

REASONABLE STEPS TO ENSURE THE AUTHENTICITY OF ELECTRONIC INSTRUCTIONS

This Guidance does not purport to be a definitive guide, but aims to provide a non-exhaustive statement of the measures that operators of UK-authorized collective investment schemes may adopt in order to comply with COLL4.4.13R(3)(b) and paragraph 4C of Schedule 4 to the Open-Ended Investment Companies Regulations 2001 (as amended).

This Guidance is current as at the date of issue, but may be revised from time to time in the light of any relevant changes to legislation or the FCA Handbook, or to reflect ongoing evolutions in technology and market practice. Firms relying on this guidance are advised to monitor the websites of The Investment Association (www.theia.org) and the FCA (www.fca.org.uk) for updated versions.

This Guidance has been prepared taking into account the FCA's policy on the confirmation of industry guidance (see FSA's Policy Statement 07/16). The FCA has reviewed its content and has confirmed that it will take compliance with it into account when exercising its regulatory functions. This confirmation took effect on 4 January 2016 for a period of 5 years, and had minor amendments made to it in September 2019.

Note that this Guidance does not alter the meaning of any relevant provision in law or FCA Rule, and should not be interpreted as doing so. It is neither mandatory nor FCA guidance; FCA confirmation of it cannot affect the rights of third parties.

Introduction

Sections 53 and 136 of the Law of Property Act 1925, section 1 of the Requirements of Writing (Scotland) Act 1995, section 6 of the Statute of Frauds (Ireland) 1695 and Schedule 4 to the Open-Ended Investment Companies Regulations 2001 (OEIC Regulations), as amended¹, and the FCA's Collective Investment Schemes Sourcebook (COLL 4.4.13(3)(b)) collectively provide that title to units² in UK-authorized unit trusts, authorised contractual schemes and open-ended investment companies may be transferred on the strength of an authority given by electronic means. These provisions are all subject to the unit trust manager or ACD taking reasonable steps to ensure that the communication is given by the unitholder (or an agent that they have appointed in writing).

This guidance is directed solely at authorised fund managers, who are subject to COLL and the Open-Ended Investment Companies Regulations 2001. Its purpose is to assist them in determining the steps they should take to satisfy the "reasonable steps" requirement. The guidance in relation to renunciation of title is applicable both when dealing as principle or as agent on behalf of the fund.

¹ As amended by The Unit Trusts (Electronic Communications) Order 2009 (SI 2009/555) and The Open-Ended Investment Companies (Amendment) Regulations 2009 (SI 2009/553).

² Throughout this guidance, the term "units" is used to refer both units of a unit trust and shares of an open-ended investment company.

The guidance has been prepared for use in connection with renunciation and transfer of title under the laws of England & Wales and Scotland. Differences that affect transfers in some circumstances under the laws of Northern Ireland have not been considered, in the absence of any funds known to operate under them.

Objectives

The guidance recommends control mechanisms that firms who are responsible for the unit register should employ in order to be satisfied that an authority has been given by the incumbent holder of the units or someone who has been properly appointed to act on their behalf. The objective ultimately is to permit more automated and efficient processing for investors while providing adequate protection to the firm and to investors against fraud.

None of the changes to legislation or FCA rules affects investors' rights to transfer or renounce title to shares by way of an appropriate physical document signed by them, which must continue to be handled in the normal way.

The guidance itself is not mandatory in relation to transfer authorities and renunciation given by electronic means, and firms may adopt alternative measures that they believe also satisfy the reasonable steps requirement.

Consultation

The preparation of this guidance included consultation with The Investment Association and Depositary and Trustee Association members and with other affected sectors of the financial services industry (eg. financial advisers, stockbrokers and custodians) through their various representative bodies. Consumer input was provided by the Financial Services Consumer Panel as part of the FCA confirmation process.

Presentation of the guidance

The annexes below identify various measures and restrictions that firms responsible for the registers of authorised unit trusts, authorised contractual schemes or open-ended investment companies should implement in order to act upon renunciations of title (Annex I) and transfer instructions (Annex II). The principles described in these two annexes could be applied to non-title or other types of instructions (such as a change in registration details). The measures etc. that are described vary according to the party(ies) involved and the method of communication and do not extend to matters that firms would need to address in any event, irrespective of whether the authority was in electronic or physical form.

