBS 5.1.16R to BCOBS 5.1.18R shall not apply with respect to that incorrectly executed payment.

Immediately before BCOBS Schedule 1, insert the following new transitional provisions

BCOBS TP 1 Transitional Provision

| <u>(1)</u> | <u>(2)</u> | <u>(3)</u> | <u>(4)</u> | <u>(5)</u> | <u>(6)</u> |
|------------|--|------------|--|--|---|
| | <u>Materials to which the transitional provision applies</u> | | <u>Transitional provision</u> | <u>Transitional provisions: dates in force</u> | <u>Handbook provisions: coming into force</u> |
| <u>1</u> | <u>BCOBS</u> | <u>R</u> | <u>Until midnight on 1 May 2010 a <i>firm</i> may continue to refer to the British Bankers' Association/ Building Societies Association/APACS Banking Code and/or Business Banking Code in any of its documentation or literature.</u> | <u>1 November 2009 to 1 May 2010</u> | <u>1 November 2009</u> |
| <u>2</u> | <u>BCOBS 4.1.1R</u> | <u>R</u> | <u>Until midnight on 1 May 2010, a <i>firm</i> need not have regard to BCOBS 4.1.2G (3)(c) or (4) in interpreting and applying BCOBS 4.1.1R.</u> | <u>1 November 2009 to 1 May 2010</u> | <u>1 November 2009</u> |

| | | | | | |
|----------|----------------------|----------|---|---|------------------------|
| <u>3</u> | <u>BCOBS 4.1.1R</u> | <u>G</u> | <u>Until midnight on 1 May 2010, a <i>firm</i> may continue to communicate changes to any rate of interest that applies to a <i>retail banking service</i> to a <i>banking customer</i> in accordance with its obligations under the general law and (where a firm subscribed to the British Bankers' Association/ Building Societies Association/APACS Banking Code or Business Banking Code on 1 July 2009) the standards set out in those Codes.</u> | <u>1 November 2009 to 1 May 2010</u> | <u>1 November 2009</u> |
| <u>4</u> | <u>BCOBS 4.1.1R</u> | <u>R</u> | <u>With respect to an introductory, promotional or preferential rate of interest that expires before midnight on 1 May 2010, a <i>firm</i> need not have regard to BCOBS 4.1.2G (5) or (6) in interpreting and applying BCOBS 4.1.1R.</u> | <u>1 November 2009 to 1 May 2010</u> | <u>1 November 2009</u> |
| <u>5</u> | <u>BCOBS 5.1.13R</u> | <u>R</u> | <u>With respect to funds credited to an account of a <i>banking customer</i> before midnight on 1 February 2010, a <i>firm</i> need not comply with BCOBS 5.1.13R.</u> | <u>1 November 2009 to 1 February 2010</u> | <u>1 November 2009</u> |

Part 2: Comes into force on 1 January 2010

4.1.4 G ...

- (8) ~~the terms of any compensation scheme if the firm cannot meet its obligations in respect of the *retail banking service* information about compensation arrangements in accordance with *COMP 16*;~~

Annex D

Amendments to the Conduct of Business sourcebook (COBS)

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

1.1 The general application rule

1.1.1 R This sourcebook applies to a *firm* with respect to the following activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*:

(1) ~~accepting deposits~~; [deleted]

....

and activities connected with them.

1.1.1A R This sourcebook does not apply to a *firm* with respect to the activity of *accepting deposits* carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*, except for *COBS* 4.6 (Past, simulated past and future performance), *COBS* 4.7.1R (Direct offer financial promotions), *COBS* 4.10 (Systems and controls and approving and communicating financial promotions), *COBS* 13 (Preparing product information) and *COBS* 14 (Providing product information to clients) which apply as set out in those provisions, *COBS* 4.1 and the Banking: Conduct of Business sourcebook (*BCOBS*).

...

4.2 Fair, clear and not misleading communications

...

Fair, clear and not misleading financial promotions

...

4.2.5 G ~~A *firm* designing a *financial promotion* relating to a *deposit* may find it helpful to take account of the British Bankers' Association/Building Societies Association Code of Conduct for the Advertising of Interest Bearing Accounts.~~ [deleted]

...

4.3 Financial promotions to be identifiable as such

4.3.1 R ...

(3) In the case of a *financial promotion* that does not relate to the *firm's MiFID* or equivalent third country business, this rule applies to

communicating or approving a financial promotion but does not apply:

...

- (e) to the extent that it relates to ~~a deposit~~ or to a *pure protection contract* that is a *long-term care insurance contract*.

4.4 Compensation information

...

- 4.4.2 G ~~The Credit Institutions (Protection of Deposits) Regulations 1995 may also apply in relation to a communication with a *client*. [deleted]~~

4.5 Communicating with retail clients

...

