

BERNE FINANCIAL SERVICES AGREEMENT INSTRUMENT 2025

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) the powers and related provisions in or under the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137D (FCA general rules: product intervention);
 - (c) section 137T (General supplementary powers);
 - (d) section 138D (Actions for damages); and
 - (e) section 139A (Power of the FCA to give guidance); and
 - (2) the powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA Handbook.
- B. The rule-making powers listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 January 2026.

Amendments to the Handbook

- D. The modules of the FCA's 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
Conduct of Business sourcebook (COBS)	Annex C
Insurance: Conduct of Business sourcebook (ICOBS)	Annex D
Supervision manual (SUP)	Annex E

New Handbook guide

- E. The FCA makes the Handbook Guide in Annex F to this instrument. This Handbook Guide does not form part of the Handbook.
- F. The Berne Financial Services Agreement Guide (BFSAG) is added to the Handbook Guides block immediately after General guidance on Benchmark Administration, Contribution and Use (BENCH).

Amendments to material outside the Handbook

- G. The Perimeter Guidance manual (PERG) is amended in accordance with Annex G to this instrument.

Notes

- H. In the Annexes to this instrument, the notes (indicated by “**Note:**” or “*Editor’s note:*”) are included for readers’ convenience, but do not form part of the legislative text.

Citation

- I. This instrument may be cited as the Berne Financial Services Agreement Instrument 2025.
- J. The guide in Annex F to this instrument may be cited as the Berne Financial Services Agreement Guide (BFSAG).

By order of the Board
27 November 2025

Annex A

Amendments to the Glossary of definitions

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

<i>Annex 5 BFSA activity</i>	a <i>BFSA registered service</i> that is provided to an <i>Annex 5 BFSA client</i> by a <i>registered BFSA investment firm</i> under access rights derived from Annex 5 of the <i>BFSA</i> .
<i>Annex 5 BFSA client</i>	means ‘relevant client’ as defined in regulation 7 of the <i>BFSA Regulations</i> .
<i>Annex 5 BFSA financial instrument</i>	means ‘relevant financial instrument’ as defined in regulation 7 of the <i>BFSA Regulations</i> .
<i>Berne Financial Services Agreement</i>	the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Mutual Recognition in Financial Services concluded on 21 December 2023 at Berne.
<i>BFSA</i>	the <i>Berne Financial Services Agreement</i> .
<i>BFSA register</i>	the register maintained by the <i>FCA</i> under regulation 8 of the <i>BFSA Regulations</i> .
<i>BFSA registered service</i>	means ‘registered service’ as defined in regulation 1(4) of the <i>BFSA Regulations</i> .
<i>BFSA Regulations</i>	the Financial Services and Markets Act 2023 (Mutual Recognition Agreement) (Switzerland) Regulations 2025 (SI 2025/1145).
<i>BFSAG</i>	the Berne Financial Services Agreement Guide.
<i>registered BFSA investment firm</i>	means ‘registered Swiss supplier’ as defined in regulation 1(4) of the <i>BFSA Regulations</i> .

Annex B

Amendments to the General Provisions (GEN)

Insert the following new section, GEN 2.4, after GEN 2.3 (General saving of the Handbook for Gibraltar). All the text is new and is not underlined.

