

Email: centralwaiversteam@fsa.gov.uk

PRIVATE & CONFIDENTIAL

Date: 5 March 2007

Dear

**WAIVER APPLICATION No(s):**

We are writing to you as your firm holds a waiver under the Conduct of Business (COB) sourcebook, which is undergoing radical change – partly because of the need to implement the Markets in Financial Instruments Directive (MiFID).

Consultation on the draft **NEWCOB** rules was completed on 23 February, and we expect to make and publish the final rules in the second quarter of 2007. These rules will then come into force, replacing the existing COB rules, on 1 November 2007. This means that from 1 November 2007, firms will be required to comply with rules found in the NEWCOB sourcebook (draft rules annexed in CP06/19 Reforming Conduct of Business Regulation and CP06/20 Financial Promotion and other Communications). Waivers currently in force will cease to apply as of 31 October 2007 and your firm, in the absence of a waiver/modification of the NEWCOB rules, will have to comply with the new rules.

Consequently, you should assess your firm's position under the new regime and decide whether your firm needs to seek a new waiver. However, please note that NEWCOB directly implements certain elements of MiFID and in most cases it will not be legally possible for us to grant waivers or modifications from the new rules for firms and businesses that fall within the scope of the Directive. This means that where we make rules that implement MiFID, but also apply these to non-MiFID firms or MiFID firms in respect of non-MiFID business, we will be able to modify or waive these rules for non-MiFID firms and business only. In addition, firms may seek a waiver for rules which do not implement MiFID, but which reflect our own policy decisions.

You should not assume that any application for a corresponding waiver under the new sourcebook will automatically be granted. Each waiver application will be considered on its own merits and against the Section 148 statutory tests as set out in FSMA and SUP 8.3.1.

**If you require a waiver, you should formally apply at the earliest opportunity (i.e. as soon after the final NEWCOB rules are made as practicable) and no later than 1 September 2007 to ensure that your application can be considered and a decision made by 1 November 2007. For applications received after 1 September, we cannot guarantee they will be completed in time for the firm to be compliant with the new regime. We aim to provide a decision within 20 working days of receipt of a complete application for at least 90% of cases. However, you should note that the "clock" will stop if we have to wait for further information from the firm.**

Some transitional provisions will be available for non-MiFID firms and business, as explained in Chapter 26 of CP06/19, and these will be finalised when we make the NEWCOB sourcebook in the second quarter of this year.

To assist us in managing our work flow, we are undertaking an exercise to establish the volume of waiver applications that are likely to be made over the next few months. We therefore request that you review your waiver and assess your firm's position. If you consider it necessary, you may wish to seek professional advice to help you with this.

**If you decide that a waiver application may be necessary, please could you email [centralwaiversteam@fsa.gov.uk](mailto:centralwaiversteam@fsa.gov.uk) by 1 June 2007:**

**In the e-mail header:**

- 1. Firm name/ firm reference number.**
- 2. Current waiver application number.**

**In the main body of the e-mail:**

- 3. The NEWCOB rule(s) that you believe will require waiving/modifying.**
- 4. When you expect to submit your application.**

Please note that the above information request does not constitute a waiver application and is solely to assist us in managing our workflow. If a waiver is required, a full and complete application should be submitted once the final NEWCOB rules have been made, in the usual manner. Information relating to this process can be found on the FSA website:

<http://www.fsa.gov.uk/Pages/Doing/Regulated/Notify/Waiver/index.shtml>

Should you wish to discuss an application for a waiver prior to formal submission, please contact the Central Waivers Team at the email address above. Further information will also be available on the Permissions and Notifications Guide, which will be available on the FSA website shortly.

Yours sincerely

Elizabeth Kim  
Waivers Team  
Regulatory Decisions Department