Referring to tax

- 4.5.7 R ...

- (2) This *rule* applies in relation to *MiFID* or equivalent *third country business* or, otherwise, to a *financial promotion*. However, it does not apply to a *financial promotion* to the extent that it relates to:

- (a) ~~a deposit other than a cash deposit ISA or a cash deposit CTF; or~~ [deleted]
- (b) a *pure protection contract* that is a *long-term care insurance contract*.

Consistent financial promotions

- 4.5.8 R ...

- (2) This *rule* does not apply to a *financial promotion* to the extent that it relates to:

- (a) ~~a deposit; or~~ [deleted]
- (b) a *pure protection contract* that is a *long-term care insurance contract*.

...

4.8 Cold calls and other promotions that are not in writing

Application

4.8.1 R This section applies to a *firm* in relation to a *financial promotion* that is not in writing, but it does not apply:

...

(4) ~~to the extent that the *financial promotion* relates to a *deposit*;~~ [deleted]

...

...

4.9 Financial promotions with an overseas element

Application

4.9.1 R ...

(3) This section does not apply to a communication by a *firm* other than in relation to its *MiFID or equivalent third country business*:

...

(e) ~~to the extent that it relates to a *deposit*;~~ [deleted]

...

...

4.11 Record keeping: financial promotion

4.11.1 R ...

(5) This *rule* does not apply in relation to a communication, made by a *firm* other than in relation to *MiFID or equivalent third country business*:

...

(e) ~~to the extent that it relates to a *deposit*;~~ [deleted]

...

...

5.1 The distance marketing disclosure rules

...

Exception: successive operations

...

5.1.10 G In this section:

...

- (2) 'operations' includes ~~the deposit or withdrawal of funds to or from a bank account and~~ transactions made within the framework of a portfolio management contract; and

...

...

15.1 Application

15.1.1 G This chapter is relevant to a *firm* that enters into a contract cancellable under this chapter. In summary, this means it is relevant to:

- (1) most providers of retail financial products that are based on ~~deposits~~ ~~or~~ *designated investments*; and
- (2) *firms* that enter into *distance contracts* with *consumers* that relate to ~~accepting deposits~~ ~~or~~ *designated investment business*.

Annex E

Amendments to the Credit Unions sourcebook (CRED)

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

1.1 The Credit Unions Sourcebook

...

- 1.1.2 G *CRED* does not encompass the requirements associated with any regulatory *permission* other than a *Part IV permission to accept deposits*. A credit union undertaking deposit-taking activity in relation to retail banking services would need to comply with the requirements in *BCOBS*. There are also additional requirements in the *Handbook* for *credit unions* that are *CTF providers* in relation to *cash deposit CTFs*. Other *permissions* are covered elsewhere in the *Handbook*. Thus, for example, a *credit union* seeking a *permission* to undertake a *regulated mortgage activity* would need to comply with the requirements in *MCOB*, and a *credit union* seeking a *permission* to undertake *insurance mediation activity* in relation to *non-investment insurance contracts* would need to comply with the requirements in *ICOBS*.

...

11.1 Introduction

Conduct of business

- 11.1.1 G (1) The Banking Conduct of Business sourcebook (~~COBS~~ BCOBS) sets out *rules* and *guidance* for *firms* on how they should conduct their business with their *customers*.
- (2) In particular there are *rules* and *guidance* relating to communications with banking customers and *financial promotions* (*BCOBS* 2), distance communications (*BCOBS* 3), information to be communicated to banking customers (*BCOBS* 4), post sale requirements (*BCOBS* 5), and cancellation (*BCOBS* 6).
- (3) Except as provided for in (4), the Conduct of Business sourcebook (*COBS*) does not apply to *accepting deposits*.
- (4) *COBS* 4.6 (Past, simulated past and future performance), *COBS* 4.7.1R (Direct offer financial promotions), *COBS* 4.10 (Systems and controls and approving and communicating financial promotions), *COBS* 13.1 (Preparing product information) and *COBS* 14.2 (Providing product information to clients) apply to *accepting deposits* as set out in those sections.
- (5) *BCOBS* 5.1.13R does not apply to *credit unions* (*BCOBS* 1.1.5R).

- 11.1.2 G (1) ~~The rules and guidance set out in COBS mainly apply to designated investment businesses and have limited application to deposits. [deleted]~~
- (2) ~~The only parts of COBS that set out rules and guidance on deposits, other than for a cash deposit ISA or cash deposit CTF, are the financial promotion rules and those relating to distance contracts for accepting deposits in COBS 5 (Distance contracts) and COBS 15 (Cancellation). Guidance on the way in which those requirements apply to credit unions is set out in CRED 11.4 (Entering into a distance contract for accepting deposits). [deleted]~~

...