2.4 Application of the Handbook to persons exercising market access rights under the Berne Financial Services Agreement

- 2.4.1 R (1) *A person* is not subject to any *Handbook* provision to the extent that it would be contrary to the *UK's* obligations under the *BFSA*.
- (2) This *rule* does not apply to provisions made by *FOS Ltd*.
- 2.4.2 G (1) The principal purpose of *GEN 2.4.1R* is to give effect to the requirement in Annex 5, Section VIII, paragraph A.1 of the *BFSA* that the *UK* defer to domestic authorisation and prudential (within the meaning of the *BFSA*) measures of Switzerland that apply where Swiss firms provide investment services from Switzerland into the *UK* under Annex 5 of the *BFSA*.
- (2) The exclusion in article 72ZA of the *Regulated Activities Order* means that *registered BFSA investment firms* do not require a *permission* insofar as they are exercising rights under Annex 5 of the *BFSA* (see *PERG 2.9.31G* to *PERG 2.9.33G*). As a result, such firms will not generally be subject to the *Handbook* where they are carrying on activities under the *BFSA*.
- (3) Article 73ZB of the *Financial Promotion Order* also creates an exemption for certain financial promotions relating to *Annex 5 BFSA activities* (see *PERG 8.14.40EG* for more information).
- (4) Further, many provisions of the *Handbook* will not apply to *Annex 5 BFSA activities* because of the territorial scope of those provisions. For instance, *CASS* generally applies to *regulated activities* carried on from an establishment in the *United Kingdom*.
- (5) However, Swiss firms exercising rights under Annex 5 of the *BFSA* will still be subject to the *Handbook* where they have a *permission* to carry on other *regulated activities* which are not carried on under the *BFSA*.
- (6) *GEN 2.4.1R* is therefore intended to ensure that the *Handbook* does not apply to a *registered BFSA investment firm* where deference applies.
- (7) Further detail about the *BFSA* and deference is contained in *BFSAG*.
- 2.4.3 G (1) *GEN 2.4.1R* is of relevance to Swiss *firms* that both have an *authorisation* and also carry on *Annex 5 BFSA activities*.

- (2) The main practical effect of *GEN 2.4.1R* is to disapply *Handbook* provisions which would generally otherwise apply to *authorised persons* engaging in *Annex 5 BFSa activities*. The *FCA* considers that this would result in the disapplication of the provisions in the table below in relation to *Annex 5 BFSa activities*.

Sourcebook	Provisions
<i>PRIN</i>	<i>PRIN 2, Principles 1, 2, 3, 5, 6, 7, 8, 9, 10, 11 and 12 (including any rule in PRIN applying those principles)</i>
<i>SYSC</i>	The entire sourcebook (excluding <i>SYSC 12</i>)
<i>COCON</i>	The entire sourcebook
<i>APER</i>	The entire sourcebook
<i>COBS</i>	The entire sourcebook (excluding <i>COBS 22.4 to COBS 22.6</i>)
<i>PROD</i>	<i>PROD 3</i>
<i>SUP</i>	<i>SUP 3.10, SUP 3.11, SUP 10A, SUP 10C, SUP 11, SUP 15 (excluding SUP 15.10) and SUP 16</i>
<i>DISP</i>	The entire sourcebook
<i>COMP</i>	The entire sourcebook

- (3) Another practical effect of *GEN 2.4.1R* is that, unless the contrary intention appears, a *Handbook* provision relating to a designated activity and made under powers conferred by sections 71N or 71O of the *Act* does not apply in relation to *Annex 5 BFSa activities*.
- (4) However, the disapplication referred to in (2) and (3) does not prevent *Annex 5 BFSa activities* from being taken into account for other purposes – for instance, if the *Annex 5 BFSa activities* might have an effect on a Swiss *firm's* financial resources or an assessment of its conduct or fitness and probity in relation to other *regulated activities*.
- (5) The disapplication also does not extend to any provisions that apply directly or indirectly to a *registered BFSa investment firm* as a result of that firm being an affiliate or controller of an *authorised person*.

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Application

1.1 General application

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Modifications to the general application rule

...

1.1.3 R ...

Firms providing investment services into Switzerland under the BFSA

1.1.3A R COBS 6.1ZB applies only in accordance with COBS 6.1ZB.1R.

...

Insert the following new section, COBS 6.1ZB, after COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions)). All the text is new and is not underlined.

6.1ZB Information about the firm (firms providing investment services through a client adviser in Switzerland under the BFSA)

6.1ZB.1 R (1) In this *rule*:

- (a) ‘client adviser’ has the meaning given in Annex 5, Section IV, paragraph B.2 of the *BFSA*;
 - (b) ‘UK investment services supplier’ means a *person* who meets the requirements in Annex 5, Section IV, paragraph B.2. of the *BFSA*;
 - (c) ‘relevant investment service’ means a service specified in Annex 5, Section III, paragraph B.a of the *BFSA*;
 - (d) ‘Swiss high net worth client’ means a *person* specified in Annex 5, Section V paragraph B.3 of the *BFSA*.
- (2) Paragraph (3) applies to a UK investment services supplier that supplies relevant investment services through a client adviser in

Switzerland to a Swiss high net worth client under access rights derived from Annex 5 of the *BFS*A.

