

**GENERAL PROVISIONS AND GLOSSARY (AMENDMENT) INSTRUMENT 2001**

**Powers exercised**

- A. The Financial Services Authority makes the provisions in this instrument in the exercise of:
- (1) the powers and related provisions listed in Schedule 4 to the General provisions (Powers exercised);
  - (2) article 15 of The Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326);
  - (3) the following articles of the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings)(Financial Services Compensation Scheme) Order 2001 (SI 2001/2967):
    - (a) articles 4(3) and 4(4) (Pending applications);
    - (b) article 6(2) (Post-commencement applications);
    - (c) articles 9(3) and 9(4) (Article 9 defaults occurring before commencement);
    - (d) article 10(2) (Applications in respect of compulsory liability insurance);
    - (e) article 12(3) (Applications under the new scheme);
    - (f) article 23 (Record keeping and reporting requirements relating to pre-commencement acts).
- B. The provisions of the Financial Services and Markets Act 2000 (the "Act") relevant to making rules and referred to above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force immediately.

**Amendment of the General provisions and the Glossary**

- D. The Glossary is amended in accordance with Annexes A, B, C and D to this instrument.
- E. The General provisions are amended in accordance with Annex E to this instrument.
- F. Both the General provisions (other than GEN 2.1.8R) and the Glossary are made, additionally, under the powers and related provisions listed at A(2) and (3).

**Citation**

- G. This instrument may be cited as the General Provisions and Glossary (Amendment) Instrument 2001.

By order of the Board  
20 September 2001

## ANNEX A

### Amendments to the Glossary arising from completion of statutory instruments

1. Insert the following definitions at the place already indicated in the Glossary:

*policy* (as defined in article 2 of the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (SI 2001/2361)) as the context requires:

(a) a *contract of insurance*, including one under which an existing liability has already accrued; or

(b) any instrument evidencing such a contract.

*policyholder* (as defined in article 3 of the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (SI 2001/2361)) the *person* who for the time being is the legal holder of the *policy*, including any *person* to whom, under the *policy*, a sum is due, a periodic payment is payable or any other benefit is to be provided or to whom such a sum, payment or benefit is contingently due, payable or to be provided.

2. Amend the definition of "previous regulator" as shown below (underlining indicates new text, striking through indicates deleted text):

*previous regulator* ...

(5) (in relation to an *underwriting agent* which obtained the *permission* relevant to that category under the Financial Services and Markets Act 2000 (Repeals, Transitional Provisions and Savings) Order 2001 (SI 2001/2636 [~~number to be added later~~])) the *Society of Lloyd's*;

**ANNEX B**  
**Technical corrections of the Glossary**

1. Delete the definition of "takeover promotion".
2. Amend the following definitions as shown below (underlining indicates new text, striking through indicates deleted text):

*approved depositary* any depositary:

(a) ~~that~~ which is subject to regulation by a national regulatory body in connection with its custody services;

(b) ~~that~~ which is required to prepare audited accounts;

(c) whose latest annual audit report is not materially qualified;  
and

(d) which:

~~(e) that~~ (i) has minimum net assets of £5 million (or its equivalent in any other currency at the relevant time) and has surplus revenue over expenditure for the last two financial years; or

(ii) if not, nevertheless has adequate financial resources for its business.

~~(d) whose latest annual audit report is not materially qualified.~~

*direct offer financial promotion*

a *non-real time financial promotion* which:

(a) contains:

(i) an offer by the *firm* or another person to enter into a *controlled agreement* with anyone who responds to the *financial promotion*; or

(ii) an invitation to anyone who responds to the *financial promotion* to make an offer to the *firm* or another person to enter into a *controlled agreement*; and

(b) 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).

*life policy*

(1) (except in COB) (in accordance with the definition of "qualifying contract of insurance" in article 3(1) of the *Regulated Activities Order*) a *long-term insurance contract* ~~(which includes a pension policy)~~ other than a reinsurance contract and a *pure protection contract*.

(2) (in COB) a long-term insurance contract in (1) or a pension policy.

*overseas financial services institution*

an institution authorised to carry on any regulated activity or other financial service by an overseas regulator in an EEA State other than the United Kingdom by a competent authority, or in any other country or territory by a regulatory body which is a member of IOSCO.

*parent undertaking*

...

(iii) it has the right to exercise a dominant influence over S through:

(A) provisions contained in S's memorandum or articles; or

(B) a control contract; or

...