Electronic commerce activities

- 11.1.5 G ~~COBS 5.2 BCOBS 3.2~~ (E-Commerce) contains rules applicable to a credit union which carries on an electronic commerce activity; that is, a credit union which accepts deposits, or carries on certain other activities, by way of an information society service.

...

11.2 Financial promotion

...

- 11.2.3 G (1) ~~Where a financial promotion relates to a deposit retail banking service BCOBS 2 applies (other than a cash deposit ISA or cash deposit CTF) only certain parts of the financial promotion rules apply. These are COBS 4.2.1R, COBS 4.5.2R, COBS 4.5.7R, COBS 4.6.2R, COBS 4.6.6R, COBS 4.6.7R, COBS 4.7.1R, COBS 4.10.2R, COBS 4.10.4R, COBS 4.10.5R and COBS 4.10.10R.~~
- (2) Except as provided for in (3) the Conduct of Business sourcebook (COBS) does not apply to a firm with respect to the activity of accepting deposits.
- (3) COBS 4.6 (Past, simulated past and future performance), COBS 4.7.1R (Direct offer financial promotions), COBS 4.10 (Systems and controls and approving and communicating financial promotions), COBS 13 (Preparing product information) and COBS 14 (Providing product information to clients) apply to a firm with respect to the activity of accepting deposits as set out in those provisions, COBS 4.1 and BCOBS.

...

- 11.2.5 G ~~Despite the limited application of COBS to deposits~~ In addition to the rules and guidance contained in BCOBS and the exemptions mentioned in CRED 11.2.4G, financial promotions (including those which are exempt) may be

subject to more general *rules* including *Principle 7* (Communications with clients) and *SYSC 3* (Systems and controls) and the *fair, clear and not misleading rule*.

- 11.2.6 G The requirement on a *firm* under ~~COBS 4.2.1R(1)~~ BCOBS 2.2 is that it must ensure that a *financial promotion* is fair, clear and not misleading. This is supported by further detailed rules including ~~COBS 4.5.2 R~~ BCOBS 2.3.1R:

(1) A *firm* must ensure that information for a *retail client*:

...

- (b) is accurate and in particular does not emphasise any potential benefits of ~~relevant business or a relevant investment~~ a retail banking service without also giving a fair and prominent indication of any relevant risks;

...

...

11.4 Entering into a distance contract for accepting deposits

- 11.4.1 G Those parts of ~~COBS~~ BCOBS that relate to *distance contracts for accepting deposits* will have limited application to a *credit union*. This is because the *Distance Marketing Directive* only applies where there is “an organised distance sales or service-provision scheme run by the supplier” (Article 2(a)). If, therefore, the *credit union* normally operates face to face and has not set up facilities to enable *customers* to deal with it at a distance, such as facilities for a *customer* to deal with it purely by post, telephone, fax or the Internet, the provisions will not be relevant. A one-off transaction dealt with by distance means in order to deal with a particular contingency or emergency will not fall under the ~~COBS~~ BCOBS provisions.

- 11.4.2 G For those *credit unions* to which the provisions in ~~COBS~~ BCOBS will apply, the provisions which are of particular relevance concern the distance communications provisions (~~COBS 5~~ BCOBS 3), pre-contract information (~~COBS 6, COBS 13 and COBS 14~~ BCOBS 4), cancellation rights (~~COBS 15~~ BCOBS 6) and the *financial promotion rules* (CRED 11.2). If the *credit union* provides *cash deposit ISAs* or *cash deposit CTFs* further rules may apply.

Pre-contract disclosure requirements

- 11.4.3 G ~~COBS 5.1~~ BCOBS 3.1 sets out the basic ~~requirement~~ requirements that ~~applies~~ apply before a *credit union* enters into a *distance contract for accepting deposits*. The *credit union* has to ensure that the terms on which it will conduct business, including, in particular, certain required information, is provided to a *consumer* (~~which means an individual, acting for purposes which are outside his trade, business or profession~~) in good time (~~that is, in sufficient time to enable a customer to consider properly the services on offer~~) in a *durable medium*, before the *retail customer* is bound by the

distance contract or offer, unless certain exemptions apply.

- 11.4.4 G The required information is the contractual terms and conditions and the other information set out in ~~COBS 5 Annex 1R~~ BCOBS 3 Annex 1R, and covers basic information about the *credit union*, the main characteristics of the service on offer, the price, details about any distance contract such as its duration, cancellation rights and any other early termination rights and penalties, and information about out-of-court complaints and compensation arrangements.