- (3) Before the UK investment services supplier commences the supply of the relevant investment services, it must provide the Swiss high net worth client with a disclosure document in which the following is clearly and prominently stated:
- (a) that the UK investment services supplier is:
 - (i) an entity incorporated in, or formed under, the domestic law of the *UK*; and
 - (ii) authorised and supervised by the *PRA* and/or the *FCA* (as appropriate) under the domestic law of the *UK*;
 - (b) that the UK investment services supplier's duty to register as a client adviser in relation to article 28, paragraph 1 of the Swiss Financial Services Act (FinSA) is disapplied in accordance with Annex 5 of the *BFS*A; and
 - (c) if appropriate, information relating to the affiliation of the UK investment services supplier to an ombudsman in accordance with article 77 of FinSA.

[**Note:** this *rule* implements Annex 5, Section IX, paragraph B.2 of the *BFS*A.]

Amend the following as shown.

22 Restrictions on the distribution of certain complex investment products

...

22.4 Prohibition on the retail marketing, distribution and sale of derivative contracts of a binary or other fixed outcomes nature

Application

22.4.1 R (1) This section applies to:

- ~~(1)~~ (a) *MIFID investment firms* with the exception of *collective portfolio management investment firms*; ~~and~~
- ~~(2)~~ (b) *branches of third country investment firms*; and
- (c) *registered BFS*A investment firms,

in relation to the marketing, distribution or sale of *investments* specified in article 85(4A) and (4B) of the *Regulated Activities Order* in or from the *United Kingdom* to a *retail client*.

- (2) In this section, *firm* includes a *registered BFSA investment firm*.

...

22.5 Restrictions on the retail marketing, distribution and sale of contracts for differences and similar speculative investments

Application

- 22.5.1 R (1) Subject to *COBS 22.5.1AR* and *COBS 22.5.1BG* this section applies to:

- (a) *MIFID investment firms* with the exception of *collective portfolio management investment firms*; ~~and~~
- (b) *branches of third country investment firms*; and
- (c) *registered BFSA investment firms*,

in relation to the marketing, distribution or sale of *restricted speculative investments* in or from the *United Kingdom* to a *retail client*.

- (2) ...

- (3) In this section, *firm* includes a *registered BFSA investment firm*.

...

22.6 Prohibition on the retail marketing, distribution and sale of cryptoasset derivatives and cryptoasset exchange traded notes

Application

- 22.6.1 R (1) This section applies to:

- (+)(a) *MIFID investment firms*, with the exception of *collective portfolio management investment firms*;
- (+)(b) *branches of third country investment firms*;
- (+)(c) *MiFID optional exemption firms*; ~~and~~
- (+)(d) *TP firms* which are *EEA MiFID investment firms* with the exception of *collective portfolio management investment firms*; and
- (e) *registered BFSA investment firms*,

in relation to the marketing, distribution or sale of *cryptoasset derivatives* and *non-UK RIE cryptoasset exchange traded notes* in or from the *United Kingdom* to a *retail client*.

(2) In this section, *firm* includes a *registered BFSA investment firm*.

...

Annex D

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

1 Application

...

1 Annex Application (see ICOBS 1.1.2R)

1

...

Part 3: Where?			
Modifications to the general rule of application according to location			
...			
3	...		
4	<u>Firms providing services into Switzerland under Annex 4 of the BFSa</u>		
4.1	<u>R</u>	(1)	<u>ICOBS 4.7 applies only in accordance with ICOBS 4.7.1R.</u>
	<u>G</u>	(2)	<u>ICOBS 4.7.1R provides that ICOBS 4.7 applies to firms providing insurance services into Switzerland under Annex 4 of the BFSa. That includes those firms to which this sourcebook may otherwise not apply because of their reliance on an exemption or exclusion (for example article 72D of the Regulated Activities Order).</u>

...

Insert the following new section, ICOBS 4.7, after ICOBS 4.6 (Commission disclosure for pure protection contracts sold with retail investment products). All the text is new and is not underlined.