The guidance envisages the following scenarios:

Renunciation of title (redemptions)

- private investor redeeming dealing directly with the fund manager;
- private investor redeeming via a regulated intermediary;
- regulated institution, providing its own custody in-house, redeeming directly with the fund manager (this would also cover a custodian that both holds the units/shares on behalf of a third party and undertakes any associated dealing activities); and
- regulated institution (eg. an investment manager) redeeming shares that are held by a third party custodian.

Transfers

- between private investors, with the holder communicating the instruction;
- between private investors, with the transferee communicating the instruction;
- between private investors, with a regulated intermediary communicating the instruction;
- from a private investor to a regulated institution, with the investor communicating the instruction;
- from a private investor to a regulated institution, with the institution communicating the instruction;
- from a private investor to a regulated institution, with a regulated intermediary communicating the instruction;
- from a regulated institution to any third party, with the institution communicating the instruction; and
- from a regulated institution to any third party, with a third party communicating the instruction (which it is suggested would not be acceptable to the holding institution).

For these purposes, "third party" includes group associates, except where an entity (eg. custodian) maintains a separate nominee entity.

The electronic media considered under each scenario are as follows:

- telephone;
- secure e-mail;
- proprietary internet site of the fund manager; and
- secure messaging network / hub (eg. SWIFT, EMX, TeX, a blockchain etc.).

Although faxes fall within the definition of electronic communications³, they are considered generically, as firms would be expected to handle them in the same way as they would original signed documents.

In a number of scenarios, communications by certain means have been excluded, as they are not believed to offer sufficiently robust assurance as to the identity of the person lodging the authority.

³ See section 15 of the Electronic Communications Act 2000, as amended.

ANNEX 1: PAPERLESS RENUNCIATION OF TITLE - REASONABLE STEPS TO ENSURE AUTHENTICITY

Communications by fax are also envisaged, in which case the firm should follow the same procedures as they would had it been received by post.

Holder	Source of instruction	Communication medium	Instruction restrictions/measures	Settlement restrictions/method
Private investor	Direct	Telephone	<p><u>Restrictions</u></p> <ul style="list-style-type: none"> • Instructions should be accepted only from sole holders • Firms should consider whether or not to limit the value of a redemption on which the proceeds may be paid on the strength of a telephone instruction <p><u>Measures</u></p> <ul style="list-style-type: none"> • Appropriate anti-impersonation checks, which do not rely on confirmation of publicly available information, should be applied to satisfy the firm as to the caller's identity. • Firms should determine a suitable period following a change to the investor's registered address, or a transfer into that investor's name from another private investor, during which either renunciation must be provided in writing or the firm must conduct appropriate additional security checks before redemption proceeds will be paid on the strength of a telephone instruction • Order confirmations should be sent by post to the investor's registered address or as otherwise previously agreed with them 	<p><u>Restrictions</u></p> <ul style="list-style-type: none"> • Payment should be made only to the registered holder <p><u>Methods</u></p> <ul style="list-style-type: none"> • Electronic funds transfer or direct credit to a bank account that has been confirmed is in the registered holder's name • Refund to holder's debit/credit card used to purchase units • Cheque (crossed "a/c payee") payable to the holder and sent to their registered address⁴
		Secure e-mail	<p><u>Restrictions</u></p> <ul style="list-style-type: none"> • Instructions should be accepted only from sole holders • Firms should consider whether or not to limit the value of a redemption on which the proceeds may be paid on the strength of an e-mail instruction <p><u>Measures</u></p> <ul style="list-style-type: none"> • The investor's e-mail address should be agreed with the firm in advance • E-mails containing renunciation should be digitally signed or employ some other form of authentication to prove their source • Firms should determine a suitable period following a change to the investor's registered address, or a transfer into that investor's name from another private investor, during which either renunciation must be provided in writing or the firm must conduct appropriate additional 	

Continued...

⁴ If available to the firm, this would be the default settlement method in the event that bank or card details are unknown or unverified by the settlement date and all other controls had been satisfied.

Note that this guidance has been prepared for use in connection with renunciation and transfer of title under the laws of England & Wales and Scotland. Differences that affect transfers in some circumstances under the laws of Northern Ireland have not been considered, in the absence of any funds known to operate under them.