*professional firm*

~~(in accordance with sections 325(2) (Definition of "members") and 327(2) (Exemption from the general prohibition of the Act)-~~  
a *person* which is:

(a) an individual who is entitled to practise a profession regulated by a *designated professional body* and, in practising it, is subject to its rules, whether or not he is a member of that body; or

(b) a *person* (not being an individual) which is controlled and managed by one or more such individuals  
~~managed and controlled by one or more individuals each of whom:~~

~~(i) is entitled to practise a profession regulated by a *designated professional body*, and~~

~~(ii) in practising it is subject to the rules of the *designated professional body*.~~

*regulated market*

(a) (as defined in article 1 of the *ISD*) a market for the instruments listed in Section B of the Annex to the *ISD* which:

(~~ia~~) appears on the list of such markets drawn up by the market's *Home State* as required by article 16 of the *ISD*;

(~~iib~~) functions regularly;

(~~iiie~~) is characterised by the fact that regulations issued or approved by the competent authorities define the conditions for the operation of the market, the conditions for access to the market and, where Directive 79/279/EEC is applicable, the conditions governing admission to listing imposed in that Directive and, where that Directive is not applicable, the

conditions that must be satisfied by a financial instrument before it can effectively be dealt in on the market; and

(iv~~d~~) requires compliance with all the reporting and transparency requirements laid down by articles 20 and 21 of the *ISD*;

(see Part 1 of SUP 17 Ann 5G for an indicative list of these markets-); and

(b) (in SUP 17 and, unless the context otherwise requires, elsewhere in the Handbook) a market notified under article 16 of the ISD, as included in point 30b of Annex IX to the Agreement of the European Economic Area, to the Standing Committee of the EFTA States as defined in that agreement;

(see Part 2 of SUP 17 Ann 5G for an indicative list of these markets).

*requisite details*

the details required ~~under in~~ the ~~Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/1376)~~ *EEA Passport Rights Regulations* and set out in *SUP 13 Ann 1R (Requisite details: branches)* and *SUP 13 Ann 1R (Requisite details: cross border services)*.

*safeguarding and administering investments*

the *regulated activity*, specified in article 40 of the *Regulated Activities Order* (Safeguarding and administering investments), which is in summary: the safeguarding ~~and the administration of~~ assets belonging to another and the administration of those assets, or arranging for one or more other *persons* to carry on that activity, where: ...

## Annex C

### Amendments to the Glossary arising from the making of DISP

1. Insert the following definitions in the appropriate alphabetical position:

<i>annual budget</i>	the annual budgeted costs of operating the <i>Financial Ombudsman Service</i> .
<i>Banking Ombudsman scheme</i>	the <i>former scheme</i> set up, on a voluntary basis, to handle complaints against those banks which subscribed to it.
<i>Building Societies Ombudsman scheme</i>	the <i>former scheme</i> set up and recognised under the Building Societies Act 1986 to handle complaints about <i>building societies</i> .
<i>former Ombudsman</i>	an ombudsman, arbitrator or independent investigator appointed under a <i>former scheme</i> .
<i>former scheme</i>	any of the following:  (a) the <i>Banking Ombudsman scheme</i> ;  (b) the <i>Building Societies Ombudsman scheme</i> ;  (c) the <i>FSA scheme</i> ;  (d) the <i>IMRO scheme</i> ;  (e) the <i>Insurance Ombudsman scheme</i> ;  (f) the <i>Personal Insurance Arbitration Service</i> ;  (g) the <i>PIA Ombudsman scheme</i> ;  (h) the <i>SFA scheme</i> .
<i>FSA scheme</i>	the <i>former scheme</i> operated by the <i>FSA</i> under paragraph 4 of Schedule 7 to the Financial Services Act 1986 for the investigation of complaints arising out of the conduct of investment business.
<i>IMRO scheme</i>	the <i>former scheme</i> set up by <i>IMRO</i> under the Financial Services Act 1986 and the <i>Investment Ombudsman Memorandum</i> to handle complaints against members of <i>IMRO</i> .