4.7 Information provided by insurance intermediaries or insurers supplying services into Switzerland under Annex 4 of the BFSa

Application and interpretation

- 4.7.1 R This section applies to the supply of relevant insurance services into Switzerland to a Swiss insurance client by a UK insurance supplier under access rights derived from Annex 4 of the *BFSA*.
- 4.7.2 R The other provisions of this sourcebook do not apply to this section except as indicated in *ICOBS* 4.7.4R.
- 4.7.3 R In this section:
- (1) ‘relevant insurance services’ means the services specified in Annex 4, Section III, paragraph B of the *BFSA*;
 - (2) ‘Swiss insurance client’ means the *persons* specified in Annex 4, Section V, paragraph B of the *BFSA*; and
 - (3) ‘UK insurance supplier’ means the *persons* specified in Annex 4, Section IV, paragraph B of the *BFSA*.

Pre-contractual disclosures

- 4.7.4 R (1) Within a reasonable time before the conclusion of an initial *contract of insurance* and, if necessary, within a reasonable time before its amendment or renewal, the UK insurance supplier must:
- (a) in the case of a UK insurance supplier that is an *insurer*, provide the Swiss insurance client with the information specified in Annex 4, Section VII, paragraph 1.a. of the *BFSA*; or
 - (b) in the case of a UK insurance supplier that is an *insurance intermediary*, provide the Swiss insurance client with the information specified in Annex 4, Section VII, paragraph 1.b of the *BFSA*.
- (2) The information in paragraph (1) must be:
- (a) clearly drafted; and
 - (b) provided in accordance with *ICOBS* 4.1A.2R.

Ad-hoc disclosures

- 4.7.5 R (1) Paragraph (2) applies where the Swiss insurance client asks the UK insurance supplier to provide copies of any files held by the UK insurance supplier relating to that Swiss insurance client or any other documents within the scope of the Swiss insurance client and UK insurance supplier’s business relationship.
- (2) The UK insurance supplier must, within 30 *days*, provide the Swiss insurance client with the documents requested under (1) unless to do

so would put the UK insurance supplier in breach of any data protection or confidentiality obligation to which they are subject.

[**Note:** this section implements Annex 4, Section VII, paragraphs 1 to 2 of the *BFS*.]

Annex E

Amendments to the Supervision manual (SUP)

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

15 Notifications to the FCA

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15.8 Notification in respect of particular products and services

...

Credit institutions providing account information services or payment initiation services

...

15.8.15 D ...

Notification in respect of investment services provided by client advisers in Switzerland under the BFSA

15.8.16 R (1) A BFSA UK investment services supplier that supplies relevant investment services:

- (a) through a client adviser in Switzerland;
- (b) to a Swiss high net worth client; and
- (c) under access rights derived from Annex 5 of the BFSA,
must notify the FCA of its intention to provide such relevant investment services before the first time it commences their supply.

(2) In this rule:

- (a) ‘BFSA UK investment services supplier’ means a *person* who meets the criteria in Annex 5, Section IV, paragraphs B.2.a to B.2.e. of the BFSA;
- (b) ‘client adviser’ has the meaning given in Annex 5, Section IV, paragraph B.2 of the BFSA;
- (c) ‘relevant investment services’ means a service specified in Annex 5, Section III, paragraph B.a of the BFSA; and
- (d) ‘Swiss high net worth client’ means the persons specified in Annex 5, Section V, paragraph B.3 of the BFSA.

[**Note:** this *rule* implements Annex 5, Section IX, paragraph B.1 of the *BFS*.]

Annex F

Berne Financial Services Agreement Guide (BFSAG)

In this annex, all text is new and is not underlined. Insert the following new guide, the Berne Financial Services Agreement Guide (BFSAG).