ANNEX 1: PAPERLESS RENUNCIATION OF TITLE - REASONABLE STEPS TO ENSURE AUTHENTICITY

Holder	Source of instruction	Communication medium	Instruction restrictions/measures	Settlement restrictions/method
			<p>security checks before redemption proceeds will be paid on the strength of an e-mail instruction</p> <ul style="list-style-type: none"> Order confirmations should be sent by post to the investor's registered address or as otherwise previously agreed with them 	
Private investor ...continued	Direct	Proprietary internet site	<p><u>Restrictions</u></p> <ul style="list-style-type: none"> Instructions should be accepted only from sole holders Firms should consider whether or not to limit the value of a redemption on which the proceeds may be paid on the strength of an internet instruction <p><u>Measures</u></p> <ul style="list-style-type: none"> Access to internet dealing facilities should be subject to appropriate log-in security controls Firms should determine a suitable period following a change to the investor's registered address, or a transfer into that investor's name from another private investor, during which either renunciation must be provided in writing, or the firm must conduct appropriate additional security checks before redemption proceeds will be paid on the strength of an internet instruction Order confirmations should be sent by post to the investor's registered address or as otherwise previously agreed with them 	<i>(See above)</i>
		Secure network/hub	Not applicable	

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Holder	Source of instruction	Communication medium	Instruction restrictions/measures	Settlement restrictions/method
Private investor The firm should confirm with the intermediary, either on a case-by-case basis or through terms of business between them, that the intermediary obtains the investor's express appointment to act as their agent for the purposes of renouncing title to units in relation to redemptions in funds managed by the firm.	Regulated intermediary	Telephone	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • The intermediary and the firm should agree in advance upon the security measures surrounding telephone dealing • Order confirmations should be sent by post to the investor's registered address or as otherwise previously agreed with them 	<u>Restrictions</u> <ul style="list-style-type: none"> • Payment to be made to one of: <ul style="list-style-type: none"> – registered holder – intermediary's client money account – another regulated institution, provided it is for reinvestment by or for the registered holder <u>Methods</u> <ul style="list-style-type: none"> • Electronic funds transfer or direct credit to a bank account that has been confirmed is in the relevant person's or institution's name • Refund to holder's debit/credit card used to purchase shares • Cheque (crossed "a/c payee") payable to the holder and sent to their registered address⁵ • Cheque (crossed "a/c payee") payable to the intermediary's client money account and sent to their relevant business address • Cheque (crossed "a/c payee") payable to another regulated institution and sent to their relevant business address with clear instruction that it is for reinvestment by the registered holder
		Secure e-mail	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • The intermediary's e-mail address for dealing purposes should be agreed with the fund manager in advance • E-mails containing renunciation should be digitally signed or employ some other form or authentication to prove their source • Order confirmations should be sent by post to the investor's registered address or as otherwise previously agreed with them 	
		Proprietary internet site	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • Access to internet dealing facilities should be subject to appropriate log-in security controls • Order confirmations should be sent by post to the investor's registered address or as otherwise previously agreed with them 	

⁵ If available to the firm, this would be the default settlement method in the event that bank or card details, or alternative cheque payee details are unknown or unverified by the settlement date and all other controls had been satisfied.

Note that this guidance has been prepared for use in connection with renunciation and transfer of title under the laws of England & Wales and Scotland. Differences that affect transfers in some circumstances under the laws of Northern Ireland have not been considered, in the absence of any funds known to operate under them.

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Holder	Source of instruction	Communication medium	Instruction restrictions/measures	Settlement restrictions/method
		Secure network/hub	<u>Restrictions</u> <ul style="list-style-type: none"> • none <u>Measures</u> <ul style="list-style-type: none"> • Bilateral agreements should be in place between the intermediary and the firm to transmit instructions and confirmations via the network/hub concerned • Order confirmations should be sent by post to the investor's registered address or as otherwise previously agreed with them 	

Holder	Source of instruction	Communication medium	Instruction restrictions/measures	Settlement restrictions/method
Regulated institution (own custody)	Direct	Telephone	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • The institution and the firm should agree in advance upon the security measures surrounding telephone dealing • Order confirmation arrangements should be agreed in advance between the institution and the firm 	<u>Restriction/method</u> <ul style="list-style-type: none"> • Payment to be made electronically as per a mandate agreed between institution and the firm
		Secure E-mail	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • The institution's e-mail address for dealing purposes should be agreed with the firm in advance • E-mails containing renunciation should be digitally signed or employ some other form or authentication to prove their source • Order confirmation arrangements should be agreed in advance between the institution and the firm 	