<i>Independent Investigator</i>	the <i>former Ombudsman</i> under the <i>FSA scheme</i> .
<i>Insurance Ombudsman scheme</i>	the <i>former scheme</i> set up, on a voluntary basis, to handle complaints against those insurance companies which subscribed to it.
<i>Investment Ombudsman</i>	the <i>former Ombudsman</i> under the <i>IMRO scheme</i>
<i>Ombudsman Transitional Order</i>	the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326).
<i>Personal Insurance Arbitration Service</i>	the <i>former scheme</i> set up on a voluntary basis and run by the Chartered Institute of Arbitrators to handle complaints against those insurance companies which subscribed to it.
<i>PIA Ombudsman scheme</i>	the <i>former scheme</i> set up by <i>PIA</i> under the Financial Services Act 1986 and operated by the PIA Ombudsman Bureau Ltd to handle complaints against members of <i>PIA</i> .
<i>relevant existing complaint</i>	<p>(in accordance with <i>the Ombudsman Transitional Order</i>) a complaint which:</p> <p>(a) was referred to a <i>former scheme</i> at any time before <i>commencement</i>, by a person who was at that time entitled, under the terms of the <i>former scheme</i>, to refer such a complaint (whether described in that scheme as the making of a complaint, the referral of a dispute, the submission of a claim, or otherwise); and</p> <p>(b) has not, before <i>commencement</i>, been rejected, withdrawn, settled or determined by <i>the former Ombudsman</i> (whether by a substantive decision, or by closure of the case without a substantive decision).</p>
<i>relevant new complaint</i>	<p>(in accordance with the <i>Ombudsman Transitional Order</i>) a complaint referred to the <i>Financial Ombudsman Service</i> after <i>commencement</i> which relates to an act or omission occurring before <i>commencement</i> if:</p> <p>(a) the act or omission is that of a person who was, immediately before <i>commencement</i>, subject to a <i>former scheme</i>;</p> <p>(b) the act or omission occurred in the carrying on by that</p>

person of an activity to which that *former scheme* applied;  
and

(c) the complainant is eligible and wishes to have the  
complaint dealt with under the new scheme;

for the purposes of (c), where the complainant is not eligible  
in accordance with *DISP 2* (Jurisdiction of the Financial  
Ombudsman Service), an *Ombudsman* may, nonetheless, if  
he considers it appropriate, treat the complainant as eligible  
if he would have been entitled to refer an equivalent  
complaint to the *former scheme* in question immediately  
before *commencement*.

*relevant new  
complaint*

(in accordance with the *Ombudsman Transitional Order*) a  
complaint referred to the *Financial Ombudsman Service*  
after *commencement* which relates to an act or omission  
occurring before *commencement* if:

(a) the act or omission is that of a person who was,  
immediately before *commencement*, subject to a *former  
scheme*;

(b) the act or omission occurred in the carrying on by that  
person of an activity to which that *former scheme* applied;  
and

(c) the complainant is eligible and wishes to have the  
complaint dealt with under the new scheme;

for the purposes of (c), where the complainant is not eligible  
in accordance with *DISP 2* (Jurisdiction of the Financial  
Ombudsman Service), an *Ombudsman* may, nonetheless, if  
he considers it appropriate, treat the complainant as eligible  
if he would have been entitled to refer an equivalent  
complaint to the *former scheme* in question immediately  
before *commencement*.

*SFA Complaints  
Bureau*

the first stage of the *SFA scheme* which aimed to resolve  
complaints by conciliation.

*SFA Consumer  
Arbitration Scheme*

the second stage of the *SFA scheme*, which determined  
complaints by means of arbitration.

*SFA scheme*

the *former scheme* (including the *SFA Complaints Bureau*  
and the *SFA Consumer Arbitration Scheme*) set up by the  
*SFA* to handle complaints against members of the *SFA* under  
the Financial Services Act 1986.



2. Amend the following definitions as shown below (underlining indicates new text, striking through indicates deleted text):