1 Application and purpose

1.1 Overview

- 1.1.1 G This special guide is for *persons* who are exercising market access rights under the *BFSAG*. Its purpose is to help those *persons* find their way around the *Handbook* by:
- (1) setting out which parts of the *Handbook* apply to *registered BFSAG investment firms* providing services from Switzerland into the *UK* under Annex 5 of the *BFSAG*; and
 - (2) setting out specific *Handbook* provisions which are relevant to:
 - (a) *UK insurers* and *insurance intermediaries* providing services from the *UK* into Switzerland under Annex 4 of the *BFSAG*; and
 - (b) *firms* providing investment services in Switzerland through a client adviser in accordance with Annex 5, Section IV, paragraph B.2 of the *BFSAG*.
- 1.1.2 G In *BFSAG*, ‘client adviser’ has the meaning in Annex 5, Section IV, paragraph B.2 of the *BFSAG*.

1.2 The BFSAG

- 1.2.1 G The *BFSAG* is an agreement between the *UK* and Switzerland governing market access rights for and cooperation in relation to the supervision of financial services suppliers established in the *UK* and Switzerland. The *BFSAG* applies to five sectors, as set out in Annexes 1 to 5 of the *BFSAG*.
- 1.2.2 G The *BFSAG* provides for enhanced cooperation arrangements in relation to the sectors covered by Annexes 1 and 2. It confers some additional market access rights for some of the sectors covered by Annex 3. Annex 4 confers new market access rights for *UK insurance intermediaries* and *insurers*. Annex 5 confers new market access rights for *registered BFSAG investment firms* and for *firms* providing investment services in Switzerland through a client adviser.

2 Market access rights and rules for UK insurance intermediaries and insurers

2.1 Annex 4 of the BFSAG

- 2.1.1 G (1) Under Annex 4 of the *BFSAG*, *UK insurers* and *insurance intermediaries* are entitled to provide certain insurance services to

certain categories of client in Switzerland on a cross-border basis, provided they meet the eligibility requirements in Annex 4. Those requirements include being included in the register maintained by the Swiss regulator (FINMA) for the purpose of the *BFSA*.

- (2) Where UK *insurers* exercise market access rights under Annex 4, Switzerland has committed to defer to UK authorisation procedures and prudential rules. That means that those *firms* are not required to be authorised in Switzerland and are not required to comply with the prudential rules covered by the agreement (for these purposes, 'prudential rules' is wider than rules relating to capital requirements).
- (3) In accordance with Annex 4, Section VI, paragraph A.b.ii of the *BFSA*, where untied insurance intermediaries exercise market access rights under Annex 4, they are relieved of the obligation to comply with the localisation requirement in article 41, paragraph 2.a of the Swiss Insurance Supervision Act of 17 December 2004. They remain subject to other requirements governing untied insurance intermediaries under Swiss law.

2.2 Additional Handbook provisions relevant to UK firms exercising rights under Annex 4 of the BFSA

- 2.2.1 G (1) UK *firms* exercising the right to provide cross-border insurance services into Switzerland in accordance with Annex 4 of the *BFSA* are still required to comply with the *Handbook* provisions where those provisions would otherwise apply to the activities the *firm* is carrying on in Switzerland.
- (2) Those *firms* are also subject to additional *rules* which give effect to notification and disclosure requirements under the *BFSA*. Those rules are in *ICOBS* 4.7.
- (3) *Firms* are also reminded of the need to comply with any applicable *PRA rules* and guidance.

3 Market access rights for registered BFSA investment firms

3.1 Annex 5 of the BFSA

- 3.1.1 G (1) Under Annex 5 of the *BFSA*, *registered BFSA investment firms* are entitled to provide certain investment services to certain categories of client in the UK on a cross-border basis from Switzerland, provided they meet the eligibility requirements in Annex 5. Those requirements include being included in the register maintained by the *FCA* for the purpose of the *BFSA* (the *BFSA register*).
- (2) Under Annex 5, each Party commits to deferring to certain regulatory and supervisory rules of the other Party for certain investment services.

- (3) For *registered BFSA investment firms* carrying on *Annex 5 BFSA activities*, this means that they are relieved from complying with ‘authorisation and prudential measures of the *United Kingdom* that apply solely to financial service suppliers’. Annex 5, Section VIII, paragraph A.1.b of the *BFSA* lists those measures. The above means that these firms:
- (a) are not required to apply for *authorisation* to carry on *regulated activities* to the extent that they are exercising rights under the *BFSA*; and
 - (b) are not required to comply with the prudential rules covered by the agreement (for these purposes, ‘prudential rules’ is wider than rules relating to capital requirements).