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Holder	Source of instruction	Communication medium	Instruction restrictions/measures	Settlement restrictions/method
		Proprietary internet site	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • Access to internet processing facilities should be subject to appropriate log-in security controls • Order confirmation arrangements should be agreed in advance between the institution and the firm 	
		Secure network/hub	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • Bilateral agreements should be in place between the institution and the firm to transmit instructions and confirmations via the network/hub concerned • Order confirmation arrangements should be agreed in advance between the institution and the firm 	

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Holder	Source of instruction	Communication medium	Instruction restrictions/measures	Settlement restrictions/method
Custodian/nominee The institution, the custodian and the firm should agree trilaterally that the firm may accept renunciation given by electronic means from the institution on behalf of the custodian.	Regulated institution (eg. investment manager)	Telephone	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • The institution and the firm should agree in advance upon the security measures surrounding telephone dealing • Order confirmation arrangements should be agreed in advance between the institution, the custodian and the firm 	<u>Restriction/method</u> <ul style="list-style-type: none"> • Payment to be made electronically as per mandate agreed between custodian and the firm
		Secure e-mail	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • The institution's e-mail address for dealing purposes should be agreed with the firm in advance • E-mails containing renunciation should be digitally signed or employ some other form or authentication to prove their source • Order confirmation arrangements should be agreed in advance between the institution, the custodian and the firm 	
		Proprietary internet site	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • Access to internet processing facilities should be subject to appropriate log-in security controls • Order confirmation arrangements should be agreed in advance between the institution and the firm 	
		Secure network/hub	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • Bilateral agreements should be in place between the institution and the firm to transmit instructions and confirmations via the network/hub concerned 	

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ANNEX 2: PAPERLESS TRANSFER OF TITLE - REASONABLE STEPS TO ENSURE AUTHENTICITY

Communications by fax are also envisaged, in which case the firm should follow the same procedures as they would if an original instrument of transfer were received by post.

Holder	Transferee	Source of instruction	Communication medium	Measures/restrictions to be applied
Private investor	Private investor	Holder	Telephone	Not appropriate for paperless transfer
			Secure e-mail	<u>Restrictions</u> <ul style="list-style-type: none"> Instructions should be accepted only from sole holders Firms should consider whether or not to limit the value of a transfer that may be instructed by e-mail <u>Measures</u> <ul style="list-style-type: none"> The investor's e-mail address should be agreed with the firm in advance E-mails containing transfer instructions should be digitally signed or employ some other form or authentication to prove their source Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them
			Proprietary internet site	<u>Restrictions</u> <ul style="list-style-type: none"> Instructions should be accepted only from sole holders Firms should consider whether or not to limit the value of a transfer that may be instructed via the internet <u>Measures</u> <ul style="list-style-type: none"> Access to internet processing facilities should be subject to appropriate log-in security controls Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them
			Secure network/hub	Not applicable

Holder	Transferee	Source of instruction	Communication medium	Measures/restrictions to be applied
Private investor	Private investor	Transferee	Telephone	Not appropriate for paperless transfer
			E-mail	
			Proprietary internet site	
			Secure network/hub	

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Holder	Transferee	Source of instruction	Communication medium	Measures/restrictions to be applied
Private investor	Private investor	Regulated intermediary	Telephone	<i>Not appropriate for paperless transfer</i>
<p>The firm should confirm with the intermediary, either on a case-by-case basis or through terms of business between them, that the intermediary obtains the investor's express appointment to act as their agent for the purposes of transferring units in funds managed by the firm.</p> <p>Note, however, that legislative constraints mean the ability for the holder to appoint an agent for these purposes does not extend to funds that operate under Scottish law where the units are being transferred as a gift.</p>			Secure e-mail	<p><u>Restrictions</u></p> <ul style="list-style-type: none"> • None <p><u>Measures</u></p> <ul style="list-style-type: none"> • The intermediary's e-mail address for instructing transfers should be agreed with the firm in advance • E-mails containing transfer instructions should be digitally signed or employ some other form or authentication to prove their source • Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them
			Proprietary internet site	<p><u>Restrictions</u></p> <ul style="list-style-type: none"> • None <p><u>Measures</u></p> <ul style="list-style-type: none"> • Access to internet processing facilities should be subject to appropriate log-in security controls • Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them
			Secure network/hub	<p><u>Restrictions</u></p> <ul style="list-style-type: none"> • None <p><u>Measures</u></p> <ul style="list-style-type: none"> • Agreements should be in place between the intermediary and the firm to transmit instructions via the network/hub concerned • Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them