<i>Compulsory Jurisdiction</i>	the jurisdiction of the <i>Financial Ombudsman Service</i> to which <i>firms</i> <u>(and certain <i>unauthorised persons</i> as a result of the <i>Ombudsman Transitional Order</i>)</u> are compulsorily subject.
<i>chargeable case</i>	any complaint referred to the <i>Financial Ombudsman Service</i> , apart from those where the <i>Ombudsman</i> considers it apparent from the complaint received, and from any <i>final response</i> which has been issued by the <i>firm</i> , that the complaint should not proceed because:  (a) the complainant is not an <i>eligible complainant</i> in accordance with <i>DISP 2</i> ; or  (b) the complaint does not fall within the jurisdiction of the <i>Financial Ombudsman Service</i> (as described in <i>DISP 2</i> ) <del>or falls outside the time limits set out in <i>DISP 2.3</i> (Time limits for referral of complaints to the <i>Financial Ombudsman Service</i>)</del> ; or  (c) the <i>Ombudsman</i> considers that the complaint should be dismissed without consideration of its merits under <i>DISP 3.3</i> (Dismissal of complaints without consideration of the merits); or  (d) the <i>Ombudsman</i> considers, at any stage, that the complaint should be dismissed under <i>DISP 3.3.1R(2)</i> on the grounds that it is frivolous or vexatious.
<i>final response</i>	a written response from the <i>firm</i> which:  (a) accepts the complaint, and, where appropriate, offers redress; or  (b) offers redress without accepting the complaint; or  (c) rejects the complaint <u>and gives</u> reasons for doing so; <del>and contains information about the right to refer the complaint to the <i>Financial Ombudsman Service</i>.</del>  <u>and which informs the complainant that, if he remains dissatisfied with the <i>firm's</i> response, he may now refer his complaint to the <i>Financial Ombudsman Service</i> and must do so within six months.</u>

- general levy* (in *DISP*) the annual fee raised from a *firm* under the *rules* to fund a part agreed between the *Financial Ombudsman Service* and the *FSA* of the *Financial Ombudsman Service's annual budget*.
- industry\_block* (in *DISP*) a grouping of *firms* by common business activity for the purposes of calculating the *general levy*.
- relevant business* (in *DISP*) that part of a *firm's* business which it conducts with private individuals and which is subject to the jurisdiction of the *Financial Ombudsman Service* as provided for ~~under~~ in *DISP* 2.6 (To which activities do the rules apply?) , measured by reference to the appropriate tariff\_base for each *industry\_block*.
- relevant complaint* (1) (in *DISP*) a relevant existing complaint or a relevant new complaint.
- (2) (in *REC*) (as defined in section 299(2) of the *Act* (Complaints about recognised bodies)) a complaint which the *FSA* considers is relevant to the question of whether a *recognised body* should remain a *recognised body*.

## Annex D

### Amendments to the Glossary arising from the making of AUTH 5, SUP 13, SUP 14 and SERV

1. Insert the following definitions at the appropriate alphabetical position:

*EEA Passport Rights Regulations* the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/2511).

*financial institution* (in accordance with paragraph 5(c) of Schedule 3 to the *Act* (EEA Passport Rights: EEA firm) and article 1(5) of the *Banking Consolidation Directive* (Definitions)) an undertaking, other than a *credit institution*, the principal activity of which is to acquire holdings or to carry on one or more of the *listed activities* listed in points 2 to 12 of Annex I to the *BCD*, which is a subsidiary of the kind mentioned in article 19 of the *BCD* and which fulfils the conditions in articles 18 and 19 of the *BCD*.

*SERV* the Special guide for service companies, forming part of the *Handbook*.

2. Amend the following definition as shown below (underlining indicates new text):

*permitted activity* (1) (except in AUTH 5 and SUP 14) a regulated activity which a firm has permission to carry on.

(2) (in AUTH 5 and SUP 14) an activity identified in a consent notice, a regulator's notice or, where none is required, a notice of intention.

**Annex E**  
**Amendments to the General provisions**

1. In paragraph 6 of the table of transitional provisions for GEN, delete the sentence which starts "Transitional provisions in *COB* ...".

2. In Schedule 4 to GEN:

(a) in paragraph 1(43), delete the full stop at the end;

(b) after paragraph 1(43), add:

"(44) article 15 of The Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326)

(45) the following articles of the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings)(Financial Services Compensation Scheme) Order 2001 (SI 2001/2967):

(a) articles 4(3) and 4(4) (Pending applications);

(b) article 6(2) (Post-commencement applications);

(c) articles 9(3) and 9(4) (Article 9 defaults occurring before commencement);

(d) article 10(2) (Applications in respect of compulsory liability insurance);

(e) article 12(3) (Applications under the new scheme);

(f) article 23 (Record keeping and reporting requirements relating to pre-commencement acts)."

(c) renumber paragraph 7 as paragraph 8 and insert above it:

"7 *GEN* 2.1.8R is made by *FOS Ltd* in the exercise of its powers referred to in Schedule 4 to *DISP*."