3.2 Deference

- 3.2.1 G (1) The areas to which deference applies are set out in Annex 5, Section VIII, paragraph A.1.b of the *BFSA*.
- (2) Certain measures are expressly excluded from the *UK*’s deference commitment in Annex 5 and Swiss firms providing services in accordance with that Annex will need to comply with these. These are:
- (a) *UK* product intervention measures (Annex 5, Section VIII, paragraph A.1.b.ii.13 of the *BFSA*) set out in the *Handbook* in *COBS* 22.4, *COBS* 22.5 and *COBS* 22.6 (see *BFSAG* 3.5.1G); and
 - (b) obligations in relation to, or arising from, trading on a trading venue under the domestic law of the *UK*. The trading venue is not relieved of obligations under the domestic law of the *UK* to report transactions of the *registered BFSA investment firms* to the *FCA* (Annex 5, Section VIII, paragraph A.1.c of the *BFSA*). This limitation covers, in particular, rules imposed by the trading venue relating to a firm which is also a *registered BFSA investment firm* for the purpose of the *BFSA*.
- (3) Measures of general application are not subject to deference – for example, criminal law, market abuse and insider trading rules, anti-money laundering rules and sanctions law.
- (4) Any provisions that do or may apply directly or indirectly to a *registered BFSA investment firm* as a result of it being an affiliate or controller of a *UK authorised person*, or which do or may apply to the *registered BFSA investment firm* only on the basis that they do not apply solely to financial services suppliers, continue to apply.
- 3.2.2 G (1) The deference provisions referred to above are implemented by:

- (a) article 72ZA of the *Regulated Activities Order* which, in summary, provides an exclusion in respect of certain *regulated activities* for *registered BFSA investment firms* where the firm is exercising rights under Annex 5 of the *BFSA*;
 - (b) article 73ZB of the *Financial Promotion Order* which, in summary, provides an exemption for communications which are *communicated* by a *registered BFSA investment firm* where the firm is exercising rights under Annex 5 of the *BFSA*; and
 - (c) *GEN* 2.4, which deals with the application of the *Handbook* to *registered BFSA investment firms*.
- (2) There is further *guidance* on articles 72ZA and 73ZB of the *Regulated Activities Order* in *PERG* 2.9.31G to *PERG* 2.9.33G and in *PERG* 8.14.40EG.
 - (3) *PERG* 2.9.17CG deals with the application of the exclusion for *overseas persons* to *registered BFSA investment firms*.

3.3 Activities carried on by employees of a registered BFSA investment firm on a temporary basis

- 3.3.1 G (1) Annex V, Section VIII, paragraph A.1.d of the *BFSA* provides that deference under that Annex shall extend, without the need for further authorisation, to activities relating to the cross-border supply of a *BFSA registered service* by a *registered BFSA investment firm* of Switzerland to an *Annex 5 BFSA client* carried out in the territory of the *United Kingdom* by its employees on a temporary basis, which is not such as to amount to a permanent establishment of the *registered BFSA investment firm* in the *United Kingdom*.
- (2) However, Annex V, Section VIII, paragraph A.1.d of the *BFSA* clarifies that deference does not extend to:
 - (a) employees of a branch of the *registered BFSA investment firm* located in the *United Kingdom* and authorised under Part 4A of the *Act*; or
 - (b) the supply of a *BFSA registered service* on a temporary basis in the territory of the *United Kingdom* by *persons* other than employees of a *registered BFSA investment firm* of Switzerland. For this purpose, an ‘employee’ includes any *person* acting in that capacity on behalf of the *registered BFSA investment firm*.
- (3) The deference provisions in Annex V have been implemented in part by article 72ZA of the *Regulated Activities Order*. Accordingly, the *FCA* considers that the exclusion in article 72ZA of the *Regulated Activities Order* extends to the circumstances described in (1).