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Holder	Transferee	Source of instruction	Communication medium	Measures/restrictions to be applied
Private investor	Regulated institution	Holder	Telephone	Not appropriate for paperless transfer
			Secure e-mail	<u>Restrictions</u> <ul style="list-style-type: none"> • Instructions should be accepted only from sole holders • Firms should consider whether or not to limit the value of a transfer that may be instructed by e-mail <u>Measures</u> <ul style="list-style-type: none"> • The investor's e-mail address should be agreed with the firm in advance • E-mails containing transfer instructions should be digitally signed or employ some other form or authentication to prove their source • Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them
			Proprietary internet site	<u>Restrictions</u> <ul style="list-style-type: none"> • Instructions should be accepted only from sole holders • Firms should consider whether or not to limit the value of a transfer that may be instructed via the internet <u>Measures</u> <ul style="list-style-type: none"> • Access to internet processing facilities should be subject to appropriate log-in security controls • Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them
			Secure network/hub	Not applicable

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Holder	Transferee	Source of instruction	Communication medium	Measures/restrictions to be applied
Private investor	Regulated institution	Transferee	Telephone	<i>Not appropriate for paperless transfer</i>
<p>The firm should confirm with the institution, either on a case-by-case basis or through terms of business between them, that the institution obtains the investor's express appointment to act as their agent for the purposes of transferring units in funds managed by the firm.</p> <p>Note, however, that legislative constraints mean the ability for the holder to appoint an agent for these purposes does not extend to funds that operate under Scottish law where the units are being transferred as a gift.</p>			Secure e-mail	<p><u>Restrictions</u></p> <ul style="list-style-type: none"> • None <p><u>Measures</u></p> <ul style="list-style-type: none"> • The institution's e-mail address for instructing transfers should be agreed with the firm in advance • E-mails containing transfer instructions should be digitally signed or employ some other form or authentication to prove their source • Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them
			Proprietary internet site	<p><u>Restrictions</u></p> <ul style="list-style-type: none"> • None <p><u>Measures</u></p> <ul style="list-style-type: none"> • Access to internet processing facilities should be subject to appropriate log-in security controls • Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them
			Secure network/hub	<p><u>Restrictions</u></p> <ul style="list-style-type: none"> • None <p><u>Measures</u></p> <ul style="list-style-type: none"> • Agreements should be in place between the institution and the firm to transmit instructions via the network/hub concerned • Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them

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Holder	Transferee	Source of instruction	Communication medium	Measures/restrictions to be applied
Private investor The firm should confirm with the intermediary, either on a case-by-case basis or through terms of business between them, that the intermediary obtains the investor's express appointment in writing to act as their agent for the purposes of transferring units in funds managed by the firm. Note, however, that legislative constraints mean the ability for the holder to appoint an agent for these purposes does not extend to funds that operate under Scottish law where the units are being transferred as a gift.	Regulated institution	Regulated intermediary	Telephone	Not appropriate for paperless transfer
			Secure e-mail	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • The intermediary's e-mail address for instructing transfers should be agreed with the firm in advance • E-mails containing transfer instructions should be digitally signed or employ some other form of authentication to prove their source • Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them
			Proprietary internet site	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • Access to internet processing facilities should be subject to appropriate log-in security controls • Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them
			Secure network/hub	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • Agreements should be in place between the intermediary and the firm to transmit instructions via the network/hub concerned • Confirmations of transfers should be sent by post to the investor's registered address or as otherwise previously agreed with them

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Holder	Transferee	Source of instruction	Communication medium	Measures/restrictions to be applied
Regulated institution	Any	Holder	Telephone	Not appropriate for paperless transfer
			Secure e-mail	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • The institution's e-mail address for instructing transfers should be agreed with the firm in advance • E-mails containing transfer instructions should be digitally signed or employ some other form or authentication to prove their source • Confirmation arrangements concerning transfers should be agreed in advance between the institution and the firm
			Proprietary internet site	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • Access to internet processing facilities should be subject to appropriate log-in security controls • Confirmation arrangements concerning transfers should be agreed in advance between the institution and the firm
			Secure network/hub	<u>Restrictions</u> <ul style="list-style-type: none"> • None <u>Measures</u> <ul style="list-style-type: none"> • Agreements should be in place between the institution and the firm to transmit instructions and confirmations via the network/hub concerned
Holder	Transferee	Source of instruction	Communication medium	Measures/restrictions to be applied
Regulated institution	Any	Other than holder	Telephone	Unlikely to be acceptable to holding institution
			E-mail	
			Proprietary internet site	
			Secure network/hub	

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