Exemptions

- 11.4.5 G The exemptions referred to in *CRED* 11.4.3G are set out in ~~COBS 5.1~~ BCOBS 3.1. They are relevant:
- (1) where the contract is concluded by telephone and the *consumer* gives explicit consent to receiving a more limited range of information: ~~COBS 5.1.12R~~ BCOBS 3.1.11R sets out the information to be provided in such cases. ~~Full information has to be provided, in a durable medium, immediately after conclusion of the distance contract (COBS 5.1.13R);~~
 - (2) where a means of communication (~~other than telephone~~) is used at the consumer's request which does not enable provision of required information in a *durable medium* before ~~conclusion of the contract~~ the consumer is bound by any distance contract or offer; in this case full information must also be provided in a *durable medium* immediately after conclusion of the *distance contract* (~~COBS 5.1.13R~~ BCOBS 3.1.12R);
 - (3) where there is an initial service agreement and the contract is in relation to a successive or separate operation of the same nature under that agreement (BCOBS 3.1.9R to BCOBS 3.1.10R), ~~or there is no initial service agreement and the contract is in relation to a successive or separate operation of the same nature and is being performed no more than one year from the date of performance of the last operation (COBS 5.1.8R, COBS 5.1.9R and COBS 5.1.10G).~~

...

Cancellation

- 11.4.7 G A *consumer* has a right to cancel a ~~distance contract~~ contract for ~~accepting deposits a retail banking service~~ without giving any reasons and without penalty. The right to cancel has to be exercised within 14 days of the day of the conclusion of the contract or the day on which he received the contractual terms and conditions, if later (~~COBS 15.2.1R~~ BCOBS 6.1.1R).
- 11.4.8 G The only exemptions from the right to cancel are when:
- (1) ~~the price of the service depends on fluctuations in the financial market outside the credit union's control which may occur during the~~

~~cancellation period~~ a contract (other than a *cash deposit ISA*) where the rate or rates of interest payable on the *deposit* are fixed for a period of time following conclusion of the contract; or

- (2) ~~the contract has already been fully performed with the consumer consent before he exercises his right to cancel~~ a contract whose price depends on fluctuations in the financial market outside the firm's control that may occur during the cancellation period; or
- (3) ~~the credit union has an initial service agreement with the consumer and the contract is in relation to a successive operation or separate operation of the same nature under that agreement (see COBS 15.2.1R)~~ a cash deposit CTF (other than a distance contract).

- 11.4.9 G The effects of cancellation are set out in ~~COBS 15.4~~ BCOBS 6.3 (Effects of cancellation). Unless the contract relates to a *cash deposit ISA* or a *cash deposit CTF*, the *credit union* has to return, no later than 30 days after the date it received notice of cancellation, any sums paid by the customer in connection with the contract. The *customer* can be required to pay for any services provided up to the date of cancellation, provided that the sums are in proportion to the extent of the services actually provided and could not be construed as a penalty. No payment can be required if the *credit union* cannot prove that a *customer* was told the amount that would be payable as ~~part of the pre-contract information~~ or if the *credit union* starts performance of the contract before expiry of the cancellation period without the *customer's* prior consent.
- 11.4.10 G ~~If there are other ancillary distance contracts related to the first, those ancillary contracts may also be cancelled automatically when a consumer exercises a right to cancel (see COBS 15). [deleted]~~
- 11.4.11 G This *guidance* is not a substitute for, and should be read in conjunction with, the requirements contained in the relevant parts of ~~COBS~~ BCOBS.

Annex F

Amendments to the Electronic Money sourcebook (ELM)

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

1.1 Application

...

Distance marketing activities

1.1.5 G ...

(2) ~~As set out in ELM 6.8, COBS 15 applies to e-money firms as if references to ‘accepting deposits’ and ‘deposits’ were references to ‘issuing e-money’ and ‘e-money’ respectively. [deleted]~~

...

1.4A Distance contracts: cancellation

...

Exercising the right to cancel

...

1.4A.5 R ~~The following rules also apply as if issuing e-money were accepting deposits: COBS 15.3.4R (Record keeping), COBS 15.3.1R (Notice of exercise) and COBS 15.4 (Effects of cancellation) also apply to issuing e-money.~~

1.5 Application of other parts of the Handbook to ELMIs

...

1.5.2 G Application of other parts of the Handbook to ELMIs

| Block | Module | Application |
|----------------------|----------------------------------|---|
| High level standards | Principles for businesses (PRIN) | Applies to every ELMi. As explained in PRIN 1.1.3G, the Principles apply with respect to regulated activities generally, but, in applying the Principles with respect to issuing e-money, the FSA will proceed only in a prudential context. |
| ... | | |