3.4 Handbook provisions relevant to registered BFSA investment firms exercising rights under Annex 5 of the BFSA

- 3.4.1 G (1) *Registered BFSA investment firms* exercising rights under the *BFSA* are not required to obtain a *Part 4A permission*. As a result, the *FCA Handbook* does not generally apply to *registered BFSA investment firms* insofar as they are exercising rights under Annex 5 of the *BFSA*.
- (2) Where a *registered BFSA investment firm* carries on some activities in the *UK* under a *Part 4A permission* and carries on other activities under the *BFSA*, deference will only apply to its *Annex 5 BFSA activities*.
- (3) *GEN 2.4* (among other things) deals with the application of the *Handbook* where deference under the *BFSA* applies.

3.5 Product intervention rules relevant to Swiss firms exercising rights under Annex 5 of the BFSA

- 3.5.1 G (1) The *BFSA* excludes certain areas from the scope of deference. Those areas include product intervention measures. Some *Handbook rules* dealing with product intervention measures apply to *registered BFSA investment firms* when exercising rights under the *BFSA*. Those are listed below:
- (a) *COBS 22.4*;
- (b) *COBS 22.5*; and
- (c) *COBS 22.6*.
- (2) *Registered BFSA investment firms* are reminded that they are still required to comply with measures of general application including, for example, criminal law, market abuse and insider trading rules, anti-money laundering rules and sanctions law.

4 Market access rights for UK investment firms

4.1 Annex 5 of the BFSA

- 4.1.1 G (1) In accordance with Annex 5, Section IV, paragraph B.2 of the *BFSA*, *UK firms* are entitled to provide certain investment services in the territory of Switzerland on a temporary basis acting through an employee (a ‘client adviser’ as defined in *BFSAG 1.1.2G*). The *firm* must meet the eligibility requirements in Annex 5, Section IV, paragraph B.2 of the *BFSA*, including the requirement to notify the *FCA*.
- (2) Annex 5, Section VIII, paragraph A.2.b.i. of the *BFSA* provides that client advisers making use of the access rights referred to in (1) are not required to register as client advisers under relevant Swiss law.

- (3) *Firms* are reminded of the exceptions to deference specified in Annex 5, Section VIII, paragraph A.2.c. of the *BFSA*.

4.2 Additional Handbook provisions relevant to UK firms exercising rights under Annex 5 of the BFSA

- 4.2.1 G (1) UK *firms* exercising the right to provide investment services in Switzerland through a client adviser in accordance with Annex 5, Section IV, paragraph B.2 of the *BFSA* are still required to comply with relevant *Handbook* provisions where those provisions would otherwise apply to the activities the *firm* is carrying on in Switzerland.
- (2) Those *firms* are also subject to additional *rules* which give effect to notification and disclosure requirements under the *BFSA*. Those requirements are set out in:
 - (a) *COBS* 6.1ZB; and
 - (b) *SUP* 15.8.

Annex G

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

Overseas persons

...

2.9.17B G ...

- 2.9.17C G (1) In line with article 72(13) of the *Regulated Activities Order*, the exclusion for *overseas persons* described in *PERG 2.9.17G* does not apply to the carrying on by an *overseas person* of any *regulated activity* ('the RAO activity') specified for the purposes of that exclusion where (in summary):
- (a) the *overseas person* is a *registered BFSA investment firm*; and
 - (b) the activity which the *registered BFSA investment firm* may carry on by virtue of its registration as such is, in substance, the same as the RAO activity, taking account of the *Annex 5 BFSA financial instruments*, in relation to which, and the clients in relation to whom, the RAO activity may be carried out.
- (2) The effect of the above is that a *registered BFSA investment firm* cannot rely on the exclusion for *overseas persons* when it is exercising market access rights under the *BFSA*. However, such firms can still rely on that exclusion for any activities which are not included in the firm's entry on the *BFSA register*, provided that the firm meets the applicable conditions for that exclusion.
- (4) Where a *registered BFSA investment firm* is carrying on a particular activity under the *BFSA* and it wishes, instead, to rely on the exclusion for *overseas persons*, it must cancel its registration under the *BFSA* for that particular activity before it can rely on the exclusion.
- (5) There is further information about the *BFSA* in *BFSAG*.

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Persons seeking to use the exemption under Article 2.1(j) of the Markets in Financial Instruments Directive

2.9.30 G ...

Swiss mutual recognition firms

2.9.31 G (1) The exclusion in article 72ZA of the *Regulated Activities Order* relates to *persons* exercising market access rights under Annex 5 of the *BFSA*. There is further information about the *BFSA* in *BFSAG*.

(2) This exclusion applies to:

- (a) *dealing in investments as principal;*
- (b) *dealing in investments as agent;*
- (c) *arranging (bringing about) deals in investments;*
- (d) *managing investments;*
- (e) *safeguarding and administering investments;*
- (f) *advising on investments (except P2P agreements); and*
- (g) *agreeing to carry on a regulated activity.*

2.9.32 G The exclusion described in *PERG* 2.9.31G is only available:

- (1) to a *registered BFSA investment firm*; and
- (2) to the extent that the *regulated activity*:
 - (a) is being carried on for the purpose of providing a *BFSA registered service*:
 - (i) to the *Annex 5 BFSA clients*; and
 - (ii) in relation to the *Annex 5 BFSA financial instruments*,
specified in the entry for that *registered BFSA investment firm*
in the *BFSA Register*; and
 - (b) is being carried on from Switzerland.

2.9.33 G (1) The effect of the exclusion described in *PERG* 2.9.31G is that a *person* who is exercising rights under Annex 5 of the *BFSA* does not require *permission* for the purpose of carrying on *regulated activities* to the extent that that *person* is exercising rights under the *BFSA*. There is further *guidance* on this exclusion in *BFSAG* 3.3.1G.

- (2) The exclusion described in PERG 2.9.31G is limited to *regulated activities* which are carried on for the purpose of providing the services listed in that *person's* entry on the *BFSA register* in relation to the categories of client and the categories of financial instrument listed in that entry.
- (3) Hence, the exclusion will not apply where a *person* is included in the *BFSA register* and carries on one of the services listed in the register but does so in relation to a client or financial instrument which falls outside the categories of client or financial instrument listed in that *person's* register entry.
- (4) Where a *registered BFSA investment firm* carries on *regulated activities* which fall outside the scope of their entitlement under the *BFSA*, that *person* will only be able to carry on those *regulated activities* if that *person*:
 - (a) has obtained *authorisation* for those activities; or
 - (b) is able to rely on another exclusion or an exemption under the *Act*.
- (5) Paragraph (2) means that, in some cases, a *registered BFSA investment firm* may carry on some *regulated activities* under the *BFSA* and carry on other *regulated activities* under its *authorisation*.
- (6) Where a *person* has a *permission* to carry on a *regulated activity*, that *person* cannot register to carry on an activity under the *BFSA* which is the same as or which corresponds to that *regulated activity* (see regulation 8(6) of the *BFSA Regulations*).
- (7) The exclusion for *overseas persons* referred to in PERG 2.9.17CG does not apply where the exclusion described in PERG 2.9.31G applies.

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8 Financial promotion and related activities

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8.14 Other financial promotions

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Promotions of qualifying cryptoassets by registered persons (article 73ZA)

8.14.40 G ...
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Berne Financial Services Agreement suppliers

- 8.14.40E G (1) Article 73ZB exempts any *communication* which is communicated:
- (a) by a *registered BFSA investment firm* in relation to *BFSA registered services*;
 - (b) to *persons* whom the *registered BFSA investment firm* reasonably believes are *Annex 5 BFSA clients*; and
 - (c) in relation to any of the financial instruments listed in Annex 5, Section VI, paragraphs A(a), (b) and (d) of the *BFSA*,
where the *BFSA registered services*, *Annex 5 BFSA clients* and the
financial instruments referred to in (1)(c) are all included in the entry
for that *registered BFSA investment firm* in the *BFSA register*.
- (2) The exemption described in (1) does not apply where the
communication is communicated in relation to the financial
instruments listed in Annex 5, Section VI, paragraph A(c) of the
BFSA – namely, collective investment schemes (CIS) or alternative
investment funds (AIFs), including money market funds (MMFs).
Accordingly, the exemption does not apply where the
communication relates to a CIS, AIF or MMF. For these purposes,
CIS, AIF and MMF have the meaning in Annex 5, Section VI,
paragraph A(c) of the *BFSA*.

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